

SHOULD THE RICO STATUTE BE APPLIED TO ABORTION?

Destro, Robert A . Philadelphia Inquirer ; Philadelphia, Pa. [Philadelphia, Pa]02 Apr 1994: A.9.

[ProQuest document link](#)

FULL TEXT

When the Supreme Court cleared the way for prosecutors and civil litigants to use the Racketeer Influenced and Corrupt Organizations statute (RICO) to sue protest groups that practice civil disobedience, the decision opened a whole new chapter in our understanding of the dynamics of First Amendment law and social history. In fact, it opened two: Chapters 7 and 13 of the federal Bankruptcy Code. After *NOW v. Scheidler*, individuals and organizations who are sued have the cold comfort of knowing that, while the First Amendment protects their right to protest, personal bankruptcy may well be the cost of defending it.

The situation need not be this way. What especially troubles me is the relative silence of articulate defenders of civil rights when faced with the court's seeming lack of concern regarding the impact that RICO can have on First Amendment rights.

In the case of *NOW v. Scheidler*, where were the ringing endorsements of the need to protect freedom of speech from the crushing expense of protracted civil litigation under RICO? Where was the recognition that the First Amendment has been held to require a good faith assertion, based on facts, that the persons sued were actually parties to an illegal conspiracy? Just as Sherlock Holmes was interested in the case of the dog that did not bark in the night, so too civil libertarians should be concerned when some of the strongest proponents of freedom of speech take a powder because the targets of this RICO case are politically incorrect pro-lifers.

The trouble with cases like *NOW v. Scheidler* is that their connection to the abortion issue numbs us to the very real dangers of authorizing prosecutors and private citizens to threaten and harass political opponents with the financial burden of defending themselves against a RICO suit.

This issue is not, as Justices Arthur M. Kennedy and David H. Souter seem to think, whether RICO should be construed in a manner which "would keep (it) from reaching ideological entities whose members commit acts of violence we need not fear chilling." The question is whether the First Amendment permits courts to entertain RICO actions against social and political protesters in the absence of clear and specific allegations that the individuals and organizations being sued were actually involved in the predicate criminal acts alleged in the complaint. More understanding of the nature of RICO claims is perhaps in order here. Designed as a tool to reach the ill-gotten gains of organized criminals, RICO sets out a list of specific crimes, or predicate acts, such as arson or extortion, that can trigger its application.

The sole issue before the court in *NOW v. Scheidler* was whether a RICO plaintiff must also show an "economic motive" for the "predicate acts" that form the basis for the complaint. Lower courts had ruled that, taken as a whole, RICO's text and legislative history required an economic motive, even though the statutory language was silent on the point. Reading RICO this way left crimes and torts associated with protest movements subject to prosecution under relevant state and federal laws but did not permit use of RICO.

In a ruling that is a caricature model of the "judicial conservatism" so much sought by some during the Reagan years, the Supreme Court disagreed. The court reasoned that, because there is nothing in RICO that says it is not applicable to criminal activity associated with social or political protest, it applies. What irony!

Nothing in the Constitution says that the states cannot regulate or prohibit abortion either. Had the court read the

Constitution the same way in deciding Roe v. Wade, there would likely be no "constitutional right to choose an abortion" and very likely no Operation Rescue for National Organization for Women to sue.

The media line of NOW and this nation's \$500 million-per-year abortion industry is that all pro-life protesters are "terrorists" who commit "psychological rape" against the women they seek to influence. The complaint against Joe Scheidler and Operation Rescue simply assumed that there was a conspiracy between the pro-life protesters involved in "rescues" and the criminals responsible for cases of alleged arson, vandalism, assault and other crimes directed at abortion providers.

There were no facts alleged linking even the named defendants to specific instances of arson. Thus there was no basis for making the defendants spend time and money defending themselves against charges amounting to little more than a claim that they are associated with a movement that wants to put the abortion industry out of business.

To date, at least \$1 million has been spent to defend the pro-life protesters involved in the Scheidler case, and there has yet to be a showing that they were involved in any of the predicate acts set out in RICO. Heaven knows how much it is going to cost to prove that a woman praying the rosary outside a Montana abortion clinic is not the kind of gangster Congress had in mind when it adopted RICO. It will be expensive.

Kennedy and Souter are convinced that the First Amendment is satisfied by permitting its use as a defense against an unsupported RICO claim. I am not. We won't know for sure until the protesters who are thrown into bankruptcy write their story. Unfortunately, they probably won't be able to afford the paper.

Credit: By ROBERT A. DESTRO

Illustration

CARTOON (1)

1. (Uncaptioned) (INX. / GIORA CARMÍ)

DETAILS

Publication title:	Philadelphia Inquirer; Philadelphia, Pa.
First page:	A.9
Publication year:	1994
Publication date:	Apr 2, 1994
Section:	EDITORIAL
Publisher:	Philadelphia Media Network (Newspapers) LLC
Place of publication:	Philadelphia, Pa.
Country of publication:	Philadelphia, Pa.
Publication subject:	General Interest Periodicals--United States
ISSN:	08856613
Source type:	Newspapers
Language of publication:	English

Document type: NEWSPAPER

ProQuest document ID: 1840685950

Document URL: <http://ezproxy.villanova.edu/login?url=https://search.proquest.com/docview/1840685950?accountid=14853>

Copyright: Copyright Philadelphia Media Network (Newspapers) LLC Apr 2, 1994

Last updated: 2016-11-17

Database: ProQuest Central

LINKS

[Check for full text](#)

Database copyright © 2018 ProQuest LLC. All rights reserved.

[Terms and Conditions](#) [Contact ProQuest](#)