The Seventh Circuit Bestows Immunity from RICO Prosecutions upon Anti-Abortion Protesters

Frans J. von Kaenel

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In *National Organization for Women v. Scheidler*, the Seventh Circuit concluded that violations of the Hobbs Act by anti-abortion activists do not constitute the economically-motivated predicate acts required for the imposition of liability under the Racketeer Influenced and Corrupt Organizations Act ("RICO").

The plaintiff brought suit under RICO against a coalition of anti-abortion groups to prevent a nationwide campaign to close abortion clinics by using illegal means. The district court granted the defendants' motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

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3. Plaintiffs included the National Organization for Women ("NOW"), the Delaware Women's Health Organization, and Summit Women's Health Organization. 968 F.2d at 614. NOW sought class certification for itself, its women members, and other women who use or may use the services of targeted health centers. *Id.* at 615 n.3. The health-center plaintiffs sued on behalf of themselves and all similarly situated abortion clinics. *Id.* The district court deferred its ruling on the class certification issue pending resolution of defendants' motion to dismiss. *Id.* All pending motions were dismissed as moot when the court granted the motion to dismiss. *Id.*
4. *Id.* at 614. Plaintiffs' civil RICO suit was authorized by § 1964(c), which provides: Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.
NOW also brought suit under the Sherman Antitrust Act, 15 U.S.C. § 1 (1988), and raised several pendant state claims. On appeal, however, the court found that Congress did not intend for the antitrust laws to apply to the defendants' activities. 968 F.2d at 623.
6. *Id.* at 615. The independent groups operated in concert under the aegis of the Pro-Life Action Network ("PLAN"). The named defendants included Pro-Life Action League, Pro-Life Direct Action League, Operation Rescue, and Project Life. *Id.* The remaining defendant, Vital-Med Laboratories, allegedly participated in a conspiracy to steal fetal remains for use at publicized burials. *Id.* at 616. See infra note 52.

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On appeal, the Seventh Circuit affirmed the district court and held that RICO requires either an economically-motivated enterprise or economically-motivated predicate acts. The court ruled that the defendants' violations of the Hobbs Act could not substitute for the requirement that the defendants' predicate acts have an economic motivation.

The harassment of women visiting abortion clinics by anti-abortion activists increased dramatically during the 1980s. The renowned clinic "blitzes" of Operation Rescue, a pro-life organization, typify anti-abortion activists' increasingly violent tactics. In response to this threat to a woman's right to visit an abortion clinic, abortion-rights advocates have turned to the federal courts for protection, bringing civil suits under several different laws, including RICO.
Section 1962(a) of RICO\textsuperscript{13} makes it unlawful for any person to use income derived from a pattern of racketeering activity to establish or operate any enterprise\textsuperscript{14} whose activities affect interstate commerce.\textsuperscript{15} The language of RICO does not explicitly require that the enterprise lower federal courts. See, e.g., New York State NOW v. Terry, 886 F.2d 1339, 1357-61 (2d Cir. 1989) (holding that abortion protestors acted within the scope of § 1985 when engaging in conspiracy to prevent women from obtaining access to abortion clinics), \textit{cert. denied}, 495 U.S. 947 (1990); Roe v. Operation Rescue, 710 F. Supp. 577, 580-81 (E.D. Pa. 1989) (holding that women seeking abortions are entitled to protection under § 1985(3) and a conspiracy to deprive women access to abortion clinics is actionable under § 1985(3)); \textit{but see} Roe v. Abortion Abolition Soc'y, 811 F.2d 931, 933-37 (5th Cir.) (holding that § 1985(3) protects class defined by common characteristics of those against whom conspiracy is aimed and that the defendants' religious beliefs about abortion were not sufficient), \textit{cert. denied}, 484 U.S. 848 (1987); National Abortion Fed'n v. Operation Rescue, 721 F. Supp. 1168, 1170-72 (C.D. Cal. 1989) (holding that subclass of women seeking to assert their right to abortion was not entitled under § 1985(3) to proceed against abortion protestors and women seeking abortion are not class needing special protection).


13. 18 U.S.C. § 1962(a) provides in relevant part that:

\begin{quote}
It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through the collection of unlawful debt in which such person has participated as a principal . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the 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.
\end{quote}


15. \textit{Id.} On October 15, 1970, President Nixon signed into law Title IX of the Organized Crime Control Act, commonly known as RICO. \textit{Id.} President Nixon remarked that the omnibus legislation would provide federal law enforcement officials with the legal mechanism to "launch a total war against organized crime." Public Papers of the Presidents of the United States: Richard Nixon 846 (1970).

Congress originally intended that RICO be used exclusively to combat organized crime. See S. REP. No. 617, 91st Cong., 1st Sess. 76 (1969) (stated purpose is the "elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce."); 116 CONG. REC. 35,295 (1970) ("[RICO] . . . provides the machinery whereby the infiltration of racketeers into legitimate businesses can be stopped and the process be reversed when such infiltration does occur.") (remarks of Rep. Poff, floor manager of the bill). \textit{But see} Gilbert v. Prudential-Bache Sec., 769 F.2d 940, 942 (3d Cir. 1985) (noting that the Supreme Court "refused to read into civil RICO any requirement, unexpressed by Congress, that the statute be confined to situations implicating organized crime"). The Supreme Court has recognized that "in its private civil version,
have a profit-making motivation. Furthermore, the Supreme Court has expressly declined to resolve the issue of whether Congress intended RICO to require an economic motivation. Currently, three federal circuit courts of appeals require some form of economic motivation in order to force a defendant to incur criminal liability under RICO. Yet, the


Use of civil RICO has expanded dramatically since its enactment. Prior to 1985, courts issued 270 RICO decisions. Courts decided only 3% of these cases in the 1970s, 2% in 1980, 7% in 1981, 13% in 1982, 33% in 1983, and 43% in 1984. Douglas E. Abrams, The Law of Civil RICO 5 n.21 (1991). Litigants have initiated RICO claims against individuals, American and foreign corporations, partnerships, labor unions, receivers, churches, colleges and universities, municipal officials, municipal organizations, estates, and political party organizations. Id. at 177-79 (citations omitted).


17. The Supreme Court denied certiorari in Northeast Women's Center, Inc. v. McMonagle, 868 F.2d 1342 (3d Cir.), cert. denied, 493 U.S. 901 (1989). McMonagle presented the Court with the issue of whether RICO liability may be imposed in the absence of a profit-making element. Id. In his dissent from the denial of certiorari, Justice White noted that the circuits disagreed on the economic-motivation requirement and stated that he would grant certiorari to resolve the conflict. Id.

The Court has refused to add other requirements to RICO when the statutory language is silent. Sedima, S.P.R.L. v. Imprex Co., 473 U.S. 479 (1985). In Sedima, the Court addressed whether § 1962(c) of RICO required an additional racketeering injury.

Section 1962(c) provides:

It shall be unlawful for any 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.


The Court rejected this contention and concluded that the statute did not contemplate such an "amorphous" requirement. The Court held that a violation of § 1962(c) requires: (1) conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. Id. at 496. In an explanatory footnote, the Court dismissed the lower court's concern about overstepping the intent of Congress: "[G]iven the plain words of the statute, we cannot agree with the court below that Congress could have no "'inkling of [§ 1964(c)']s implications.'" Id. at 495 n.13.

18. But see supra note 17 (discussing McMonagle). See also United States v. Hartley, 678 F.2d 961, 990-91 (11th Cir. 1982) (explaining that the proper inquiry is whether the enterprise conducted affairs through a pattern of racketeering activity, not whether profit resulted), cert. denied, 459 U.S. 1170 (1983); United States v. Thordarson, 646 F.2d 1323, 1328-29 & n.10 (9th Cir.) (explaining that RICO proscribes criminal conduct without regard to the objectives of the individuals engaging in the conduct), cert. denied, 454 U.S. 1055 (1981).

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Seventh and the Third Circuit differ on whether predicate acts which constitute violations of the Hobbs Act permit a court to ignore the economic-motivation requirement.

In *United States v. Ivic*, the Second Circuit became the first of the circuits to impose an economic-motive requirement for RICO convictions. In *Ivic*, the court reversed the RICO convictions of four Croatian nationalists. The court concluded that because RICO sections 1962(a) and 1962(b)'s use of the term "enterprise" clearly referred to an organized profit seeking venture, the court must give the same meaning to the term "enterprise" when used in subsection (c) of the statute.

Cognizant of RICO's liberal construction clause, the court nevertheless characterized political activity, at least when devoid of any financial motive, as beyond the contemplated reach of RICO. The court concluded that RICO excludes groups that do not generate a profit because the Act only applies to organizations that produce revenue to infiltrate legitimate businesses. Absent proof that an enterprise or its predicate

19. 700 F.2d 51 (2d Cir. 1983).
20. *Id.* at 53. The defendants were convicted of attempting to murder a political opponent and bombing a dance studio and travel agency. *Id.* at 53-55. The court held that the defendants had political rather than economic motivations. *Id.* at 61.
21. *Id.* at 60-61. The court invoked the proposition that "[w]hen the same word is used in the same section of an act more than once, and the meaning is clear in one place, it will be assumed to have the same meaning in other places." *Id.* at 60 (citing United States v. Nunez, 573 F.2d 769, 771 (2d Cir.), cert. denied, 436 U.S. 930 (1978)). See *Turkette v. United States*, 452 U.S. 576, 581 (1981) (rejecting an *ejusdem generis* approach to interpreting RICO's statutory provisions); Perry, *supra* note 16, at 1036-78 (discussing *Turkette*).

As additional support for its holding, the court relied upon the title of the Act and interpreted the terms "corrupt" and "racketeer influenced" as connoting money making activities. *Ivic*, 700 F.2d at 61. "The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature." *Id.* (quoting United States v. Palmer, 16 U.S. (3 Wheat.) 610, 631 (1818)).

22. RICO's liberal construction clause provides that "the provisions of this title shall be liberally construed to effectuate its remedial purposes." The Second Circuit perceived its holding as entirely consistent with this directive because the court believed that RICO's "remedial purposes" would not be furthered if the statute covered terrorist activities. *Ivic*, 700 F.2d at 65 n.8.
23. *Id.* at 63.
24. *Id.*. In this *pre-Sedima* decision, the court relied upon RICO's legislative history. 700 F.2d at 62-63. Applying the rationale of United States v. Turkette, 452 U.S. 576 (1981), the court concluded that RICO applies only to organizations which generate monies to serve as a "springboard into the sphere of legitimate enterprise." *Ivic*, 700 F.2d at 63 (quoting *Turkette*, 452 U.S. at 593). While *Turkette* defined "enterprise" as encompassing illegitimate organizations, the Second Circuit perceived nothing in RICO to suggest that it reaches every such organization, "even one whose animating long-term purpose and predicate crimes are political rather than pecuniary. Indeed, the rationale of *Turkette* points decidedly the other way." *Id.*
acts have a financial purpose, the Ivic court deemed section 1962(c) not applicable.

In United States v. Bagaric, the Second Circuit distinguished its holding in Ivic by stating that an economic motivation does not have to constitute the predominant purpose motivating a RICO defendant's predicate acts or enterprise. Bagaric also involved Croatian nationalists, but in addition to their terrorist acts, the defendants also extorted money from individuals unsympathetic to the Croatian's cause. Seeking to avoid needless politicization of trials, the Court rejected the notion that Ivic required an economic motive paramount to all others. The Second Circuit concluded that courts should characterize an enterprise according to its function rather than its structure. Thus, in Bagaric, the Second Circuit held that either the enterprise or the defend-
Two years later, in *United States v. Ferguson*, the Second Circuit further relaxed the requisite economic nexus between an enterprise and independent predicate acts. In *Ferguson*, members of the Black Liberation Army robbed armored trucks to obtain money to further their activities. Affirming the defendants' RICO convictions, the court concluded that when the enterprise and the predicate acts are the same, a plaintiff can use the same evidence to prove both elements of a RICO violation. Thus, in order to impose RICO liability a court need only find that the predicate acts have some type of economic motivation. In *United States v. Flynn*, the Eighth Circuit explicitly agreed with *Ivic*'s holding that a RICO defendant must operate an "enterprise" toward an economic goal. The Eighth Circuit, however, required proof of an economic motive, independent of the commission of predicate acts. In *United States v. Ferguson*, the Second Circuit further relaxed the requisite economic nexus between an enterprise and independent predicate acts. In *Ferguson*, members of the Black Liberation Army robbed armored trucks to obtain money to further their activities. Affirming the defendants' RICO convictions, the court concluded that when the enterprise and the predicate acts are the same, a plaintiff can use the same evidence to prove both elements of a RICO violation. Thus, in order to impose RICO liability a court need only find that the predicate acts have some type of economic motivation. In *United States v. Flynn*, the Eighth Circuit explicitly agreed with *Ivic*'s holding that a RICO defendant must operate an "enterprise" toward an economic goal. The Eighth Circuit, however, required proof of an economic motive, independent of the commission of predicate acts.

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32. *Bagaric*, 706 F.2d at 56-57. In contrast to *Bagaric*, the *Ivic* court held that the enterprise itself needed an economic motive. *See* Gale, supra note 16, at 1351 ("Thus, when *Bagaric* dismissed the importance of focusing on the enterprise, it left no statutory language basis on which to ground the economic motive requirement."). *See also infra* notes 33-37 and accompanying text.


34. *Id.* at 853. The court found that "the defendants' activities centered around the commission of economic crimes." *Id.* The self-professed political revolutionaries perpetrated several armored truck robberies and murdered guards and police officers at the scene of the crimes. *Id.* They used the proceeds to support fellow enterprise members and maintain safehouses for members who were evading apprehension. *Id.* In *Ferguson*, the court addressed the *Ivic* court's refusal to extend RICO's coverage to terrorist organizations which commit predicate acts to further their activity. *Id.* *See supra* note 25 and accompanying text.

35. *See supra* note 25 and accompanying text. *See also Bagaric*, 706 F.2d at 57; Turkette 452 U.S. at 583. In *Ferguson*, the court explicitly rejected the defendants' claim that an "enterprise was not proven independent of the predicate acts." 758 F.2d at 853. In support of its conclusion, the court noted the presentation of other relevant evidence that established the existence of an enterprise. This evidence included: testimony regarding the Black Liberation Army's structure, ongoing strategy and planning sessions, and connections among the criminal predicate acts. *Id.* In essence, the court reiterated the *Bagaric* court's "elucidation" of *Ivic*. The court found nothing in RICO that requires proof that the motivating force behind the defendants' actions was a "significant economic purpose." *Abrams*, supra note 15, at 133.


38. The Eighth Circuit's definition of enterprise contains three elements: "(1) a common or shared purpose; (2) some continuity of structure and personnel; and (3) an ascertainable structure distinct from that inherent in a pattern of racketeering." *Id.* at 1051.


40. *See Anderson*, 626 F.2d at 1372. In *Anderson*, the lower court convicted two county judges under RICO for defrauding the county citizens. *Id.* at 1361-62. The court stated in dictum that "enterprise," as used in § 1961(4), must "exist[] for the purpose of maintaining operations directed
Flynn, the defendant was charged with three predicate acts of murder and attempted murder. Although none of these crimes had an overt economic motivation, the court nevertheless sustained the defendant’s RICO conviction because the enterprise’s intent to gain control of a local labor union promoted an economic purpose independent from the predicate acts.

In Northeast Women’s Center v. McMonagle, the Third Circuit obviated the need for an explicit economic motivation in civil RICO actions premised on predicate offenses in violation of the Hobbs Act. The defendants, anti-abortion activists, engaged in increasingly violent protests at an abortion clinic. Forswearing statutory interpretation, the court focused on the plaintiff’s novel use of the Hobbs Act to serve as a predicate toward an economic goal that has an existence that can be defined apart from the commission of the predicate acts constituting the ‘pattern of racketeering activity.’” Id. at 1372 (quoting 18 U.S.C. § 1961(4)). Because the “enterprise” had no independent existence apart from the commission of the predicate acts, the Anderson court reversed the defendants’ convictions. Id. at 1369, 1375.

In congruence with vic, the Eighth Circuit also found that the term “enterprise” should be interpreted uniformly throughout § 1962. “Congress . . . employed the identical term in all three subsections [of § 1962] and defined the term in section 1961 without differentiation according to the provision in which it appeared. Uniform definition thus appears more consistent with legislative intent.” Id. at 1366 n.12. But see United States v. Cappetto, 502 F.2d 1351, 1358 (7th Cir. 1974) (explaining that “[e]nterprise” in subsections (b) and (c) has a different meaning than in subsection (a)), cert. denied, 420 U.S. 925 (1975).

41. Flynn, 852 F.2d at 1047.

42. Id. at 1052. Several commentators have posited that because the predicate acts in Flynn did not have an independent economic objective, the Eighth Circuit failed to answer the question whether it would allow a RICO conviction against an enterprise if the predicate acts did not have an economic purpose. Thus, the court’s apparent approval of this proposition is dictum. See Gale, supra note 16, at 1353 (asserting that because the court found that the enterprise had an economic goal its statement that an enterprise must be directed toward an economic goal was dictum); Perry, supra note 16, at 1033 n.92 (arguing “that the Flynn decision did not resolve the question whether the Eighth Circuit would allow a RICO claim against an enterprise without an economic goal if the predicate acts did have an economic orientation”).


44. 868 F.2d at 1350. For the text of the Hobbs Act, see infra note 46.

45. Id. at 1345. The defendants illegally entered the clinic on four occasions, knocked down and injured employees, threw medical supplies on the floor, and harassed patients. Ultimately, some of the staff resigned and the clinic lost its lease, forcing it to move to another location. Id. at 1346-47.

46. Id. at 1348. The plaintiff alleged that the defendants’ interference with the clinic’s right to operate its business violated the Hobbs Act. Id. A violation of the Hobbs Act is among the predicate acts listed in § 1961(1)(b). Specifically, 18 U.S.C. § 1961 provides:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so
icate offense under RICO. The court noted that imposing liability under the Hobbs Act does not require a finding of an economic motivation. The Third Circuit emphasized that the statutory language of RICO permits a plaintiff to establish a pattern of racketeering activity by demonstrating that the defendant committed any act indictable under the Hobbs Act. Thus, when violations of the Hobbs Act constitute the predicate offenses, the Third Circuit held that RICO does not require an economically-motivated predicate act or enterprise for the imposition of civil liability.

In National Organization for Women v. Scheidler, the Seventh Circuit held that when the defendant's predicate acts consist of violations of the Hobbs Act, the plaintiff still must prove that either these predicate acts or the defendants' enterprise has an economic motivation before a court can impose civil liability under RICO. In Scheidler, the court


Basically, "the Hobbs Act thus requires proof (1) that the defendant took or obtained tangible or intangible property by wrongful use of actual or threatened force, violence, or fear and (2) that the defendant's conduct obstructed, delayed or affected commerce." See Abrams, supra note 15, at 286.

The definition of property under the Hobbs Act is expansive. See, e.g., Stirone v. United States, 361 U.S. 212, 215 (1960) (explaining that the Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery, or physical violence"); United States v. Tropiano, 418 F.2d 1069, 1075-76 (2d Cir. 1969) (explaining that "property" under the Act, "includes in a broad sense, any valuable right considered as a source or element of wealth," including "a right to solicit business"), cert. denied, 397 U.S. 1021 (1970); McMonagle, 868 F.2d at 1350 (explaining that "rights involving the conduct of business are property rights"); Town of West Hartford v. Operation Rescue, 915 F.2d 92, 101 (2nd Cir. 1990) (discussing the broad definition of property in the Hobbs Act).

47. Id. at 1348, 1350.
48. Id. at 1350 (citations omitted).

The Third Circuit also rejected defendant's contention that civil RICO does not apply to politically motivated actions. Id. at 1348. Justifiably concerned with the First Amendment ramifications, the court recognized that the First Amendment "does not shield from governmental scrutiny practices which imperil public safety or order." Id. (quoting United States v. Dickens, 695 F.2d 765, 772 (3d Cir.), cert. denied, 460 U.S. 1092 (1983)).

49. Id. at 1350 (citing 18 U.S.C. § 1961(1)(B)).
50. Id.
52. Id. at 629. See supra note 6 (listing the allegations in the complaint of defendants' illegal activities).

During clinic "blitzes," protestors used a method called "lock and block" in which they pour glue into clinic locks, and individual protestors lock themselves to clinic doors. 968 F.2d at 615. In addition, at least two defendants entered a laboratory providing pathology and sanitary disposal services to clinics and stole approximately 4000 aborted fetuses, "individually packaged and labeled
endorsed McMonagle's recognition of Hobbs Act violations as predicate RICO offenses. However, the court expressly refused to allow Hobbs Act predicate offenses lacking an economic motivation to serve as substitute for the economic-motivation requirement. Using the language of section 1962 to support its conclusion, the court interpreted Congress' use of the term “enterprise” as limiting the application of RICO to entities possessing an economic motivation. Anticipating such a conclusion, the plaintiffs argued that the Hobbs Act violations had an economic motivation because the defendants intended the activities to increase the plaintiffs' cost of operating the clinic. Dismissing this inference, the court reasoned that the defendants committed their acts of extortion to force the plaintiffs to close the clinics. Notwithstanding the acknowledgement that the defendants' activities resulted in a negative economic effect to the plaintiffs, the court refused to equate that adverse effect with the economic-motive requirement first formulated in Ivic.

The court also held that the contributions received by the anti-abor-

53. Id. at 629-30. The Seventh Circuit does not require that the defendant profit economically from the extortion to sustain a Hobbs Act conviction. See United States v. Anderson, 716 F.2d 446 (7th Cir. 1983) (affirming a Hobbs Act conviction of anti-abortion activist who kidnapped a physician to stop him from performing abortions); see also Town of West Hartford v. Operation Rescue, 915 F.2d 93, 102 (2d Cir. 1990) ("Whether a Hobbs Act defendant personally receives any benefit from his alleged extortion is largely irrelevant for the purpose of determining guilt under the Act.") (quoting United States v. Clemente, 640 F.2d 1069, 1079-80 (2d Cir.), cert. denied, 454 U.S. 820 (1981).

54. 968 F.2d at 629-30. The court stated that notwithstanding its agreement with the Third Circuit's reading of the Hobbs Act, it refused to concur in its conclusion that “in circumstances involving a non-economic enterprise conducting non-economic acts, plaintiffs may invoke the provisions of RICO.” Id.

55. Id. at 629.

56. Id. In reaching this conclusion, the court relied directly on the Second Circuit's interpretation of § 1962(a) and (b) in Ivic. See Ivic, 700 F.2d at 61.

57. Schiedler, 968 F.2d at 620. Anti-abortion protests interfere with the conduct of abortion clinic business and thus have a direct economic impact. See, e.g., McMonagle, 868 F.2d at 1346-47 (abortion clinic forced to install sophisticated security system to deter repeated trespasses by anti-abortion demonstrators); American College of Obstetricians & Gynecologists v. Thornburgh, 613 F. Supp. 656, 658-61 (1985) (physicians refused to work at clinics under same management as clinic that was target of protest); see PoKempner, supra note 12, at 665-68 ("Protests that seek to interfere with the conduct of business force abortion clinics to invest more heavily in security measures, insurance, and litigation, and make it more difficult for clinics to retain qualified personnel. When protesters succeed in increasing clinic costs or forcing clinics out of regional markets, the effect may be to restrain competition to the detriment of consumers.") (footnotes omitted).

58. 968 F.2d at 630.

59. Id.
tion activists did not constitute sufficient economic motivation to satisfy
the requirement that a predicate act have an economic objective.\textsuperscript{60} The
plaintiffs acknowledged the indirect nature of the contributions; how-
however, they argued that this was sufficient because section 1962(a) included
indirect finding of enterprises.\textsuperscript{61} Rejecting this interpretation of section
1962(a), the court held that the weak causal connection between the de-
fendants' predicate acts and their receipt of donations did not constitute
the requisite economic motivation.\textsuperscript{62}

The court concluded that for the purposes of section 1962(a), income
is that which the defendants would not have received "but for" their
racketeering conduct.\textsuperscript{63} Applying this "but for" test, the court held that
the donations received by the defendant did not constitute income within
the meaning of section 1962(a).\textsuperscript{64}

The court next determined that the Pro-Life Action Network
("PLAN")\textsuperscript{65} as an enterprise failed to possess an economic motivation
pursuant to section 1962(c).\textsuperscript{66} The Seventh Circuit held that when
neither the enterprise nor the racketeering acts have an economic moti-
vation, a court should not impose civil RICO liability.\textsuperscript{67} Although the
court acknowledged the Supreme Court's concern of facilitating enforce-
ment of RICO,\textsuperscript{68} the court asserted that its holding only defined the ele-
ments of RICO rather than imposing additional requirements on
plaintiffs or prosecutors to prove RICO violations.\textsuperscript{69}

The Seventh Circuit's refusal to recognize the similarities between eco-
nomic motivation and economic impact is shortsighted.\textsuperscript{70} First, the

\textsuperscript{60} Id. at 625.
\textsuperscript{61} Id. See supra note 13 for the text of § 1962(a).
\textsuperscript{62} 968 F.2d at 625. "That reprehensible criminal and tortious conduct results incidentally in
donations to support it, is more a comment on the nature of defendants' supporters than on the
purpose of the defendant's acts." Id. at 630.
\textsuperscript{63} 968 F.2d at 625.
\textsuperscript{64} Id. The shortcoming was inadequate pleading rather than faulty logic. However, based
upon the tenor of the opinion, if the plaintiffs alleged a direct nexus between predicate acts and
contributions, the court most likely would not have sustained a RICO conviction.
\textsuperscript{65} See supra note 5.
\textsuperscript{66} 968 F.2d at 626. The Seventh Circuit adopted the Eighth Circuit's definition of "enter-
prise." See Anderson, 626 F.2d at 1372; see also supra notes 35-40. But see Bagaric, 700 F.2d at 57
(concluding that proof of enterprise and predicate acts are functionally equivalent).
\textsuperscript{67} 968 F.2d at 626 (emphasis added).
\textsuperscript{68} See supra note 17.
\textsuperscript{69} 968 F.2d at 629.
\textsuperscript{70} Trapped within the outdated \textit{Ivic} paradigm, the court attempted to justify its conclusion by
court's reliance on the *Ivic* framework allowed the court to ignore the exponential growth of civil RICO suits during the last decade. Although commentators have described RICO's language as complicated and mysterious, the Supreme Court has held that courts should interpret and apply RICO broadly.

Second, the Seventh Circuit failed to extend the *Ivic* line of cases to its logical conclusion. As the Second Circuit recognized in *Bagaric*, the effect of extortion activities on the national economy rather than the intent of the extortionist determines the applicability of RICO. Given its reluctance to limit the scope of civil RICO, the Seventh Circuit logically should have expanded the economic-motivation requirement to encompass economic impact.

Finally, section 1961(1) expressly defines racketeering activity as encompassing Hobbs Act violations. Despite the Seventh Circuit's recognition of this definition, the court insisted upon proof of an economically motivated enterprise when violations of the Hobbs Act constitute the predicate acts. Yet, RICO itself imposes no such requirement. The *Scheidler* decision is an unwarranted restriction of an inherently expansive statute. Any belated attempt to curtail RICO's civil applica-

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71. See supra notes 19-26 and accompanying text.
72. See supra note 15.
74. *Sedima*, 473 U.S. at 497-98.
75. See supra notes 19-36 and accompanying text.
76. See *Bagaric*, 706 F.2d at 54.
77. 968 F.2d at 629. See, e.g., Morgan v. Bank of Waukegan, 804 F.2d 970, 975-76 (7th Cir. 1986) (multiple schemes not required for pattern of racketeering activity); Schacht v. Brown, 711 F.2d 1343 (7th Cir.) (rejecting argument that RICO is limited to organized crime), cert. denied, 464 U.S. 1002 (1983).
79. See supra note 46 and accompanying text.
80. *Scheidler*, 968 F.2d at 629.
81. See supra note 16.
tion disregards Congress' deliberate policy choices to defy judicial confinement.\footnote{See Haroco v. American Nat'l Bank & Trust, 747 F.2d 384, 398-99 (7th Cir. 1984). See also \textit{supra} notes 15, 17.} Absent constitutional restrictions, Congress rather than the judiciary should address any difficulties or discontentment with RICO's sweeping application.

\textit{Frans J. von Kaenel}