

FOR IMMEDIATE RELEASE**December 3, 2004**

COURT URGED TO REQUIRE CITIES TO ABIDE BY LEASE AGREEMENTS

(RUI One Corp. v. City of Berkeley)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to prevent governments from adopting laws that impose increased costs on their lessees, above and beyond the costs imposed by the lease agreement.

In a brief filed in *RUI One Corp. v. City of Berkeley*, WLF urged the Court to review, and ultimately overturn, a lower court decision that upheld a Berkeley, California ordinance that imposed huge new liabilities on a company that operates a restaurant on land owned by Berkeley. WLF argued that the ordinance violated the U.S. Constitution's Contract Clause, which prohibits state and local governments from passing any laws that "impair[] the obligation of contracts."

"The lower court decision in this case unquestionably frustrates the reasonable expectations of those who enter into contracts/leases with municipalities," said WLF Chief Counsel Richard Samp after filing WLF's brief. "The decision provides an easy roadmap to any government agency seeking methods of obtaining from government contractors concessions that it is unable to obtain during the contract bargaining process," Samp said.

The case involves RUI, a company that operates a large restaurant in an area of Berkeley owned by the City and known as the Berkeley Marina. In June 2000, Berkeley adopted a "living wage" ordinance ("LWO") -- a law that required all employers who either leased property from or provided services to the City to pay a super minimum wage, along with a generous benefits package, to each of their employees. The law applied prospectively only; that is, only to companies entering into new contracts or leases with Berkeley after adoption of the LWO. Because RUI held a long-term lease that would not expire until 2017, the LWO did not apply to RUI.

However, groups representing restaurant workers immediately began complaining to the city counsel about the failure of the LWO to cover RUI. In response, in October 2000 Berkeley amended the LWO to expand its coverage. The sole effect of this new Marina Amendment was to impose the living wage ordinance on RUI on a retroactive basis; no company other than RUI was affected by the expanded ordinance. Because it is now covered by the LWO, RUI incurs annual costs of about \$126,000 in new wage and benefit expenses.

RUI filed suit to challenge the Marina Amendment, claiming *inter alia* that it impaired the value of its lease with Berkeley, in violation of the Contract Clause. The district court dismissed RUI's suit, and the federal appeals court in San Francisco affirmed that dismissal by a 2-1 vote. RUI is asking the Supreme Court to review the appeals court's decision.

In its brief, WLF argued that Berkeley violated the Contract Clause by attempting to foist significant new expenses on RUI in excess of those provided for in the lease. WLF argued that in signing the lease, Berkeley and RUI agreed that the only costs that RUI would incur in renting the Berkeley Marina site were those costs set forth in the lease. WLF argued that Berkeley was "impairing" the value of RUI's lease by adopting an ordinance that imposes significant new costs on RUI.

WLF agreed that Berkeley is free to adopt a "living wage" law that applies prospectively to all new contractors and lessees, and is even free to adopt, pursuant to its police powers, a "living wage" law that applies retrospectively to *all* current contractors and lessees. But, WLF noted, the Marina Amendment did not apply the LWO to current contractors and lessees generally, but *only* to RUI. WLF argued that the retroactive application of the statute to only a single employer is not a valid exercise of Berkeley's police powers, and thus violates the Contract Clause's prohibition against impairment of contracts.

WLF argued that the principal purpose of the Contract Clause is to permit individuals to order their business affairs by establishing in advance what costs they will incur in a business venture. WLF argued that that purpose would be completely frustrated if governments were free to impose new costs on their lessees after failing to gain the lessee's agreement during the contract bargaining process to pay those costs. WLF noted that when the RUI/Berkeley lease was last renegotiated in 1996, RUI agreed (at Berkeley's request) to pay the cost of numerous improvements on the Marina property, but Berkeley never requested that RUI increase the salaries of any of its employees.

WLF is a public interest law and policy center with supporters in all 50 states, including many in California. WLF frequently litigates in support of the property rights and contract rights of private citizens.

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