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## Federal Government Use of Civil Racketeering Laws Against Labor Organizations

**T**HE UNITED STATES DEPARTMENT OF JUSTICE filed the first civil lawsuit under the Racketeer Influenced and Corrupt Organizations Act of 1970 seeking a court-ordered, government-operated trusteeship over a labor organization in 1982. In 1988 the government filed a similar lawsuit against the International Brotherhood of Teamsters, and it has since pursued similar actions against two other international unions, threatened to do so against a third and filed similar lawsuits seeking similar relief against more than a dozen local unions and district councils. Nearly all of these cases have produced settlements in the form of consent decrees or other agreements providing for substantial government control over the governance of these organizations, often for open-ended periods of time.

The AFL-CIO has formally opposed the use of the civil RICO law against unions on two occasions.

In 1987 the Executive Council warned that “[t]here is no valid law enforcement justification for intricate and contrived strategies whose purpose is to make it easy for the government to take control of unions composed of thousands of honest, hard-working trade unionists. And there can be no doubt that government supervision is synonymous with the destruction of free trade unions, not with their salvation.”

In 1991 the Convention called for reform of the RICO statute so it would serve its intended purpose of combating organized crime, rather than be wielded as an “anti-trade union weapon” by the government and “undermin[e] union democracy by bypassing the Landrum-Griffin Act by allowing the government to pick who should run a union, thereby undermining rank-and-file members’ right to elect union officials.”

Like the Executive Council in 1987, the Convention affirms the AFL-CIO’s unwavering commitment to the principle that “unions must be entirely democratic and that union leadership must be scrupulously honest. We support full and vigorous law enforcement aimed at the racketeers...who seek to prey on our movement; the government has an obligation to trade unions and their members to provide such enforcement...Prosecutors have a full arsenal of weapons at their disposal for getting at the individuals in the labor movement who abuse their positions of trust. Those weapons should be used in an effectively targeted fashion.”

The AFL-CIO is equally dedicated to the principle that a free and autonomous labor movement independent from government control is essential to a democratic society. But through its civil RICO initiatives, the government has imposed its own views as to what union structures and rules best serve the goal of union democracy, overriding lawful and democratically determined processes guaranteed by the Labor-Management Reporting and Disclosure Act and other federal laws. And, in the name of due process, the government has imposed mechanisms that often undermine individual rights, unfairly label union officers as “racketeers,” embrace the standard of guilt-by-association, and effectively accord the government the authority to dictate who may run for and be elected to union office. In turn, these actions have inspired employers to file their own “racketeering” lawsuits against unions that target legitimate union activities unrelated to corruption.

The apparatus established through civil RICO imposes extreme financial burdens; diverts membership dues away from their intended use for organizing, bargaining, contract enforcement, legislative and other vital core union programs; and sometimes threatens the very existence of the organization for whose benefit the government claims to be acting. The government has demonstrated little understanding of or respect for the notion that draining resources from these initiatives disserves union members and undermines union solidarity and effectiveness.

Experience proves, however, that the government has significantly shifted its focus from enforcement of the criminal laws—including the higher, constitutionally based standard of proof of guilt beyond a reasonable doubt they entail—to the more amorphous civil RICO law, and the laxer burden of proof it encompasses, as a principal method to combat perceived corruption within labor unions. And this targeting has been extremely selective: when it comes to the corporate sector, the government rarely seeks civil RICO culpability, and never seeks relief in the form of a government monitorship or operational oversight. Larger-scale criminal activity in corporations, often entailing fraud, theft and other offenses involving hundreds of millions, and even billions, of dollars, has become commonplace, but the government routinely acts through individual criminal prosecutions or enforcement of civil laws that do not accord the government a governance or oversight role over the corporation. In short, the government appears to view corruption within unions as systemic and institutional, but corruption within corporations as isolated and individual.

All of these problems have marked the government’s most extensive application of civil RICO, its 13-year intervention in the International Brotherhood of Teamsters. The stated objectives of the judicial consent decree issued in

1989 were the removal of criminal elements from the Teamsters Union and the establishment of democratic procedures to guarantee its governance by officers selected by the members. During the decree's first seven years, the apparatus the decree fostered engaged in significant, and extremely costly, internal investigations and prosecutions, and the Teamsters Union significantly amended lawful provisions of its constitution to change many rules and procedures.

Now, however, it has been more than five years since any officer within the Teamsters Union has been charged with being a member of or associating with organized crime. The Teamsters Union has created its own far-reaching anti-corruption program to keep organized crime out of the union and to ensure that its officers and members adhere to the highest standards of conduct. The Teamsters Union has firmly established a tradition of democratic elections, and, at its convention this year, amended its constitution to guarantee continued free, fair and open elections of officers. All told, the consent decree has cost Teamsters members over \$100 million.

Although the goals of the consent decree clearly have been met, the government to date has refused to yield its control and the cost to the union's members continues at the rate of \$5 million each year. As a matter of national law enforcement policy, government mechanisms imposed as a result of actual or threatened civil RICO litigation must terminate by a time certain. The goals of the Teamsters consent decree have now been secured. No legitimate reason remains to justify continued government intervention in that organization. It is time for the consent decree to end and the Teamsters Union returned to the full democratic control of its members. And, it is time for the government to reassess its civil RICO enforcement policy so that it is fairly and even-handedly applied, and reserved only for extraordinary situations.