

For Immediate Release

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WLF URGES SUPREME COURT TO RULE AGAINST SENTENCING GUIDELINES

(*Booker v. U.S.*; *Fanfan v. U.S.*)

The Washington Legal Foundation (WLF) filed a brief with the United States Supreme Court urging it to affirm a pair of lower court rulings that held that the U.S. Sentencing Guidelines are unconstitutional under the Sixth Amendment's guarantee to a right to trial. If the Court agrees with WLF, as many legal observers believe it will, Congress will likely revamp the controversial guidelines which have mandated draconian sentences even for minor regulatory offenses.

In the last few months, several federal courts have ruled that the Supreme Court's June 2004 ruling in *Blakely v. Washington*, which dealt with the constitutionality of the State of Washington's sentencing guidelines, also applies to the federal guidelines. In *Blakely*, the Supreme Court ruled in a 5-4 decision written by Justice Scalia, that factors used by the judge to enhance a prison sentence must be found beyond a reasonable doubt by the jury under the Sixth Amendment. Under the current federal guidelines, once a jury finds a defendant guilty of an offense beyond a reasonable doubt, the judge, at the urging of the prosecutor, "enhances" the sentence by finding, only by a preponderance of the evidence, that the defendant may have committed other offenses for which he was not charged. Indeed, in some cases, the judge is urged to enhance the sentence for conduct which the defendant was acquitted by the jury. WLF argued in its brief that *Blakely* should apply because the guidelines are mandatory, leaving federal judges little, if any, discretion to depart from them to avoid imposing unduly harsh sentences.

WLF has long been a critic of the sentencing guidelines. In one case, WLF's small business clients were sentenced to *eight years* in prison for importing frozen seafood because it was packed in plastic bags instead of cardboard boxes. WLF's Supreme Court brief, filed on behalf of itself and the Allied Educational Foundation, was drafted with the *pro bono* assistance of Donald B. Verrilli, Jr. and Elaine J. Goldenberg of the Washington, D.C. office of Jenner & Block LLP. A hearing in this landmark case will be held on October 4, 2004, the first day of the Court's new term. A ruling is expected by the end of the year.

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