



FOR IMMEDIATE RELEASE

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**WLF SAYS CONGRESS ACTS APPROPRIATELY
IN REQUIRING FOOD WARNING UNIFORMITY
(*In re: Food Warning Legislation*)**

WLF attorneys yesterday advised a leading House Democrat that Congress would be acting appropriately were it to adopt legislation requiring national uniformity in food safety and warning requirements. In a written response to a request for counsel from U.S. Representative Edolphus Towns, WLF attorneys Daniel Popeo and Richard Samp stated that H.R. 4167, the proposed National Uniformity for Food Act of 2005 ("NUFA"), is consistent with the federal government's traditional role in the regulation of interstate commerce and an appropriate response to the disruptions in interstate commerce caused by California's Proposition 65.

Under current federal law, only a small number of food safety standards are subject to a national uniformity requirement, and virtually the only warning requirements subject to national uniformity are those related to nutritional labeling. In other areas, States are free to impose food safety and warning standards that are different from federal standards. NUFA would expand the list of food safety standards from which States would not be free to deviate, albeit States would still be free to impose their own standards over a wide range of other subjects (*e.g.*, food sanitation) and would find their standards preempted only when the federal government actually has a food safety standard in place. NUFA preemption of food warning standards would be considerably broader; NUFA would not permit States to impose *any* warning requirements on food, other than warnings explicitly provided for by the federal government.

In their letter to Congressman Towns, WLF attorneys Popeo and Samp praised NUFA as "a carefully designed effort to balance the respective roles of the federal and State governments" in food safety issues. WLF noted that NUFA would likely have little effect in most States, which tend to work cooperatively with federal food safety officials. WLF said that NUFA would have a significant impact only in those few States -- particularly California -- in which excessive imposition of food warning requirements is having a significant negative effect on interstate commerce.

WLF stated that NUFA's efforts to address concerns regarding interference with the free flow of interstate commerce is consistent with Congress's traditional role -- undertaken pursuant to its powers under Article I, § 8 of the Constitution -- in regulating interstate commerce. WLF noted that one of the principal reasons why the Founding Fathers thought it

necessary to adopt the Constitution was to prevent States from interfering with interstate commerce. WLF stated that it is fully consistent with Congress's historic use of its Commerce Clause powers to impose uniform national regulation whenever -- as the drafters of NUFA have recognized with respect to food safety and warning requirements -- Congress determines that such uniformity is necessary to ensure the free flow of commerce.

WLF stated that the recent decision of California Attorney General Bill Lockyer to file lawsuits under California's Prop 65 against major food producers underscores the need for measures designed to prevent States from interfering with the free flow of commerce. Prop 65, adopted by California voters as an initiative measure in 1986, has given rise to numerous lawsuits claiming that food manufacturers should be held liable for failure to provide health warnings regarding their products. Prop 65 provides that anyone who sells a product containing a chemical that California has determined causes human cancer or reproductive toxicity must give consumers a "clear and reasonable warning" regarding that risk. A principal difficulty with Prop 65 has been that California has established a considerably lower threshold for determining that a chemical causes cancer or reproductive toxicity than has the rest of the nation. Food ingredients that federal officials and officials in other States deem harmless to humans in small quantities have been held by California to trigger Prop 65's warning requirements.

WLF attorneys said that Lockyer has accelerated that trend with two recent lawsuits, one against sellers of canned tuna and one against manufacturers of potato chips and French fries, as well as fast food restaurants that sell those potato products. WLF charged that both suits are wholly unwarranted, because there is no scientific evidence that the chemicals in question (mercury in the case of tuna, acrylamide in the case of potato products) are dangerous to humans in the quantities they are being consumed. Indeed, acrylamide is naturally created by high-temperature cooking and has been a regular part of human diets for thousands of years. WLF noted that as much as 40% of all food sold in California would be subject to cancer warnings if the courts were to accept Lockyer's acrylamide arguments. WLF said that NUFA would directly address the abuses brought about by Prop 65.

WLF is a public interest law and policy center located in Washington, D.C., with supporters in all 50 States. WLF devotes a considerable portion of its resources to preventing excessive regulation by all levels of government.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's letter to Rep. Towns is posted on its web site, www.wlf.org.