

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, :

Plaintiff-Appellee, : Case No. 2012-2006

v. : On Appeal from the Highland

Zachary Bondurant, : County Court of Appeals

Defendant-Appellant. : Fourth Appellate District

Case No. 11CA25

REPLY BRIEF OF DEFENDANT-APPELLANT ZACHARY BONDURANT

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## I. Introduction.

The State expends considerable energy arguing that this Court should insert a policy restriction into R.C. 2923.32(A)(1) and R.C. 2923.31(I)(2)(c) and ignore the plain language of those statutes. It asks this Court to create a rule that would make everyone associated with an enterprise criminally responsible for all of the acts of the other members, without requiring that those charged must have personally conducted or participated in those acts. Although the corrupt activities statute is clearly designed to make those who participate in a criminal enterprise liable for that participation, it does not treat all participants as equally liable for all the enterprise's activities.

In short, the State's argument is absurd. And while the State was able to convince both the trial court and the court of appeals that the argument had some merit, it is evident from a case relied on in the State's brief, that the question before this Court has already been answered: a person may only be convicted of engaging in a pattern of corrupt activity under R.C. 2923.31(I)(2)(c) and R.C. 2923.32(A)(1) if that person "performed" at least two of the predicate acts identified in R.C. 2923.31(I)(2)(c) and the aggregate value of that individual's acts was at least \$500 (now \$1,000). *State v. Schlosser*, 79 Ohio St.3d 329, 334, 681 N.E.2d 911 (1991), quoting *United States v. Palmeri*, 630 F.2d 192, 203 (3rd Cir. 1980). A person cannot "perform" another's acts, and accordingly, the state cannot reach its threshold amount by aggregating the amounts "performed" by two separate participants in the enterprise.

The State's only purported support for its argument is RICO's legislative history, but other than the federal legislature's intent that RICO should be broadly construed, there is nothing in RICO that allows the predicate acts of codefendants to be aggregated to satisfy a financial threshold – in fact, RICO does not even have a similar provision. For these reasons, the State's arguments must fail, and the decision of the appellate court must be reversed.

## II. Argument.

### Proposition of Law

**A defendant may only be convicted of engaging in a pattern of "corrupt activity" as defined in R.C. 2923.31(I)(2)(c) if the value of the contraband for that defendant's activities is equal to or exceeds the threshold amount set forth in the statute.**

In this case, Mr. Bondurant was convicted of twelve predicate acts, that had a total aggregate value of \$460. *State v. Bondurant*, 2012-Ohio-4912, 982 N.E.2d 1261, ¶ 22; Tr. 345, 445, 467-71. But the trial court allowed the jury to convict Mr. Bondurant of engaging in a pattern of corrupt activity by aggregating the value of his predicate acts with those of his codefendant, Jeffrey Stevens. *Bondurant* at ¶ 1, 22-23. The court then imposed an additional seven-year prison sentence for that conviction. Aug. 18, 2011 Judgment Entry of Conviction. But because the State did not prove that Mr. Bondurant's acts satisfied the essential elements of R.C. 2923.32, his conviction should be reversed.

**A. Revised Code Sections 2923.32(A)(1) and 2923.31(I)(2)(c) are only ambiguous if the words chosen by the legislature are ignored.**

As already explained, the plain language of R.C. 2923.32(A)(1) and R.C. 2923.31(I)(2)(c) set forth the essential elements of engaging in a pattern of corrupt activity, and as applicable to this case, the statutes require a single person to commit two predicate acts that have an aggregate value of \$500. The State tries to manufacture an ambiguity by claiming that “any combination of violations” is unclear. But that phrase is only ambiguous if the first half of R.C. 2923.32(A)(1) is ignored, which this Court cannot do. *See Cheap Escape Co. v. Haddox*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 16 (restating the principle that each word in a statute should be given meaning unless the result is unreasonable). R.C. 2923.32(A)(1) states: “[n]o **person** employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity.” (Emphasis added.) Because the language is clear and unambiguous, this Court need not look beyond the words chosen to find a different legislative intent. *In re M.W.*, 133 Ohio St.3d 303, 2012-Ohio-4538, 978 N.E.2d 164, ¶ 17.

The State also claims that the legislature intended for codefendants’ acts to be aggregated, because R.C. 2923.32(A)(1) is aimed at eradicating illegal group activities. The State is correct that the statute criminalizes illegal activities performed for the

benefit of a group enterprise,<sup>1</sup> but the State ignores the statute's method and legislature's goal of deterring and punishing individuals for the illegal activity that *they have engaged in* on behalf of or in cooperation with a group: "To obtain convictions [under RICO], the state ha[s] to prove that *each defendant* was voluntarily connected to that pattern [of racketeering activity] and *performed* at least two acts in furtherance of it." (Emphasis added.) *Schlosser*, 79 Ohio St.3d at 334, quoting *Palmeri*, 630 F.2d at 193. If punishment of individuals for their activities was not the statute's goal, that statute would not require *each defendant* to have performed "two or more incidents of corrupt activity . . . related to the affairs of the same enterprise," R.C. 2923.31(E), and would not have defined "corrupt activity" to include "any combination of the violations" of possession and trafficking in drugs valued at more than \$500.<sup>2</sup>

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<sup>1</sup> The State argues that corrupt activity requires proof that two or more people are working together. State's Brief, 11. The State misreads R.C. 2923.31(I)(2)(c) and R.C. 2923.32(A)(1). When those statutes are read together they require a person to participate or conduct activities on behalf of the enterprise. But a person may work alone when he or she commits the predicate acts, so long as the acts are for the benefit of the enterprise.

<sup>2</sup> When examined in other contexts, the absurdity of the State's approach to the corrupt activities statute becomes plain. "Incidents" of corrupt activity stretch far more broadly than monetary crimes. Should the State also be permitted to "aggregate" the harm caused by crimes of violence that an individual defendant had no role in? Should the State be permitted to "aggregate" the value of the crimes committed by two participants in the enterprise who have never met and have no relationship to one another? The "aggregation" rule simply allows the State to treat every participant in the enterprise as responsible for the acts of every other participant. If the legislature had intended such liability, it could have stated it in far simpler terms.

In contrast to the State's theory, the statute's plain language makes sense. Because each person convicted under this section could receive a substantial sentence, the legislature demands evidence of a minimal level of participation in the group's activities by requiring that each person's profits from the illegal activities amount to the nominal sum of \$500 (now \$1,000). As written, the statute permits the courts to impose increased penalties on only those participants in the enterprise that have committed a pattern of corrupt activities as statutorily defined. But the State wants to turn the statute on its head; if the State is permitted to aggregate a participant's conduct with the conduct of other participants to reach its statutory threshold, the minor players in a criminal enterprise are treated the same or worse than the ringleader. In fact, that is precisely what happened in this case: Mr. Bondurant received a seven-year sentence for his corrupt activities crime, but the undisputed ringleader, Rodger Cassell, from whom the police recovered \$35,000 in suspected drug sale proceeds, only received a *six-year* corrupt activities sentence. High-level criminal bosses, who conduct and oversee multiple criminal acts, warrant substantial sentences because they are the leaders and commanders of the organized criminal activity. But under the State's theory, there is no difference between the little fish and the big ones—this is neither what the statute dictates nor what the legislature intended.

**B. The Ohio legislature's intent differed from the federal legislature's intent, because Ohio did not enact RICO.**

The State argues that the federal legislature intended for RICO to be broadly construed, and because engaging in a pattern of corrupt activity is the state-law counterpart, the Ohio legislature must have intended the same construction. Based on that premise, the State argues that R.C. 2923.32(A)(1) and R.C. 2923.31(I)(2)(c) have broader application if courts are allowed to aggregate codefendants' offenses; and therefore, that must be what the Ohio legislature intended.

This argument is—bluntly—just silly. It hardly bears repeating that the Ohio legislature is not the federal legislature, and the federal legislature's intent in crafting RICO cannot—and should not—be imputed onto the Ohio legislature. There are significant differences between the two acts. If the Ohio legislature had intended to capture and criminalize the exact same conduct that was criminalized by RICO, it would have enacted the same language. It did not.<sup>3</sup>

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<sup>3</sup> In 1970, the Racketeer Influenced and Corrupt Organizations Act ("RICO") became law. 18 U.S.C. 1961 *et seq.* "RICO's central aim [wa]s to prevent and punish the financial infiltration and corrupt operation, through patterns of racketeering activity, of 'legitimate business operations affecting interstate commerce.'" *United States v. Sutton*, 605 F.2d 260, 262-63 (6th Cir. 1979), quoting *Iannelli v. United States*, 420 U.S. 770, 787 n. 19, 95 S. Ct. 1284, 1294, 43 L. Ed. 2d 616 (1975), reversed by 642 F.2d 1001 (6th Cir. 1980). In 1985—fifteen years after RICO's enactment—Ohio codified R.C. 2923.32(A)(1).

RICO	Engaging in Pattern of Corrupt Activity
<p>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.</p> <p>18 U.S.C. § 1962(c).</p>	<p>No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or the collection of an unlawful debt.</p> <p>R.C. 2923.32(A)(1).</p>
<p>"pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.</p> <p>18 U.S.C. § 1961(5)</p>	<p>"Pattern of corrupt activity" means two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.</p> <p>At least one of the incidents forming the pattern shall occur on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern shall occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity.</p> <p>For the purposes of the criminal penalties that may be imposed pursuant to section 2923.32 of the Revised Code, at least one of the incidents forming the pattern shall constitute a felony under the laws of this</p>

	<p>state in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, shall constitute a felony under the law of the United States or the other state and would be a criminal offense under the law of this state if committed in this state.</p> <p>R.C. 2923.31(E).</p>
<p>"racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act . . . which is chargeable under State law and punishable by imprisonment for more than one year * * * (D) any offense involving . . . dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act . . . ), punishable under any law of the United States.</p> <p>18 U.S.C. § 1961(1).</p>	<p>"Corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:</p> <p>* * *</p> <p>(2) Conduct constituting any of the following:</p> <p>* * *</p> <p>(c) Any violation of section . . . 2925.03 . . . of the Revised Code, any violation of section 2925.11 of the Revised Code that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, any violation of section 2915.02 of the Revised Code that occurred prior to July 1, 1996, any violation of section 2915.02 of the Revised Code that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of section 3769.11 of the Revised Code as it existed prior to that date, any violation of section 2915.06 of the Revised Code as it existed prior to July 1, 1996, or any violation of</p>

	<p>division (B) of section 2915.05 of the Revised Code as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds one thousand dollars, or any combination of violations described in division (I)(2)(c) of this section when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds five hundred dollars (now one thousand dollars).</p> <p>R.C. 2923.31(I)(2)(c).</p>
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But even if the federal legislature's intent could be ascribed to the Ohio legislature, the State offers no support for its position that "any combination of violations" means that the value of the codefendants' acts may be aggregated to satisfy the statutory threshold. In fact, a case relied upon by the State suggests otherwise. In *Schlosser*, this Court recognized that even the federal statute requires personal participation in the predicate acts to warrant a conviction. *Schlosser*, 79 Ohio St.3d at 334 (stating that *each* defendant must participate in the predicate acts to sustain a

conviction). As noted above, if a defendant must personally participate in the predicate acts, it follows that those acts must be the basis for satisfying the \$500 statutory threshold.

**C. This Court should not affirm Mr. Bondurant's conviction based upon unindicted conduct.**

**1. There was no complicity instruction.**

The total value of Mr. Bondurant's predicate acts was \$460—an amount that does not satisfy the statutory threshold. Because Mr. Bondurant's conviction for engaging in a pattern of corrupt activity cannot be affirmed unless aggregated with Mr. Stevens' predicate acts, the State says that this Court may review the trial testimony to see if Mr. Bondurant participated in unindicted acts that might satisfy the threshold and that it can use the complicity statute to do so. *See State's Brief*, pp. 5-9, 11-13.

This is a spurious argument at best. Mr. Bondurant was indicted for twelve drug-related offenses that occurred over a three-day period in February 2011 and that had an aggregate total value of \$460. *Bondurant*, 2012-Ohio-4912, ¶ 22; Tr. 345, 445, 467-71. He was convicted of each of those offenses, and they were the predicate acts underlying Mr. Bondurant's conviction for engaging in a pattern of corrupt activity. Tr. 467-71. He was not charged with any other offenses, either as a principal or as a complicitor. And most importantly, the jury was not given a complicity instruction. It would, therefore, reach far beyond the jury's verdict to suggest that it could have found him guilty of any acts as a complicitor.

**2. Mr. Bondurant is entitled to notice of the predicate acts.**

Finally, even if Mr. Bondurant's conviction could be affirmed based upon unindicted and unproven acts, the Due Process Clauses of the State and federal constitutions required the prosecutor to identify the predicate offenses that underlie the engaging in a pattern of corrupt activity charge. *State v. Siferd*, 151 Ohio App.3d 103, 2002-Ohio-6801, 783 N.E.2d 591, ¶ 20. Here, the only predicate offenses identified were those for which Mr. Bondurant was convicted and which occurred on February 3, 4, and 5, 2011. *See* Indictment, Counts 49-60, pp. 11-13; Tr. 467-71. The jury was given the following instruction to determine whether Mr. Bondurant was guilty of engaging in a pattern of corrupt activity:

[B]efore you can find that either defendant engaged in a corrupt activity, you must find that the State proved beyond a reasonable doubt that each defendant is guilty of at least two counts of trafficking in drugs alleged in the Indictment, and that the total proceeds of, or value of, all of the contraband or property illegally sold or purchased in all of the trafficking in count, uh, drug counts, pertaining to the defendants of which you found the defendant's guilty exceeds \$500.00. So, in other words, the total of all the counts that you find, if you find anyone guilty, must be over five hundred dollars (\$500.00) to allow you to find corrupt activity occurred for Count One purposes.

Tr. 460. As a prerequisite to finding the respective defendant guilty of engaging in a pattern of corrupt activity, the jury had to find the respective defendant was guilty of two of the predicate acts for which that respective defendant was indicted. The only acts that Mr. Bondurant was found guilty of were those charged in the indictment. In this posture, due process prevents the State from using uncharged acts as a basis of

liability. The simple fact that there was testimony alleging that Mr. Bondurant may have participated in other uncharged criminal acts cannot serve as a basis for satisfying the \$500 statutory threshold needed to affirm his conviction for engaging in a pattern of corrupt activity. *Siferd*, 2002-Ohio-6801, ¶ 20.

### III. Conclusion.

Based on the foregoing, Mr. Bondurant asks that this Court rule that the violations of codefendants cannot be aggregated to satisfy the threshold amount in R.C. 2923.31(I)(2)(c). Therefore, Mr. Bondurant's conviction for engaging in a pattern of corrupt activity should be vacated.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

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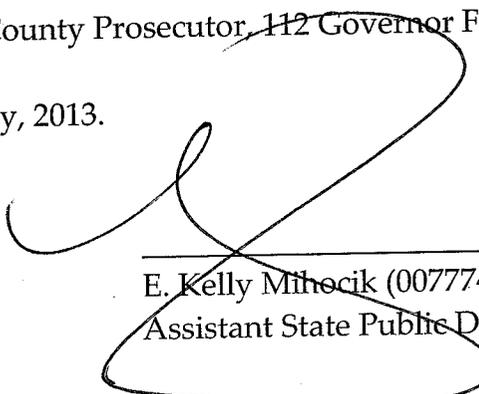
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was sent by regular U.S. Mail, to the Office  
Anneka P. Collins, Highland County Prosecutor, 112 Governor Foraker Place, Hillsboro,  
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APPENDIX TO  
REPLY BRIEF DEFENDANT-APPELLANT ZACHARY BONDURANT

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UNITED STATES CODE SERVICE  
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\*\*\* Current through PL 113-9, approved 5/1/13 \*\*\*

TITLE 18. CRIMES AND CRIMINAL PROCEDURE  
 PART I. CRIMES  
 CHAPTER 96. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

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*18 USCS § 1961*

§ 1961. Definitions

As used in this chapter [*18 USCS §§ 1961 et seq.*]--

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [*21 USCS § 802*]), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 [*18 USCS § 201*] (relating to bribery), section 224 [*18 USCS § 224*] (relating to sports bribery), sections 471, 472, and 473 [*18 USCS §§ 471, 472, and 473*] (relating to counterfeiting), section 659 [*18 USCS § 659*] (relating to theft from interstate shipment) if the act indictable under section 659 [*18 USCS § 659*] is felonious, section 664 [*18 USCS § 664*] (relating to embezzlement from pension and welfare funds), sections 891-894 [*18 USCS §§ 891 through 894*] (relating to extortionate credit transactions), section 1028 [*18 USCS § 1028*] (relating to fraud and related activity in connection with identification documents), section 1029 [*18 USCS § 1029*] (relating to fraud and related activity in connection with access devices), section 1084 [*18 USCS § 1084*] (relating to the transmission of gambling information), section 1341 [*18 USCS § 1341*] (relating to mail fraud), section 1343 [*18 USCS § 1343*] (relating to wire fraud), section 1344 [*18 USCS § 1344*] (relating to financial institution fraud), section 1351 [*18 USCS § 1351*] (relating to fraud in foreign labor contracting), section 1425 [*18 USCS § 1425*] (relating to the procurement of citizenship or naturalization unlawfully), section 1426 [*18 USCS § 1426*] (relating to the reproduction of naturalization or citizenship papers), section 1427 [*18 USCS § 1427*] (relating to the sale of naturalization or citizenship papers), sections 1461-1465 [*18 USCS §§ 1461 through 1465*] (relating to obscene matter), section 1503 [*18 USCS § 1503*] (relating to obstruction of justice), section 1510 [*18 USCS § 1510*] (relating to obstruction of criminal investigations), section 1511 [*18 USCS § 1511*] (relating to the obstruction of State or local law enforcement), section 1512 [*18 USCS § 1512*] (relating to tampering with a witness, victim, or an informant), section 1513 [*18 USCS § 1513*] (relating to retaliating against a witness, victim, or an informant), section 1542 [*18 USCS § 1542*] (relating to false state-

ment in application and use of passport), section 1543 [18 USCS § 1543] (relating to forgery or false use of passport), section 1544 [18 USCS § 1544] (relating to misuse of passport), section 1546 [18 USCS § 1546] (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 [18 USCS §§ 1581-1592] (relating to peonage, slavery, and trafficking in persons)[.], section 1951 [18 USCS § 1951] (relating to interference with commerce, robbery, or extortion), section 1952 [18 USCS § 1952] (relating to racketeering), section 1953 [18 USCS § 1953] (relating to interstate transportation of wagering paraphernalia), section 1954 [18 USCS § 1954] (relating to unlawful welfare fund payments), section 1955 [18 USCS § 1955] (relating to the prohibition of illegal gambling businesses), section 1956 [18 USCS § 1956] (relating to the laundering of monetary instruments), section 1957 [18 USCS § 1957] (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 [18 USCS § 1958] (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 [18 USCS § 1960] (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 [18 USCS §§ 2251, 2251A, 2252, and 2260] (relating to sexual exploitation of children), sections 2312 and 2313 [18 USCS §§ 2312 and 2313] (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 [18 USCS §§ 2314 and 2315] (relating to interstate transportation of stolen property), section 2318 [18 USCS § 2318] (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 [18 USCS § 2319] (relating to criminal infringement of a copyright), section 2319A [18 USCS § 2319A] (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 [18 USCS § 2320] (relating to trafficking in goods or services bearing counterfeit marks), section 2321 [18 USCS § 2321] (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 [18 USCS §§ 2431-2346] (relating to trafficking in contraband cigarettes), sections 2421-24 [18 USCS §§ 2421-2424] (relating to white slave traffic), sections 175-178 [18 USCS §§ 175-178] (relating to biological weapons), sections 229-229F [18 USCS §§ 229-229F] (relating to chemical weapons), section 831 [18 USCS § 831] (relating to nuclear materials), (C) an act which is indictable under *title 29, United States Code, section 186* [18 USCS § 186] (dealing with restrictions on payments and loans to labor organizations) or section 501(c) [18 USCS § 501(c)] (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this *title* [18 USCS § 157]), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act [21 USCS § 802]), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 [8 USCS § 1324] (relating to bringing in and harboring certain aliens), section 277 [8 USCS § 1327] (relating to aiding or assisting certain aliens to enter the United States), or section 278 [8 USCS § 1328] (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B) [18 USCS § 2332b(g)(5)(B)];

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter [18 USCS §§ 1961 et seq.];

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter [18 USCS §§ 1961 et seq.] or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter [18 USCS §§ 1961 et seq.];

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter [18 USCS §§ 1961 et seq.]. Any department or agency so designated may use in investigations authorized by this chapter [18 USCS §§ 1961 et seq.] either the investigative provisions of this chapter [18 USCS §§ 1961 et seq.] or the investigative power of such department or agency otherwise conferred by law.

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\*\*\* Current through PL 113-9, approved 5/1/13 \*\*\*

TITLE 18. CRIMES AND CRIMINAL PROCEDURE  
PART I. CRIMES  
CHAPTER 96. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

**Go to the United States Code Service Archive Directory**

*18 USCS § 1962*

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 2 DOCUMENTS.

THIS IS PART 1.

USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code [18 USCS § 2], to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in 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. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) 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.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.