SUPREME COURT OF THE UNITED STATES

No. 92–780

NATIONAL ORGANIZATION FOR WOMEN, INC., ETC., ET AL., PETITIONERS *v.* JOSEPH SCHEIDLER ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[January 24, 1994]

JUSTICE SOUTER, with whom JUSTICE KENNEDY joins, concurring.

I join the Court's opinion and write separately to explain why the First Amendment does not require reading an economic-motive requirement into the RICO, and to stress that the Court's opinion does not bar First Amendment challenges to RICO's application in particular cases.

Several respondents and *amici* argue that we should avoid the First Amendment issues that could arise from allowing RICO to be applied to protest organizations by construing the statute to require economic motivation, just as we have previously interpreted other generally applicable statutes so as to avoid First Amendment problems. See, *e.g.*, *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U. S. 127, 138 (1961) (holding that antitrust laws do not apply to businesses combining to lobby the government, even where such conduct has an anticompetitive purpose and an anti-competitive effect, because the alternative "would raise important constitutional questions" under the First Amendment); see also *Lucas* v. *Alexander*, 279 U. S. 573, 577 (1929) (a law "must be construed with an eye to possible constitutional limitations so as to avoid doubts as to its validity"). The argument is meritless in this case, though, for this principle of statutory construction applies only when the meaning of a statute is in doubt, see *Noerr*, *supra*, and here

"the statutory language is unambiguous," *ante*, at 11.

Even if the meaning of RICO were open to debate, however, it would not follow that the statute ought to be read to include an economic-motive requirement, since such a requirement would correspond only poorly to free-speech concerns. Respondents and *amici* complain that, unless so limited, the statute permits an ideological organization's opponents to label its vigorous expression as RICO predicate acts, thereby availing themselves of powerful remedial provisions that could destroy the organization. But an economic-motive requirement would protect too much with respect to First Amendment interests, since it would keep RICO from reaching ideological entities whose members commit acts of violence we need not fear chilling. An economic-motive requirement might also prove to be underprotective, in that entities engaging in vigorous but fully protected expression might fail the proposed economic-motive test (for even protest movements need money) and so be left exposed to harassing RICO suits.

An economic-motive requirement is, finally, unnecessary, because legitimate free-speech claims may be raised and addressed in individual RICO cases as they arise. Accordingly, it is important to stress that nothing in the Court's opinion precludes a RICO defendant from raising the First Amendment in its defense in a particular case. Conduct alleged to amount to Hobbs Act extortion, for example, or one of the other, somewhat elastic RICO predicate acts may turn out to be fully protected First Amendment activity, entitling the defendant to dismissal on that basis. See *NAACP* v. *Claiborne Hardware, Co.*, 458 U. S. 886, 917 (1982) (holding that a state common-law prohibition on malicious interference with business could not, under the circumstances, be constitutionally applied to a civil-rights boycott of white merchants). And even in a case where a RICO violation has been validly established, the First

Amendment may limit the relief that can be granted against an organization otherwise engaging in protected expression. See *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958) (invalidating under the First Amendment a court order compelling production of the NAACP's membership lists, issued to enforce Alabama's requirements for out-of-state corporations doing business in the State). See also *NAACP* v. *Claiborne Hardware, Co.*, *supra*, at 930–932 (discussing First Amendment limits on the assessment of derivative liability against ideological organizations); *Oregon Natural Resources Council* v. *Mohla*, 944 F. 2d 531 (CA9 1991) (applying a heightened pleading standard to a complaint based on presumptively protected First Amendment conduct).

This is not the place to catalog the speech issues that could arise in a RICO action against a protest group, and I express no view on the possibility of a First Amendment claim by the respondents in this case (since, as the Court observes, such claims are outside the question presented, see *ante*, at 12, n. 6). But I think it prudent to notice that RICO actions could deter protected advocacy and to caution courts applying RICO to bear in mind the First Amendment interests that could be at stake.