

For Immediate Release

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SUPREME COURT URGED TO REVIEW MAJOR SENTENCING GUIDELINE CASE (*Thurston v. United States*)

The Washington Legal Foundation (WLF) filed a brief in the U.S. Supreme Court urging the Court to review and reverse a court of appeals decision that sharply limited the trial court from departing downward under the Sentencing Guidelines in a case where one business defendant received probation in a plea bargain, but a less culpable executive was given five years for exercising his right to stand trial for the same offense. If the High Court reviews and reverses the decision, it could permit trial courts to depart more easily from the draconian sentences dictated by the U.S. Sentencing Guidelines.

In *Thurston v. United States*, two executives employed by a medical laboratory testing company were indicted on one conspiracy count for allegedly charging Medicare to pay for certain blood tests for patients which were performed, but were determined to be medically unnecessary. The prosecutors allowed one defendant, Joseph Isola, to plead nolo contendere and to receive probation. They offered the same deal to William Thurston who rejected it and elected to exercise his constitutional right to trial. He was found guilty by a jury of the single conspiracy count. Thereafter, the trial court imposed a sentence of three months in prison and two years probation in order to avoid sentencing disparity with the co-defendant and because of Thurston's significant charitable works in the community.

The government appealed the sentence, and in the interim, Congress enacted -- after Thurston completed his term of imprisonment and home detention -- the so-called PROTECT Act, otherwise known as the Feeney Amendment, that sharply reduced the trial court's ability to depart from the Guidelines and provided courts of appeals with *de novo* review authority when reviewing departure decisions by trial courts instead of the due deference standard. On appeal, the U.S. Court of Appeals for the First Circuit reversed and ordered Thurston to serve five years, the maximum sentence for conspiracy. The trial judge recused himself from the case, not wanting to carry out a clearly unjust sentence.

In its brief, WLF argued that the courts should be allowed to depart from the draconian sentences dictated by the Guidelines, especially where not to do so, would result in gross disparities of sentences with co-defendants.

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