No. 98-1480

In The

Supreme Court of the United States

ROBERT A. BECK, II,

Petitioner,

vs.

RONALD M. PRUPIS, et al.,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITIONER'S REPLY BRIEF

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I. RESPONDENTS' INACCURATE COUNTER-STATEMENT OF FACTS IS INAPPROPRIATE.

The Eleventh Circuit stated that there was only one controlling question for its decision, beginning its December 15, 1998 opinion as follows:

> This case *hinges* on the following question: Must a plaintiff bringing a civil RICO conspiracy claim prove that the overt act (in furtherance of the conspiracy) by which he was injured was an "act of racketeering"? (emphasis added)

(CP App. 2). The Bellezza Respondents spend the first 10 pages of their Brief arguing the facts as they would ultimately present them to a jury.[1] This Petition, however, arises from a grant of summary judgment, and the courts must, therefore, construe the facts in favor of Beck.[2] Beck's Statement of the Facts is faithful to the factual recitations of the courts below. The odd spectacle of a *respondent* challenging the factual basis of the court of appeals' opinion alters neither the Eleventh Circuit's opinion nor the reason this Court granted certiorari. The question presented is not the factual dispute over

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[1] The Bellezza Respondents' Response Brief ("Bellezza Br.") at 8 even includes attacks on hearsay grounds that were not made at the district court level.

[2] One misstatement of the Record does require mention. The Bellezza Br. at 7 cites a March 5, 1991 letter opinion of the New Jersey District Court, which granted Firemark's Motion to Dismiss the Complaint, to argue that there is no *"evidence"* supporting Beck's claims. It is fundamental that a motion to dismiss does not involve the review of evidence. In fact, the evidence was not before the trial court, as the pertinent discovery had not yet taken place. *See also* Beck's Initial Brief ("Pet. Br.") at 11 (discussion of evidence relating to Firemark). Moreover, substantial additional evidence would have been filed on this and other issues had they been raised at the trial court level, rather than for the first time on appeal.

whether Beck's termination was an overt act in furtherance of a conspiracy; it is the legal question: assuming that his termination was an overt act in furtherance of a § 1962(d) conspiracy, does Beck have a right to sue under RICO?[3]

II. THE PLAIN LANGUAGE OF RICO CONFERS A PRIVATE RIGHT OF ACTION ON PETITIONER.

Respondents attempt to rewrite § 1964(c) to state that a person may sue thereunder only if he has been "injured in his business or property by reason of a *predicate act as defined by § 1961(1).*" Of course, that is not what the statute says. On the contrary, Congress provided a right to sue to any person injured "by reason of a violation of § 1962," which includes § 1962(d) conspiracies to violate § 1962(a)-(c).

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[3] The Bellezza Respondents conclude their brief as they begin it, with a factual argument that was never made to any court below: they supposedly terminated Beck after the RICO conspiracy had ended and, therefore, Beck's termination was not an overt act in furtherance of the conspiracy. Bellezza Br. 42-43. This argument mischaracterizes the facts and law. As more fully detailed in Pet. Br. at 5-11, the Defendant Directors' illegal conduct continued for almost two years after Beck's termination, until the bankruptcy of SIG, and included thefts that Beck had prevented prior to his termination. Beck's termination for his refusal to participate in, his blowing the whistle on and his threat to the continued racketeering conduct of the Defendant Directors, was an overt act committed by the Defendant Directors in furtherance of their § 1962(d) conspiracy. *See generally United States v. Coia*, 719 F.2d 1120, 1124-1125 (11th Cir. 1983) ("where a conspiracy contemplates a continuity of purpose and a continued performance of acts, it is presumed to exist until there has been an affirmative showing that it has terminated.") (quoting *United States v. Mayes*, 512 F.2d 637, 642 (6th Cir.), *cert. denied*, 422 U.S. 1008 (1975)).

Recognizing the force of the plain language of RICO, Respondents characterize its use as "overly mechanistic," accusing the courts whose decisions have stayed true to the statutory language of "reading RICO in a vacuum, without reference to RICO's central purpose of punishing racketeering activity." Bellezza Br. 14; *see also Beck v. Prupis*, 162 F.3d 1090, 1098-1099 (11th Cir. 1998) (CP App. 15-16); *Miranda v. Ponce Federal Bank*, 948 F.2d 41, 48 (1st Cir. 1991). This argument ignores the canon of statutory construction that courts must, absent an ambiguity, adhere to the text of a statute. *See* Pet. Br. 17-21. Overriding this plain language with a perceived notion of what Congress's intent supposedly *should* have been violates fundamental principles of separation of powers.

Respondents attempt to support their arguments by quoting, out of context, passages from *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985). Bellezza Br. 15-17. On these issues, however, the Court in *Sedima* dealt solely with the plaintiff's § 1962(c) claim – the Court's discussion did not involve the plaintiff's § 1962(d) claim at all. The Court rejected the Second Circuit standard, which would have grafted a "racketeering injury" requirement onto RICO, and instead relied on the statutory language. *Sedima*, 473 U.S. at 494-500.

There is no justification for incorporating a predicate act injury requirement, an essential element only for a § 1962(c) claim (by virtue of the language of that section), into a § 1962(d) claim. *See Schiffels v. Kemper Financial Services, Inc.*, 978 F.2d 344, 349 (7th Cir. 1992) (*Sedima* does not apply to § 1962(d) claims); *Shearin v. E.F. Hutton Group, Inc.*, 885 F.2d 1162, 1169 (3d Cir. 1989) (same). The best Respondents can do here is to fall back on their misguided notion that Congress's intent in enacting RICO was to combat predicate acts. Bellezza Br. 14-17. Even if this were not flatly wrong, see Section VII, *infra*, in any

event, the "statement that the plaintiff must seek redress for an injury caused by conduct that RICO was designed to deter is unhelpfully tautological." *Sedima*, 473 U.S. at 494.

Moreover, importing a predicate act injury requirement into a § 1962(d) claim would render that section superfluous to § 1962(c) in the civil context (§ 1964(c) provides a civil remedy for a violation of all four of the subsections of § 1962). Pet. Br. 19-20; *see also* Section III, *infra*. In fact, if a predicate act injury requirement were written into RICO, not only would § 1962(d) become superfluous to § 1962(c) in the civil context, but so would § 1962(a) and § 1962(b). As with subsection (d), neither subsection (a) nor (b) provides remedies for the victims of predicate acts. Thus, Respondents' argument would rewrite § 1964(c) to provide civil remedies only for violations of § 1962(c), a result plainly at odds with the actual language of the statute.[4]

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[4] Amicus Washington Legal Foundation (the "WLF") goes even farther, contending that there can never be a civil RICO claim arising from a violation of § 1962(d). They reason that because, under criminal RICO, "nothing more" than an agreement to violate RICO is needed to establish an indictable RICO conspiracy, it follows that "[a]n overt act done in furtherance of a conspiracy" is not part of that conspiracy and "not 'conduct constituting a violation' of § 1962(d)." WLF Br. at 8. The WLF thus erroneously converts the *minimum requirement* for § 1962(d) – an agreement to violate RICO – into an *exclusive definition* – nothing beyond the bare agreement counts as part of the violation. This ignores § 1964(c), which expressly requires an injury, which, in the case of § 1962(d), must be caused by an overt act. The absurdity of the WLF's reasoning is further revealed by its consequence: because one cannot be injured by the agreement alone, and because § 1964(c) provides a remedy only for those "injured . . . by reason of" a violation of § 1962(d), and because (under the WLF theory) overt acts in furtherance of the agreement cannot constitute part of the conspiracy violation, it follows, according to the WLF, that "*RICO does not authorize suits for civil conspiracy.*" WLF Br. at 11 (emphasis added). The explicit text of § 1964(c), of course, provides otherwise. Respondents' amicus thus urges this Court to amend RICO to delete a civil cause of action provided by Congress.

Respondents theorize that, under the plain language of § 1964(c), an "artful pleader" could circumvent the requirements of § 1962(a)-(c). Bellezza Br. 17-18. This contention has already been answered. *See* Pet. Br. 39-41. Respondents, however, have escalated this argument to a new level, arguing that any other interpretation would render all of § 1962(a)-(c) superfluous. Respondents are mistaken. Each section of § 1962 provides a separate and distinct civil remedy under § 1964(c): actions under § 1962(a) for injuries proximately caused by an investment of proceeds derived from a pattern of racketeering; actions under § 1962(b) for injuries proximately caused by acquisition through a pattern of racketeering activity of any interest in an enterprise; actions under § 1962(c) for injuries proximately caused by conducting the affairs of the enterprise through a pattern of racketeering; and actions under § 1962(d) for injuries proximately caused by conspiracies to violate sections (a), (b) and (c). While some fact patterns might occasionally create some overlapping claims, these are separate and distinct causes of action. *See also Shearin*, 885 F.2d at 1170 ("it would be anomalous to allow plaintiffs to recover for harm suffered from investment in, or control or conduct of, a pattern of racketeering, yet preclude recovery for conspiracy to commit these violations simply because the overt act that furthers the conspiracy does not itself qualify as racketeering.").

Finally, Respondents argue that the literal reading of RICO should be rejected to avoid "absurd results." The

purportedly absurd results Respondents forecast, however, are eliminated by the proximate cause analysis required by *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992).[5] *See id.* at 276 (a "review of the conflicting cases shows that all could have been resolved on proximate-causation grounds."); Pet. Br. 27-32; Section IV, *infra*.[6]

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[5] The hypothetical raised in the Bellezza Br. at 19, regarding a campaign of defamation designed to discredit a non-employee threat to a RICO conspiracy, is inapposite, as other aspects of RICO jurisprudence also would bar any such suit, specifically that a person who has been defamed has not been injured in his "business or property." *See, e.g., Grogan v. Platt*, 835 F.2d 844, 846-847 (11th Cir. 1988).

[6] Respondent Mezey's Brief at 8-10 argues that RICO's pattern element is void for vagueness. This argument was never raised in any court below nor is it fairly included within the question presented on this Petition. Moreover, in *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989), this Court defined this very element. *See, e.g., Columbia Natural Resources, Inc. v. Tatum*, 58 F.3d 1101 (6th Cir. 1995) (RICO pattern element not unconstitutionally void), *cert. denied*, 516 U.S. 1158 (1996). The pattern of racketeering activity at issue in this case (Pet. Br. 1-11) includes mail fraud, wire fraud and extortion, all of which certainly provide notice of the potentially criminal conduct. Mezey cannot escape RICO liability by way of a vagueness challenge on the ground that he was allegedly unaware of the extent of the direct repercussions of the overt acts committed in furtherance of the already illegal conspiracy. *See, e.g., U.S. v. Masters*, 924 F.2d 1362, 1367 (7th Cir.), *cert. denied*, 500 U.S. 919 (1991).

III. A DISTINCTION BETWEEN CIVIL AND CRIMINAL RICO CONSPIRACIES IS NOT SUPPORTED BY THE LANGUAGE OF RICO OR THE COMMON LAW.

A. The Language of RICO Leaves No Room for a Civil/Criminal Distinction as to the Single Phrase, "To Conspire."

The words "to conspire" appear only once in § 1962. Respondents argue that this single statutory phrase should have two completely different meanings depending on the context involved, criminal or civil. Bellezza Br. 20-22. This argument, however, violates a fundamental principle of statutory construction: "A term appearing in several places in a statutory text is generally read the same way each time it appears. We have even stronger cause to construe a single formulation . . . the same way each time it is called into play." *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994); *see also United States v. Nippon Paper Industries Co.*, 109 F.3d 1, 4 (1st Cir. 1997) (" . . . common sense suggests that courts should interpret the same language in the same section of the same statute uniformly, regardless of whether the impetus for interpretation is criminal or civil.").[7] Here, there is similarly

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[7] *See also United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517 (1992) (applying language in statute consistently in both tax and criminal settings); *Citron v. Citron, M.D.*, 722 F.2d 14, 16 (2d Cir. 1983) ("Nothing in the statute or in its legislative history suggests that Congress intended different standards of willfulness to be applied in the civil and criminal contexts. Nor does it seem logical that the same term, 'willfully', in the same statute, § 2511, should have any different meaning when applied directly to a criminal violation than when the same violation is incorporated by reference to establish civil liability."), *cert. denied*, 466 U.S. 973 (1984).

no justification to interpret the single phrase, "to conspire," differently depending on whether the statute is invoked in a civil or a criminal proceeding.[8]

Respondents contend that the civil remedy for a RICO criminal conspiracy provided by § 1964(c) is merely a procedural device to impute liability to co-conspirators, as opposed to a substantive civil claim for which plaintiffs may bring an action. Bellezza Br. 23-25. Respondents, however, confuse the distinction between substantive claims and conspiracy claims with the dichotomy between substantive causes of action and procedural devices. By its terms, § 1964(c) creates "Civil Remedies," not mere procedural devices, and provides causes of action to plaintiffs injured by reason of violations of § 1962(a), § 1962(b), § 1962(c) or § 1962(d). The interpretation of § 1962(d) urged by Respondents cannot be reconciled with the statute's structure.

Finally, RICO is a criminal statute. While it does provide civil remedies as well, those remedies are for *violations of this criminal statute* and RICO conspiracy claims under § 1964(c) must be understood in that light. Here, an overt act committed in furtherance of a RICO conspiracy in violation of § 1962(d) has directly injured

[8] Respondents attempt to justify their criminal/civil distinction by noting obvious procedural differences between civil and criminal RICO proceedings, including burdens of proof and statute of limitations. Bellezza Br. 21-22. These differences, however, do not arise from different interpretations of a single statutory phrase. On the contrary, as even Respondents concede, when RICO terms such as "conduct," "enterprise" and "pattern of racketeering" are at issue, the identical meaning is applied in both civil and criminal contexts. *Id.* at 22. This applies with equal force to the statutory language, "to conspire."

Beck. Nothing further is required under the statute to provide Beck with a right to sue.

B. An Independent Claim for a Civil Conspiracy Existed at Common Law.

Even if using two different meanings for the single phrase, "to conspire," were appropriate, Respondents' argument would still be based upon a false premise, because the common law itself recognizes an independent action for a civil conspiracy:[9]

> [A]lthough the general rule is that "an act which constitutes no ground of action against one person cannot be made the basis of a civil action for conspiracy," in certain circumstances mere force of numbers acting in unison may comprise an actionable wrong. In essence . . . ordinarily there can be no independent tort for conspiracy. However, if the plaintiff can show some peculiar power of coercion possessed by the conspirators by virtue of their combination, which power an individual would not possess, then conspiracy itself becomes an independent tort. The essential elements of this tort are a malicious motive and coercion through numbers or economic influence.

Churruca v. Miami Jai-Alai, Inc., 353 So.2d 547, 550 (Fla. 1977) (citations omitted). In fact, a cause of action for an independent tort of conspiracy is recognized throughout

[9] At minimum, even ignoring RICO's criminal underpinnings, the common law is not so well-established on this civil issue so as to justify an assumption that Congress imported a different rule into the RICO statute.

the states.[10] Respondents are therefore simply wrong in claiming that, at common law, the overt act in a civil conspiracy action must itself constitute the underlying unlawful act.[11]

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[10] *See, e.g., Shaltupsky v. Brown Shoe Co.*, 350 Mo. 831, 835 (Mo. 1943) (noting common law independent civil conspiracy action and stating that "[t]he result of this greater power of coercion is that what is lawful for an individual is not the test of what is lawful for a combination of individuals."); *Fleming v. Dane*, 22 N.E.2d 609, 611 (Mass. 1939) ("The most common illustration of such a 'conspiracy' is to be found in the combined action of groups of employers or employees. . . . "); *Braswell v. Carothers*, 863 S.W.2d 722, 727 (Tenn.App. 1993) ("The requisite elements of the cause of action are common design, concert of action, and an overt act. Injury to person or property, resulting in attendant damage, must also exist." (citations omitted)); *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 483 S.E.2d 789, 795 (S.C.App. 1997) ("An action for civil conspiracy may exist even though defendants committed no unlawful act and no unlawful means were used."), *affd. in part, revd. in part on other grounds*, 514 S.E.2d 126 (S.C. 1999); *Dowd & Dowd, Ltd. v. Gleason*, 693 N.E.2d 358, 371 (Ill. 1998).

[11] The Bellezza Br. at 29 n.19 cites *Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153 (3d Cir. 1993), for the proposition that, without a substantive RICO claim, no conspiracy to violate RICO can exist. In *Rehkop v. Berwick Healthcare Corp.*, 95 F.3d 285, 290 (3d Cir. 1996), however, the Third Circuit rejected this very argument, noting that *Lightning Lube* involved a situation where the acts complained of were not violations of § 1962(a)-(c) and thus "failed to serve as the object of a section 1962(d) conspiracy." The same distinction disposes of the remaining cases cited for this point in the Bellezza Br. Here, as in *Rehkop*, Beck has provided proof of violations of § 1962(c). "The reason he cannot pursue such a claim is that he was not harmed by the section 1962(c) violation. Nonetheless, the defendants' alleged violation of section 1962(c) can serve as the object of a section 1962(d) conspiracy, and if [the complaining party] was harmed by reason of the conspiracy, he may pursue a section 1962(d) claim." *Rehkop*, 95 F.3d at 290.

IV. BECK'S INJURIES WERE PROXIMATELY CAUSED BY THE DEFENDANT DIRECTORS' CONSPIRACY TO VIOLATE RICO.

Although Beck was not injured by the predicate acts committed as part of the RICO conspiracy, that fact would be relevant only if Beck's claim was brought under § 1962(c), instead of § 1962(d). Beck's injuries were directly caused by the RICO conspiracy and, therefore, under *Holmes*, were proximately caused by the violation of § 1962(d).

Contrary to Respondents' bald assertions, Beck was injured in the "first step" of causation under the conspiracy alleged. *Holmes*, 503 U.S. at 271-272. In the chain of causation, no person or event stands between the overt act of terminating Beck in furtherance of the conspiracy and Beck's injuries. The injuries flow directly from that overt act. In no way is Beck complaining about injuries he suffered "merely from the misfortunes visited upon a third person by the defendant's acts . . . ." *Id.* at 268. There is a "direct relation between the injury asserted [Beck's termination] and the injurious conduct alleged [the Defendant Directors' RICO conspiracy]." *Id.* While Beck's injuries are not in the linear chain of harm resulting from the predicate acts, his injuries are the first link in the chain of harm caused by the overt acts committed in furtherance of the conspiracy itself, which, pursuant to the plain meaning of § 1964(c), is the only issue for a proximate cause analysis of a civil claim brought under § 1962(d).[12]

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[12] As more fully detailed in Pet. Br. at 29-31, the underlying reasons for the directness requirement are met here. Beck's damages are easily ascertainable, as he is the only person to have suffered this loss of employment – there are no potential multiple recoveries as to these damages. While victims of the

Respondents' attempt to divorce Beck's termination from the RICO conspiracy by asserting that a state wrongful discharge suit would be "simpler and more administratively convenient," Bellezza Br. 32, adds nothing to the proximate cause analysis. Beck's termination was an overt act committed in furtherance of the RICO conspiracy. Accordingly, Beck was directly injured by the violation of § 1962(d) and he has satisfied the proximate cause analysis required by *Holmes*. The fact that a "simpler" cause of action also may exist is irrelevant to the issue of proximate cause, especially given that Congress enacted RICO to supplement existing state law remedies. *See Sedima*, 473 U.S. at 498-499.

V. THE "ANTITRUST INJURY" ANALOGY URGED BY RESPONDENTS HAS ALREADY BEEN REJECTED BY THIS COURT.

Respondents urge this Court to rewrite RICO to incorporate a "racketeering injury" requirement analogous to the "antitrust injury" required under the Clayton Act. Bellezza Br. 35-37. Yet this Court has expressly rejected the application of "antitrust standing principles"

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predicate acts have suffered their particular damages, the RICO conspirators must be liable for all injuries directly caused by their conspiracy. Respondents' argument that these potential multiple awards to the various direct victims of the racketeering conduct for the injuries that each person and only that person suffered (including Beck) somehow impacts the proximate cause issue distorts *Holmes*. The focus of *Holmes* on this element only involved apportionment of damages and multiple recoveries for *identical* conduct and damages. *Holmes*, 503 U.S. at 269, 272-273. Last, Respondents' deterrence arguments ignore the undeniable deterrent provided by whistleblowers, who may, by being the first wave of deterrence, actually prevent predicate acts and the associated injuries from occurring. *See* Pet. Br. 30, 37-38.

to RICO civil actions. *Sedima*, 473 U.S. at 498-499; *see also Holmes*, 503 U.S. at 269 n.15 (" 'antitrust injury' has no analogue in the RICO setting"). Respondents ask the Court to graft language onto RICO to redefine the injuries redressable under the statute, when the simple answer to the problem of endless ripples of civil RICO liability is application of the time-honored test for proximate cause. *See Holmes*, 503 U.S. at 268-271, 276; *see also id.*, 503 U.S. at 286 (O'Connor, J., concurring).[13] Respondents thus offer a remedy already rejected by this Court in *Sedima* for a problem already solved by this Court in *Holmes*.

The Respondents insist that they "do not seek to resurrect the 'racketeering' . . . injury requirement[ ]," Bellezza Br. 36 n.25, but they protest too much. The "racketeering activity" injury requirement they urge, Bellezza Br. 36, is, at best, a distinction without a difference. Like the unsuccessful respondents in *Sedima*, Respondents here repeatedly invoke "antitrust injury" and "antitrust damage," Bellezza Br. 26 n.18, 27 n.18, 35, 37, and they cite the very same antitrust precedents this

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[13] The proximate cause requirement already "confine[s] RICO's civil remedies to those whom the defendant has truly injured in some meaningful sense." *Holmes*, 503 U.S. at 279 (O'Connor, J., concurring). Respondents themselves indicate that the goal of their proposed rewrite of RICO is to ensure that employees fired in furtherance of a RICO conspiracy may recover under § 1964(c) only if they are " 'proximately' injured" by that conspiratorial misconduct. Bellezza Br. 38. Proximate cause, however, is not a concept unique to antitrust law, see Bellezza Br. 30-32 & n.21, 34-35, nor was it commended to this Court in *Holmes* solely by its employment under the Clayton Act. Rather, proximate cause is a general (and sensible) common-law limit on damages liability that is almost as old as the common law itself. *Holmes*, 503 U.S. at 268, 271; *see also id.* at 287 (Scalia, J., concurring in the judgment).

Court dismissed as inapposite in *Sedima*.[14] Similarly, just as the respondents did in *Sedima*, Respondents here ask the Court to read a new limitation into § 1964(c), so that a person "injured in his person or property by reason of a violation of section 1962" will have to prove not only that he has been injured "by reason of" a RICO conspiracy in violation of § 1962(d), but also that he has suffered a "racketeering activity" injury by reason of a violation of § 1962(c). Respondents' proposed judicial amendment to RICO may appear to be more modest than that urged in *Sedima*, but it is no more permissible. "There is no room in the statutory language for an additional . . . requirement." *Sedima*, 473 U.S. at 495.

This Court used the Clayton Act to inform its reading of RICO in *Holmes* because the two statutes used identical language in formulating the causation requirement – "by reason of." However, there is no similar textual justification for using antitrust doctrine to interpret civil RICO's injury requirements, because there are no similar parallels in the RICO text at issue here. Section 1964(c) provides a civil remedy for injuries from § 1962 violations, and that includes not only the racketeering activity forbidden by subsections (a), (b) and (c), but also the conspiracy to violate those subsections, which is expressly made "unlawful" by subsection (d). The antitrust statutes are organized differently, with the prohibition on conspiracies in restraint of trade being made part of the substantive definition of the antitrust violation. *See* 15 U.S.C. § 1. There is simply no textual support in the antitrust statutes for the distinction that Respondents ask this Court to

[14] Compare Bellezza Br. 35, 36 (discussing *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977), and *Blue Shield of Va. v. McCready*, 457 U.S. 465 (1982)), with Br. of Respondents in *Sedima*, No. 84-648 at text accompanying n.26; n.31 (same). *See also Sedima*, 473 U.S. at 512-514 (Marshall, J., dissenting) (same).

legislate here – between injury from a predicate act that is part of a conspiracy and injury from a wrongful overt act that is also part of that conspiracy.

The use of a special "antitrust injury" requirement to deny standing under the antitrust laws to most discharged employees makes sense in the antitrust context, because the "clear focus" of the antitrust laws is "to promote free competition," not to provide civil relief "for all wrongdoing in the business community." *Ostrofe v. H.S. Crocker Co.*, 740 F.2d 739, 751 (9th Cir. 1984) (Kennedy, J., dissenting), *cert. dism'd*, 469 U.S. 1200 (1985). Antitrust standing is therefore generally limited to consumers and competitors of the defendant. *Associated General Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 538 (1983).[15] In stark contrast, there is no such limitation in RICO to a particular type of economic harm or a particular type of anticompetitive conduct or other economic motive. Instead, recovery may be had by "*[a]ny* person injured in his business or property by reason of a violation of section 1962." § 1964(c) (emphasis added). Civil RICO liability does not even require *any* economic motive. *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 252 (1994). The policy concerns in the antitrust employee discharge cases, apart from this "antitrust injury" focus, are met in the RICO context, as they are in antitrust as well, by reliance on the proximate cause requirement. *Ostrofe*, 740 F.2d at 750 (Kennedy, J., dissenting) (issue is whether plaintiff "has standing to challenge the price-fixing conspiracy as

[15] The special "antitrust injury" inquiry was adopted to ensure not only that a plaintiff's injury has been caused by a defendant's conduct in the market, but also that the injury results from an *anti*competitive rather than a *pro*competitive aspect of that conduct. *See Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 335-336 (1990).

the proximate cause of his discharge injury"); compare *id.* at 749 (discussing proximate cause analysis) with *Holmes*, 503 U.S. at 269-270 (proximate cause) and Pet. Br. 28-30 (same). Therefore, there is neither need nor legal justification for using antitrust law to redefine and restrict the injuries for which Congress has provided redress under the broad terms of § 1964(c).

VI. APPLYING RICO AS WRITTEN WILL NOT SUBVERT FEDERALISM.

For the first time in this case, Respondents here contend that a decision that enforces the plain language of RICO and rejecting a predicate act injury requirement would violate federalism principles and encroach on the employer-employee relationship, an area that, according to the Respondents and their amici, is solely the province of state law. Bellezza Br. 38-40. However, as this Court made clear in *United States v. Turkette*, 452 U.S. 576 (1981), the fact that RICO may reach conduct already regulated by state law, both criminal and civil, is not some unintended result of a wayward judicial construction. On the contrary,

> [t]he view [of Congress] was that existing law, state and federal, was not adequate to address the problem, which was of national dimensions. . . . As the hearings and legislative debates reveal, Congress was well aware of the fear that RICO would mov[e] large substantive areas formerly totally within the police power of the State into the Federal realm.

Id. at 586-587 (citations omitted). As this Court explained, RICO does not undermine state authority, because it merely supplements state remedies, rather than preempting them:

> RICO imposes no restrictions upon the criminal justice systems of the States. *See* 84 Stat. 947 ("Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or *affording civil remedies* in addition to those provided for in this title"). Thus, under RICO, the States remain free to exercise their police powers to the fullest constitutional extent in defining and prosecuting crimes within their respective jurisdictions. That some of those crimes may also constitute predicate acts of racketeering under RICO, is no restriction on the separate administration of criminal justice by the States.

Turkette, 482 U.S. at 587 n.9 (emphasis added); *see also Sedima*, 473 U.S. at 498 (noting supplementary function of RICO); *Westfall v. United States*, 274 U.S. 256, 258 (1927) (Holmes, J.) ("Of course an act may be criminal under the laws of both jurisdictions . . . Moreover, when it is necessary in order to prevent an evil to make the law embrace more than the precise thing to be prevented it may do so.").[16] Moreover, RICO does not in any way divest state sovereigns of the power to adjudicate employer-employee relationships, as concurrent jurisdiction exists under RICO. *Tafflin v. Levitt*, 493 U.S. 455 (1990).[17]

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[16] "There is no argument that Congress acted beyond its power in so doing," *Turkette*, 452 U.S. at 587, especially given that RICO's purview is limited to acts that affect interstate commerce. *See especially* 18 U.S.C. § 1962.

[17] Respondents attempt to divorce the overt act committed in furtherance of the RICO conspiracy from the RICO conspiracy itself. The former is part and parcel of the latter. As Congress had the full authority to provide federal treble damages relief for conspiracies to violate RICO to effectuate its manifest purpose of eradicating organized crime in cases affecting interstate commerce, as a supplement to already existing state law, the fact that this cause of action also reaches areas on which the states are also free to legislate does not violate any principles of federalism.

Respondents' professed concern about federal regulation of employment relationships is behind the times. Bellezza Br. 39. Since at least the New Deal, a plethora of federal statutes have regulated (and in some cases preempted) the terms and conditions of employment relationships where activities affect interstate commerce. *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*; the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*; the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*; the Labor Management Relations Act, 29 U.S.C. § 185, *et seq.*; the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801; and the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*[18]

Respondents' main authority on federalism, *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), Bellezza Br. 39-40, actually undermines their argument. In *Bray*, the Court concluded that 42 U.S.C. § 1985(3) should not be read to "mak[e] a whole catalog of ordinary state crimes a concurrent violation of a single congressional statute," 506 U.S. at 287 (Kennedy, J., concurring), because that statute was enacted to redress a particular type of injury with a particular motivation: invidious, class-based discriminatory animus. The Court therefore

[18] The amicus brief of the American Tort Reform Association at 12-13 argues that providing a person such as Beck with a right to sue under RICO will upset the balance relating to labor/employment issues. These are the same slippery slope arguments already rejected by this Court in *Sedima*, 473 U.S. at 498-500. Nothing in RICO justifies carving an exception for the employment setting. On the contrary, RICO was designed, *inter alia*, to protect businesses from the encroachment of organized crime.

held that § 1985(3) did not provide a federal cause of action against persons obstructing access to abortion clinics. The contrast with RICO could not be more dramatic. First, the manifest purpose of civil RICO was indeed to make a "whole catalog" of state crimes a concurrent violation of federal civil racketeering law and thereby to provide federal treble damages relief for racketeering conspiracies involving, among other things, routine frauds and other acts sanctioned by state law. Second, RICO contains no motivation limitation analogous to class-based animus under § 1985(3); indeed, RICO offenses do not even require an economic motive, and that is why RICO, unlike § 1985(3), has been held to provide a cause of action against persons who conspire to disrupt abortion clinics. *See National Organization for Women*, 510 U.S. at 252, 255-256.[19]

VII. RECOGNIZING STANDING ON THE PART OF WHISTLE BLOWERS FURTHERS THE PURPOSE OF RICO.

An abiding theme of Respondents' briefs is that the plain meaning of the statute should not control, given RICO's supposed "central purpose" to punish predicate acts. *See, e.g.*, Bellezza Br. 14-17. Congress's purpose in enacting RICO, however, was not to punish predicate acts – those acts were already punishable under the myriad state and federal laws making the predicate acts, themselves, criminal violations. Rather, Congress was concerned with creating new weapons to combat organized crime and, specifically, the infiltration of businesses by

[19] *See also Haddle v. Garrison*, 525 U.S. 121 (1998) (at-will employee terminated for whistle blowing had been injured by conspiracy in violation of 42 U.S.C. § 1985(2), notwithstanding existence of state remedies).

criminal elements. *See Turkette*, 452 U.S. at 590-591 and n.13. This purpose fully supports providing a RICO claim to employees injured when they are terminated for resisting the infiltration of business by a criminal enterprise or for blowing the whistle on the RICO conspiracy. *See* Pet. Br. 32-36.[20]

CONCLUSION

For the foregoing reasons and those more fully stated in Beck's Initial Brief on the Merits, the judgments below should be reversed and the case should be remanded for further proceedings, including trial.

Respectfully submitted,

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[20] In the various regulatory statutes cited by the Bellezza Br. at 41 n.30, Congress included specific language creating a cause of action for whistle blowers because those laws did not also contain a more general private civil right of action. No such specific attention to the whistle blower scenario was necessary under RICO, because § 1964(c) already confers the right to sue upon any person injured by a § 1962 violation, including a § 1962(d) conspiracy.