NATIONAL ORGANIZATION FOR
WOMEN V. SCHEIDLER: RICO
A VALUABLE TOOL FOR
CONTROLLING VIOLENT PROTEST

All Americans have a protected right of lawful civil disobedience. If the form of civil disobedience exceeds first amendment protection, the protest becomes unlawful. Good motives will not excuse the unlawful conduct.¹

INTRODUCTION

Anti-abortion protesters, in furtherance of their belief that abortion is the actual killing of an unborn child, have often become extremists, endangering the lives of others.² Such fanaticism is evident in a recent circulation of “WANTED” posters containing the picture of an abortion-performing doctor.³ That doctor is now a murder victim, gunned down by an abortion opponent during an anti-abortion protest.⁴ In one situation alone, anti-abortion protesters were responsible for 23 acts of arson and attempted arson, 33 fire bombings and attempted fire bombings, 8 assaults and batteries on abortion clinic personnel, 383 acts of trespass on clinic property, 84 acts of harassment, and 73 invasions or “blitzes” of clinics.⁵ In another incident, an anti-abortion protester kidnapped a doctor and his wife at gunpoint and threatened to kill them unless the doctor agreed to stop performing abortions.⁶

². See Patricia Ireland, Racketeering Law Should Cover Violent Opponents of Abortion, HOUS. POST, Jan. 21, 1994, at A25. “[A]nti-abortion extremists have been responsible for more than 600 criminal acts — including murder, death threats, arson, bombings, assault, kidnapping, invasions and burglary.” Id.
⁴. Protester Guns Down Clinic Doctor; Abortion Opponent Surrenders in Florida, Is Charged with Murder, ST. LOUIS POST-DISPATCH, Mar. 11, 1993, at A1 [hereinafter Clinic Doctor]. Five months later, another doctor was shot by a woman who had sent fan mail to Dr. Gunn’s murderer. Seth Faison, Abortion Doctor Wounded Outside Kansas Clinic, N.Y. TIMES, Sept. 9, 1993, at A25.
⁵. Brief of Petitioners at 7, Scheidler, (No. 92-780).
⁶. See United States v. Anderson, 716 F.2d 446 (7th Cir. 1983). One author goes so far as to compare anti-abortion protesters with Ku Klux Klan members. She states “They once came in the night, wearing white hooded robes and brandishing fiery crosses, proclaiming that God was pro-white and on their side. Now they come in the morning, wearing suits and carrying incendiary posters, proclaiming that God is pro-life and on their side.” Lisa J. Banks, Comment, Bray v. Alexandria Women’s Health Clinic: The Supreme Court’s License for Domestic Terrorism, 71 DENV. U. L. REV. 449, 449 (1994) (quoting Constance A. Morella,
In a recent attempt to discourage such illegal and dangerous behavior, the United States Supreme Court held that the Racketeering Influenced and Corrupt Organizations Act (RICO)\(^7\) could apply to anti-abortion protesters.\(^8\) This Note will examine the recent decision of the United States Supreme Court in *National Organization for Women v. Scheidler*\(^9\) that allows courts to apply RICO to non-economic enterprises. This Note will first discuss the problems that arise from protest, as well as a brief historical background of the RICO statute. It will further analyze the legal reasoning behind the Supreme Court’s decision to apply RICO to anti-abortion protesters, and explore the possible First Amendment implications of such a decision.

**HISTORICAL BACKGROUND**

**Anti-abortion Protest Becomes Violent**

Since the 1960’s, protesting has become a prevalent form of protected speech and expression.\(^10\) At the root of such expression lies strong and occasionally fanatical beliefs in the areas of politics, religion and morality.\(^11\) In 1973, the Supreme Court handed down its decision in *Roe v. Wade* legalizing abortion.\(^12\) The Court stated that the right to privacy includes a woman’s...
choice whether or not to terminate her pregnancy.\textsuperscript{13} The decision in effect created a new volatile area of protest, evidenced by two opposing views frequently characterized as pro-life and pro-choice.\textsuperscript{14}

Protest surrounding the abortion issue has occasionally crossed the line of being peaceful, turning violent and even criminal.\textsuperscript{15} Such fervor continues to draw Congressional attention, in part because violent protest disturbs the nation's peace and order.\textsuperscript{16} Because protest can and often does detrimentally affect the interests of those targeted,\textsuperscript{17} the affected groups and the Federal government alike sought means to counter-balance the illegal activities of anti-abortion protesters.\textsuperscript{18} A recent development in combating violent protest has been the application of RICO to anti-abortion protesters.

\textit{The Racketeer Influenced and Corrupt Organizations Act}

After much investigation into the problem of organized crime,\textsuperscript{19}
Congress enacted the Organized Crime Control Act of 1970 (OCCA).\textsuperscript{20} The OCCA was designed to create tools that the Federal government could use to attack organized crime and its detrimental effect on the nation’s economy.\textsuperscript{21} RICO, added to the OCCA by Chapter 96, Title IX, was one such tool designed to assault organized crime in both the criminal and civil arenas. The criminal component of RICO designates specific activity as criminal.\textsuperscript{22} The civil component allows those injured by RICO offenders to sue for civil damages.\textsuperscript{23} Because civil actions arise directly from the enumerated criminal


\textsuperscript{21} In the Organized Crime Control Act of 1970, the Statement of Findings and Purpose is as follows:

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America’s economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation’s economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanction and new remedies to deal with the unlawful activities of those engaged in organized crime.


\textsuperscript{23} 18 U.S.C. § 1964(c) provides:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and cost of the suit, including a reasonable attorney’s fee.

§ 1964(c).
offenses, RICO’s civil component is only as broad in scope as its criminal component.  

While RICO’s purpose initially focused on organized crime, that is not its only application. RICO has been interpreted to be broad in scope, extending far beyond the organized crime arena.

Courts’ Interpretation of RICO

Congressional records, statutory language and legislative history indicate that Congress intentionally drafted civil RICO to be a broad provision. The language itself has been a critical factor used by the courts in determining the applicability of RICO to various situations. If the language proves to be unambiguous, courts will follow the statute’s plain meaning.

Congress deliberately drafted RICO’s language to create a statute effective against crime detrimental to society. One commentator stated, “[I]n enact-

See generally Blakey, supra note 19, at 261; Strafer, supra note 7; Note, Civil RICO: The Temptation and Impropiety of Judicial Restriction, 95 HARV. L. REV. 1101 (1982) [hereinafter Judicial Restriction].

25. 116 CONG. REC. 35,206 (1970). Rep. Clancy stated that all forms of crime needed to be dealt with (“Organized crime, indeed all forms of crime, today offer a challenge to this nation.”). See also H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 248 (1989) (“But Congress for cogent reasons chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime.”).
26. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497 (1985) (“This less restrictive reading is amply supported by our prior cases and the general principles surrounding this statute. RICO is to be read broadly.”). See generally Blakey, supra note 19 (concluding that RICO’s legislative history demonstrates that the statute is not limited but broad).
28. The intent to make RICO a broad measure is evidenced by Sen. McClellan’s statement that “[i]t is impossible to draw an effective statute which reaches most of the commercial activities of organized crime, yet does not include offenses commonly committed by persons outside organized crime as well.” 116 CONG. REC. 18,940 (1970).
30. See Palm, supra note 29, at 170.
32. See Schacht v. Brown, 711 F.2d 1343, 1353 (7th Cir. 1983), cert. denied, 464 U.S.
ing RICO, Congress intended to curtail and ideally eliminate the debilitating
effect of racketeering activity on American society . . . . To effectively attack
these perceived evils, Congress enacted a very broad and stringent statute.”
As a result of RICO’s construction, courts have steadfastly tried to impose re-
strictions on its reach. However, the United States Supreme Court has con-
sistently determined RICO’s language to be unambiguous in its scope, thus re-
jecting any restrictions imposed by lower courts.

Courts have also emphasized the presence in the statute of what has been
termed the “liberally construed” clause. This express provision states that
RICO is to be read broadly to effectuate its purpose. Courts have interpreted
this clause as preventing a narrow view of RICO. This clause appears to
have accomplished its purpose, as it is often cited by the Supreme Court when
the Court applies RICO to new areas.

RICO’s language is viewed as unambiguous, yet courts and legal
scholars often probe further into its legislative history. Upon review of
RICO’s history, one commentator suggested that “RICO’s reach extends
beyond its primary target, the ‘big fish’ of organized crime, and threatens to
ensnare some ‘minnows’ as well.” Courts agree that the legislative history
demonstrates that Congress was well aware of RICO’s broad scope and im-
33. Palm, supra note 29, at 183.
34. The lower courts in many cases tried to impose limitations on RICO’s breadth. However,
those limitations were rejected upon review by the Supreme Court. See Sedima, S.P.R.L. v.
Imrex Co., 473 U.S. 479 (1985) (refusing to apply RICO only to a Defendant who had already
been criminally convicted); United States v. Turkette, 452 U.S. 576 (1981) (refusing to limit
RICO to strictly “legitimate” enterprises). See generally Gary S. Abrams, The Civil RICO
Controversy Reaches The Supreme Court, 13 HOFSTRA L. REV. 147, 154-59 (1984) (discussing
judicial attempts to limit RICO’s scope); Judicial Restriction, supra note 23 (opposing
restrictions on RICO).
35. See, e.g., Sedima 473 U.S. at 499; Turkette, 452 U.S. at 481.
36. This clause can be found in The Organized Crime Control Act of 1970, Pub. L. 91-452,
84 Stat. 947, § 904(a) (1970). See generally Palm, supra note 29 (providing a general analysis
on liberal construction clause).
37. 84 Stat. 947, § 904(a). The exact language states: “The provisions of this title shall be
liberally construed to effectuate its remedial purposes.” Id.
38. Reves v. Ernst & Young, 113 S. Ct. 1163, 1172 (1993) (“The clause obviously seeks to
ensure that Congress’ intent is not frustrated by an overly narrow reading of the statute.”).
See Palm, supra note 29, at 184 (“Congress provided a liberal construction clause to ensure
that RICO would have the greatest possible impact on the problem of racketeering.”).
39. See supra note 35 and accompanying text.
40. Strafer, supra note 7, at 682.
Congress knew its language was capable of extending into areas other than organized crime);
in fulfilling its proper legislative role must examine not only individual instances, but whole problems. In that connection, it has a duty not to engage in piecemeal legislation.” Such a statement is indicative of Congress’ intention to cast a broad net. Legislative history also implies that, if Congress had desired to impose restrictions, it would have mentioned such restrictions in the statute itself. One commentator concludes that “[a]s with the statutory language, this silence [in legislative history] leads to the conclusion that Congress never intended to make an economic requirement.”

While alerted to its dangerously broad scope, Congress enacted RICO without limitation. The resulting effects of RICO are dramatic. However, that was the intention of Congress as it believed RICO’s broad construction was necessary to control the adverse effects of certain crimes on society. Courts consistently hold that they will restrict neither RICO’s reach nor its application, as to do so would be contrary to Congressional intent.

The First Amendment

“Classic First Amendment law divides the world of expressive conduct into two parts: that which is protected by the Constitution and that which is not.” Because protest as a form of expression embraces the essential constitutional value of freedom of speech, it warrants protection by the First Amendment. Even speech concerning fervently debated public issues, such as abortion, will be afforded protection in order to serve an individual’s interest in self-expression.

Schachet v. Brown, 711 F.2d 1343 (7th Cir. 1983) (stating that legislative history shows Congress knew of RICO’s far-reaching implications).
42. 116 CONG. REC. 18,914 (1970) (statement by Senator McClellan).
43. Sedima, S.P.R.L. v. Imrex Co. Inc., 473 U.S. 479, 490 (1985) (had limitations been intended, it would have been mentioned in the statute). But see id. (Powell, J., dissenting) (stating that the limitation is apparent in the phrase “organized crime”).
46. See supra note 32.
47. Turkette, 452 U.S. at 587 (asserting that because Congress intended a broad statute, it is not in the courts authority to restrict RICO’s application). Id.; Abrams, supra note 34, at 178 (stating the general principle that statutory correction should be left to Congress); Judicial Restriction, supra note 23 (discussing restrictions).
49. Id: Miller, supra note 18, at 311.
50. U.S. CONST. amend. I. “Congress shall make no law . . . abridging the freedom of speech . . . .” Id.
51. See Miller, supra note 18, at 311-12.
However, a tenuous line has been drawn between legal, protected protest and that which is not protected. Peaceful protest, such as leafleting and peaceful picketing, will be protected. In the anti-abortion context, protesters will be protected "to the extent that they do not harass patients and clinic staff and to the extent that they leave open access to the clinics." But protest can lose protection by the First Amendment when it becomes violent and threatens the constitutional rights of others. Such unprotected activity can include forced entry onto clinic property and obstructing access to that property. When protesters employ violent means to further their message, they have crossed that line and may no longer be afforded first amendment protection.

The limitation as to violent protest does not infringe upon an individual's first amendment rights. An often cited case standing for this proposition is *Northeast Women's Center, Inc. v. McMonagle.* In that case, the Third Circuit held:

The First Amendment, which guarantees individuals freedom of conscience and prohibits governmental interference with religious beliefs, does not shield from government scrutiny practices which imperil public safety, peace or order . . . .

[T]he First Amendment does not offer a sanctuary for violators. The same constitution that protects the defendants' right to free speech, also protects the Center's right to abortion services and the patients' rights to receive those services.

In *Northeast Women's Center,* the court held that the Defendants' activities did indeed exceed the boundaries of the First Amendment.

Most recently, the United States Supreme Court upheld an injunction against anti-abortion protesters. The Court stated that rights granted under the First Amendment will not protect activity engaged in for the sole purpose

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57. *Id.* 
58. *Id.* at 1349.
59. *Id.* ("[D]efendants' actions went beyond mere dissent and publication of their political views.").
of depriving others of their constitutional rights. Thus, while the right to express one's opinion is a fundamental privilege preserved by the Constitution, it is not absolute.

STATEMENT OF THE CASE

The Lower Courts

Plaintiffs National Organization for Women (NOW) and two women's health centers filed a complaint against Defendants, anti-abortion organizations and protesters, asserting violations of the Sherman Anti-Trust Act and RICO. The complaint alleged that the Defendants "conspired to drive women's health centers that perform abortions out of business through a pattern of concerted, unlawful activity." Some of the activities complained of included threatening and intimidating clinic personnel and patients, trespassing on clinic property, damaging clinic equipment, forming blockades, preventing appointments at the clinics from being made by tying up the telephone lines and making false appointments, and establishing competing pregnancy testing and counseling facilities near the clinics. Because such unlawful activity interfered with legitimate business, the Plaintiffs sought relief from the United States District Court for the Northern District of Illinois.

Claims under various sections of RICO were set forth in the complaint. The Plaintiffs' first allegation involved a violation of section 1962(a) in which it is unlawful to receive income derived from a pattern of racketeering activity. The Plaintiffs suggested that the Defendants' publicity-seeking activi-

61. Id.
62. NOW is a national nonprofit organization supporting women's rights, including the right to have an abortion.
64. Scheidler, 765 F. Supp. at 941. Because the United States Supreme Court only dealt with the RICO counts of the complaint, the Sherman Act violations will not be addressed in this Note. The District Court concluded that the Sherman Act did not apply and dismissed the Plaintiffs' claims regarding the anti-trust counts. Id. The Court of Appeals affirmed the judgment. 968 F.2d 612, 623.
65. Scheidler, 765 F. Supp. at 938 (RICO claims initially brought under 18 U.S.C. §§ 1962(a), (b) & (d)).
66. Id. (some of the alleged activity included threatening personnel and patients, trespass, and property damage).
67. Id. at 938-39.
68. Id. at 938.
ties generated anti-abortion supporters’ contributions, thus fulfilling the income requirement. The second RICO claim was brought under section 1962(c) which requires conduct of an enterprise through a pattern of racketeering activity. In response, Defendants filed a timely motion to dismiss for failure to state a claim upon which relief can be granted. They asserted that RICO requires activity to be economically motivated. The Defendants further stated that RICO did not apply to their activities as they acted for social, political and moral reasons.

The District Court analyzed the various RICO claims and granted the Defendants’ motion to dismiss. In this decision, the District Court concluded that the Defendants’ racketeering activity neither generated income, nor was based on economic motivation.

Plaintiffs then appealed to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit affirmed the judgment of the District Court.

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

§ 1962(a).

70. Scheidler, 765 F. Supp. at 941 (stating that the more outrageous the activity, the more likely that the group would receive large donations).


It shall be unlawful for a person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

§ 1962(c).

72. FED. R. CIV. P. 12.

73. Scheidler, 765 F. Supp. at 941-42. Among the circuits that have addressed this issue, there has been a split. See generally Gale, supra note 44, at 1348-49 (providing a thorough explanation).


77. Id. at 941 (“The court believes that the receipt of donations from supporters of the Defendant organizations does not constitute income derived from a pattern of racketeering activity.”).

78. Id. at 944 (“The motivation . . . was not to obtain money, but rather to otherwise further their anti-abortion cause”).

79. National Organization for Women v. Scheidler, 968 F.2d 612, 614 (7th Cir. 1992),
Court and dismissed the RICO allegations.\textsuperscript{80} It stated that income received by the Defendants was not derived from racketeering activity.\textsuperscript{81} Furthermore, the Seventh Circuit concluded that the Plaintiffs failed to prove any economic motivation on behalf of the Defendants.\textsuperscript{82}

\textit{United States Supreme Court}

The Plaintiffs appealed to the United States Supreme Court and on June 14, 1993 were granted certiorari.\textsuperscript{83} The Supreme Court examined the actual language and the legislative history of the RICO statute.\textsuperscript{84} It made specific reference to the fact that nowhere does RICO’s language require an “enterprise” to have an economic motivation.\textsuperscript{85} The Court also referred to guidelines for RICO issued by the Department of Justice which provides that an enterprise must be “directed toward an economic or other identifiable goal.”\textsuperscript{86} Anti-abortion sentiment would likely fall into the category of “other identifiable goals.”

The Court then considered RICO’s general purpose to eliminate activity that adversely affects society.\textsuperscript{87} In the Court’s opinion, Chief Justice Rehnquist stated that “[a]n enterprise surely can have a detrimental influence on interstate or foreign commerce without having its own profit-seeking motives.”\textsuperscript{88} Applying RICO only to economically-motivated enterprises would create a less effective provision.\textsuperscript{89} Upon review, the Supreme Court stated that its refusal to confine RICO would stand, as the legislative history...
suggests no “clearly expressed intent to the contrary.”

Consistent with RICO’s statutory language and legislative history, the Court found there to be no economic requirement that would prevent the Plaintiffs from going forward with their case. Thus, the Supreme Court unanimously reversed the judgment of the Court of Appeals.

ANALYSIS

A. RICO Interpreted Broadly

The United States Supreme Court decision extending RICO to enterprises driven by non-economic motives parallels other Supreme Court decisions that also refused to limit the scope of this statute. In *H.J. Inc. v. Northwestern Bell Telephone Co.*, the Court had to determine the applicability of RICO to a telephone company that allegedly bribed the Senate body that sets the company’s billing rates. In construing the Act, the Court examined both the text of RICO, as well as its legislative history. Following this method of interpretation, RICO was determined to apply to the particular situation. *H.J. Inc.* illustrates that the method of interpreting RICO remains the same, whether the Court is determining if RICO is applicable to enterprises with economic, political or social goals.

The Supreme Court did not deter from this path of interpretation in deciding *Scheidler*. To determine if RICO’s provisions were applicable to anti-abortion protesters, the Court again examined the statutory language and legislative history. The Court concluded that the actual language of RICO

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91. *Scheidler*, 114 S. Ct. at 806 (“We hold only that RICO contains no economic motive requirement.”).

92. *Id.*


95. *Id.*

96. *Id.* at 237-39.

97. *Id.* at 250 (holding that, under the analysis the Court set forth, the Petitioners could continue with the RICO claims against the Respondents).


99. See supra note 84.
is unambiguous, yet further inquired into RICO’s legislative history. In encouraging the enactment of RICO, Representative Clancy believed that such behavior could occur in the form of protest. Consistent with this belief, he stated that “[t]he activities of a small group of activists are jeopardizing the safety and education of the majority.” This statement indicates that Congress envisioned RICO broad enough as to encompass unruly protesters. In cases subsequent to its enactment, the purpose to keep society orderly has been consistently sustained as courts have applied RICO to political, social and religious protest.

In determining RICO to be broad, a key realization is that behavior driven by non-economic motivation can still be illegal. Enterprises not seeking any economic benefit can fall under RICO’s umbrella. Congress purposely cast a wide net in order to capture the illegal activity enumerated in RICO. The underlying motivations of illegal activity are of no relevance as the effect of those activities remains the same. Whether the driving force is economic or moral, such activity adversely affects the Nation’s economy and order. One commentator stated that “[t]he motive[s] behind the unlawful conduct cannot justify the crime.” Violent protest cannot be allowed to persist and courts should refrain from inquiring into its underlying motivations. Such an inquiry would only serve to intensify the

100. Scheidler, 114 S. Ct. at 806. (“We believe that statutory language is unambiguous”).
101. Id. at 805-06 (discussing legislative history of RICO).
102. See Statement of Findings and Purpose, supra note 21.
104. See supra note 21.
105. Id.
106. See United States v. Bagaric, 706 F.2d 42 (2d Cir. 1983) (RICO was applied against activists motivated by political beliefs). Without a requirement of economic motivation, RICO will be able to apply to many groups that were previously out of reach. See Antonio J. Califa, RICO Threatens Civil Liberties, 43 VAND. L. REV. 805, 845 (1990).
107. 116 CONG. REC. 592 (1970) (Senator McClellan expressed concern that racketeering can be found in non-profit organizations, such as charities and foundations.).
109. Bagaric, 706 F.2d at 53 (“RICO demands no such inquiry. The offenses it proscribes are, in the main, activities punishable irrespective of motives for performance.”). See also Gale, supra note 44, at 1345 (“[C]ongress purposefully worded the statute broadly enough so that it could extend to anyone who committed the crimes enumerated in the predicate acts, regardless of their motivation.”).
110. See supra note 17.
111. See supra note 17.
112. See Pool, supra note 1, at 263.
113. Bagaric, 706 F.2d at 53 (stating that the offenses are punishable regardless of motives).
prosecutions and trials surrounding such volatile issues.\textsuperscript{114} This is especially true of the abortion issue,\textsuperscript{115} as protesters tend to be extreme in expressing their beliefs.\textsuperscript{116}

Furthermore, while restricting the scope of RICO would be contrary to Congress’ intent, it would also create loopholes.\textsuperscript{117} Any restriction, in effect, would be detrimental to RICO’s intended purpose by allowing some violators to go unpunished.\textsuperscript{118} A restriction would also be counter-productive.\textsuperscript{119} “Congress drafted RICO broadly enough to encompass a wide range of criminal activity, taking many different forms and likely to attract a broad array of perpetrators operating in many different ways.”\textsuperscript{120} If civil RICO was applied only to profit-seeking enterprises, it would be increasingly difficult for the Government to stop non-economically oriented enterprises from engaging in criminal activity.\textsuperscript{121} Without RICO, violent protesters may go unpunished and undeterred. RICO was designed to fill these gaps, not to create them.\textsuperscript{122}

Congress’ conscious policy choice to draft a broad provision demands that courts refrain from restricting RICO’s scope.\textsuperscript{123} To read an economic requirement into RICO’s text would invalidate a vital tool utilized to keep

\textsuperscript{114} Id. at 54 (“Further, investigation into motive would serve only to politicize, and otherwise inflame, RICO prosecutions.”).

\textsuperscript{115} Id. Because abortion is such a controversial issue, most people either oppose or support it. To inject this debate into court proceedings could not only sway jurors in one direction, but could prejudice the case.

\textsuperscript{116} For example, during the trial of Griffin, Dr. Gunn’s murderer, one protester picketed near the courthouse carrying a sign stating, “Disobey unjust laws.” This protester was later responsible for the shootings of two others. William Claiborne, Two Killed at Clinic in Florida; Radical Abortion Foe Charged in Shootings, WASH. POST, July 30, 1994, at A1.

\textsuperscript{117} Haroco, Inc. v. American Nat’l Bank & Trust Co., 747 F.2d 384, 390 (7th Cir. 1984) (stating that “narrower terms would provide loopholes through which the primary targets of RICO might escape”).

\textsuperscript{118} See Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 498 (1985) (stating that to impose restrictions would in effect eliminate § 1964(c) from the statute).


\textsuperscript{120} H.J. Inc., 492 U.S. at 248-49.

\textsuperscript{121} See Sedima, 473 U.S. at 493 (“[T]he purpose [to control crime] would be largely defeated, and the need for treble damages as an incentive to litigate unjustified, if private suits could be maintained only against those already brought to justice.”).

\textsuperscript{122} Id. at 493 (“Private attorney general provisions such as § 1964(c) are in part designed to fill prosecutorial gaps.”). See Abrams, supra note 34, at 176 (“Indeed, the ‘private attorney general’ theory of civil RICO and statutes like it is based on the notion that these statutes are needed to fill in the gaps left by the government’s failure to prosecute certain situations.”).

\textsuperscript{123} United States v. Turkette, 452 U.S. 576, 587 (1981) (stating that courts do not have the authority to restrict RICO).
protesters in check.\footnote{124} Clearly, Congress did not intend to cripple the effectiveness of the government in managing illegal activity.\footnote{125} While protesters are free to express their opinions and beliefs, they cannot endanger the whole of society.\footnote{126} Activities prohibited by RICO are illegal in any arena, whether it is political, social or economic. RICO provides society with the means to combat the threats such activity presents to peace and order. The Supreme Court’s decision refusing to impose restrictions on RICO is consistent with the statute’s purpose.\footnote{127} The Court did not exceed its authority in applying RICO to violent anti-abortion protesters when, as in this case, they threaten the order of society.\footnote{128}

\textbf{B. First Amendment Implications}

While the Court properly applied RICO to such violent protest, its decision raises other issues concerning the First Amendment and the potential for the “chilling effect” on an individual’s right to protest.

\textbf{Violent Protest is not Protected by the First Amendment}

In his concurring opinion, Justice Souter suggests that courts should consider First Amendment rights when applying RICO to violent protest.\footnote{129} He expresses no opinion about a potential First Amendment claim by the protesters in \textit{NOW v. Scheidler}, but stresses that the Supreme Court’s decision would not prohibit such a challenge.\footnote{130} Thus, an inquiry must be made as to whether the First Amendment right to free speech is violated when RICO is applied to the activities of violent anti-abortion protesters.

The freedom to express one’s opinion is preserved by the First Amendment.\footnote{131} In this case, NOW insists that its challenge is not aimed at the pro-

\footnote{124. Note that RICO is not a tool to prohibit the protesters’ freedom of speech, but a tool to control their illegal activities in furtherance of those beliefs.}

\footnote{125. \textit{Statement of Findings and Purpose, supra} note 21.}

\footnote{126. See \textit{supra} note 15. Many incidents and cases have demonstrated the lengths to which protesters will go to promote their beliefs.}

\footnote{127. See \textit{Statement of Findings and Purpose, supra} note 21.}

\footnote{128. National Organization for Women v. Scheidler, 968 F.2d 612, 615 (7th Cir. 1992). Some of the activities complained of were physical and verbal intimidation, threats to clinic personnel, trespass upon and damage to property, and blockades.}

\footnote{129. National Organization for Women v. Scheidler, 114 S. Ct. 798, 807 (1994) (“But I think it would be prudent to notice that RICO actions could deter protected activity and to caution courts applying RICO to bear in mind the First Amendment interests that could be at stake.”).}

\footnote{130. \textit{Id.} at 806 (“[T]he Court’s opinion does not bar First Amendment challenges to RICO’s application in particular cases.”).}

\footnote{131. U.S. Const. amend. I. “Congress shall make no law . . . abridging the freedom of}
testers' right to publicize their anti-abortion views. Instead, it is directed at the protesters' right to engage in illegal and violent activity in furtherance of this belief.

The First Amendment guarantees certain freedoms, but it does not allow an individual to endanger peace and order. It does not extend protection to violent protest. The court in Northeast Women's Center stated that “the First Amendment does not offer a sanctuary for violators [of laws]. The same constitution that protects the defendants' right to free speech, also protects the Center's right to perform abortion services and the patient's rights to receive those services.” While peaceful protest is protected, violent protest employing illegal means is not. One commentator asserted that “[s]ome activities plainly are not covered by the first amendment, no matter the expressive political content of those acts.” Among activities commonly listed as unprotected are arson, firebombing and trespass. In Scheidler, NOW alleged that the protesters had engaged in each of these acts. Protesters cannot use their political beliefs as a shield when their activity is illegal.

Chilling Effect Is Minimal

One commentator suggests that “[I]f protesters do not violate RICO, then RICO's restrictions do not violate the protesters' first amendment rights. It is important to realize that RICO does not impose liability on any act that

speech . . . .” Id.

132. See Brief for Petitioner, supra note 3.
133. See Northeast Women’s Center, Inc. v. McMonagle, 868 F.2d 1342-45 (3d Cir. 1989), cert. denied, 493 U.S. 901 (1989) (“The Center has emphasized throughout this litigation that it is not challenging Defendants’ free speech right to make public their opposition to abortion.”).
134. United States v. Dickens, 695 F.2d 765, 772 (3d Cir. 1982), cert. denied, 460 U.S. 1092 (1983) (stating that the First Amendment will not protect practices that endanger public safety, peace and order from government inspection).
135. Gale, supra note 44, at 1370.
137. See Califa, supra note 106, at 823-24 (but draws a distinction between pure protected speech, unprotected conduct, and mixed conduct); Ledewitz, supra note 10, at 67 (distinguishing between protected and unprotected speech).
139. Id.
140. See Brief of Petitioners, supra note 3, at 7.
141. Pool, supra note 1, at 256.
142. Califa, supra note 106, at 828 n.122 (showing the minimal expressive content in United States v. Anderson, 716 F.2d 446 (7th Cir. 1983), in which the defendant kidnapped
was not already a crime." 143 Violations of RICO are crimes and the Constitution cannot protect criminal behavior. 144

Other commentators advance the argument that the possibility of a pending RICO violation may deter peaceful protesters from expressing their beliefs. 145 Such a deterrent is commonly known as the “chilling effect”. 146 The theory behind the “chilling effect” is that the harm of deterring free speech greatly outweighs the harm that could result from deterring other activities. 147 However, not all protest is subject to RICO, and the effect on protest is minimal at best. 148 One spokesperson for People for Ethical Treatment of Animals, Inc. stated that “[a]nimal activists use peaceful and nonviolent means . . . . Their voice will not be diminished by today’s decision [in Scheidler].” 149 This statement indicates that peaceful protesters will not be “chilled”. If protesters become subject to RICO, they have already engaged in illegal activity. 150 For example, a protester who sets fire to a clinic has already engaged in the crime of arson. The protester’s awareness that arson is a crime failed to deter or “chill” such activity. An additional RICO violation would likely not engender the chilling effect in the protester. 151 Protesters “realize beforehand that they are violating the law and therefore may be subject to liability.” 152 Thus, if protesters are engaging in peaceful, legal means, they will not be chilled from expressing their beliefs about abortion. 153

While a First Amendment challenge to RICO involving a non-profit enterprise has not yet been raised, such a challenge would likely fail. 154 The

an abortion doctor and his wife at gunpoint).

143. Gale, supra note 44, at 1371-72.

144. See id. at 1371.

145. See generally Califa, supra note 106.


147. Califa, supra note 106, at 833.


150. Gale, supra note 44, at 1372 (“[A]ll protesters who can be sued under RICO will at least have been blockading a clinic.”).

151. This example follows the line of reasoning set forth by Adam Gale. See Gale, supra note 44.

152. Gale, supra note 44, at 1372.

153. Id. at 1370 (“In general, activity protected by the first amendment cannot be criminalized.”).

154. See Northeast Women’s Center v. McMonagle, 868 F.2d 1342, 1348-49 (3d Cir. 1989) (the court stated that the Defendants’ actions went beyond the First Amendment protection). See generally Gale, supra note 44.
First Amendment does not protect violent activity with minimal expressive content. 155

CONCLUSION

The unanimous Supreme Court decision in Scheidler further expands the boundaries of civil RICO to encompass non-economically motivated enterprises. RICO can now be applied to social protesters, such as the anti-abortionists in this case, when they engage in violent activity. Consequently, RICO could also be used in suits involving animal rights activists and anti-nuclear protesters, 156 should they employ violent means.

While RICO was initially thought to only deal with organized crime, its textual language and legislative history indicate that Congress envisioned a much broader scope. 157 Because Congress chose to enact a far-reaching provision, it is not in the Court’s authority to restrict RICO’s reach. 158

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155. See Califa, supra note 106, at 828 n.122.
156. Califa, supra note 106, at 845 (the author also points out that many of the anti-Vietnam war protesters would have been subject to RICO). See also Supreme Court Ruling: Protesting RICO, ARIZ. REPUB., Jan. 26, 1994 at B6 (stating that animal and environmental activists may be affected).
157. See supra note 26 and accompanying text.
158. United States v. Turkette, 452 U.S. 576, 587 (1981) (asserting that because Congress drafted a broad provision, it is not up to the courts to restrict RICO).