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An Offer They Couldn't Refuse: Rolling Back RICO through a Direct Interpretation of Hobbs Act Extortion

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Congress passed the Racketeer Influenced and Corrupt Organizations Act ("RICO") in 1970 with the goal of eliminating organized crime.[1] Despite this goal, recent years have seen civil RICO expanded beyond its originally intended sphere.[2] Securities fraud, commercial fraud, and antitrust claims, rather than traditional organized crime, have increasingly been the basis for civil RICO actions.[3] In addition, plaintiffs have attempted to apply RICO in the "protest" context.[4] Such civil actions frequently target abortion protesters,[5] and the general applicability of RICO indicates plaintiffs may soon target other protesters, such as environmental, animal rights, or anti-war activists.[6]

Two factors have driven this expansion of civil RICO: the expanding definitions of terms within RICO and the expanding breadth of its predicate offenses.[7] As an example, plaintiffs rarely have difficulty meeting the enterprise requirement of RICO, which defines the sorts of organizations to which RICO applies,[8] because the courts have interpreted the requirement broadly.[9] Civil RICO actions against protesters commonly cite the extortion provision of the Hobbs Act,[10] § 1951(b)(2), as the requisite predicate offense.[11]

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1. Racketeer Influenced and Corrupt Organizations Act, Pub. L. No. 91-452, 84 Stat. 941 (codified as amended at 18 U.S.C. §§ 1961–1967 (2000)); Alexander M. Parker, *Stretching RICO to the Limit and Beyond*, 45 DUKE L.J. 819, 819 (1996).

2. Parker, *supra* note 1, at 819–20. RICO creates civil and criminal liability. 18 U.S.C. § 1964 (2000) (establishing the civil remedies of RICO).

3. Parker, *supra* note 1, at 819.

4. *Id.* at 820.

5. *E.g.*, Scheidler v. Nat'l Org. for Women, Inc., 537 U.S. 393, 398 (2003) (concerning a RICO claim against abortion protestors where protestors conceded conduct was criminal); Planned Parenthood of the Colombia/Willamette, Inc. v. Am. Coalition of Life Activists, 290 F.3d 1058 (9th Cir. 2002), *cert. denied*, 123 S.Ct. 2637 (2003) (noting RICO and Freedom of Access to Clinic Entrances ("FACE") claims against protesters); Tompkins v. Cyr, 202 F.3d 770 (5th Cir. 2000) (noting the addition of a RICO claim against abortion protesters by plaintiffs); Libertad v. Welch, 53 F.3d 428 (1st Cir. 1995) (concerning a RICO action based on abortion protests).

6. *See* Xavier Beltran, *Applying RICO to Eco-Activism: Fanning the Radical Flames of Eco-Terror*, 29 B.C. ENVTL. AFF. L. REV. 281, 281–82 (2002).

7. *See* Parker, *supra* note 1, at 820–21.

8. *See* 18 U.S.C. § 1961(4) (2000).

9. *See infra* notes 40–42 and accompanying text.

10. § 1951. The Hobbs Act was a response to the Supreme Court's decision in *United*

The Hobbs Act defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."[12]

In *Scheidler v. National Organization for Women, Inc.*,[13] the United States Supreme Court considered a civil RICO action against abortion protesters.[14] Petitioners, abortion protesters, aimed to shut down abortion clinics and convince women not to have abortions.[15] In the statutory language, they attempted to achieve these goals through the use of "force, violence, or fear."[16]

To prevail on the civil RICO claim, the plaintiff in *Scheidler* needed to demonstrate that the actions of the protesters met each element of the predicate offense of Hobbs Act extortion. In the abortion protest context, this would have required a broad interpretation of the critical terms of § 1951(b)(2).[17] However, *Scheidler* established a narrow, rather than broad, interpretation of the critical term "obtaining."[18] The narrow interpretation requires the extortionist to deprive the victim of property *and* acquire

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States v. Local 807 Intl Bhd. of Teamsters, 315 U.S. 521 (1942). James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 889 (1988). The Hobbs Act's predecessor, the Anti-Racketeering Act, was interpreted in *Local 807* as inapplicable in cases where the extortionists were seeking "wages." *See id.* Congress was "outraged" at the result of the decision and replaced the Anti-Racketeering Act with the Hobbs Act to eliminate the exception. *See id.*

11. Parker, *supra* note 1, at 820. The racketeering activities defined in 18 U.S.C. § 1961(1) function as the heart of RICO claims. *See id.* They are commonly referred to as the predicate offenses. *Id.* Liability extends only if plaintiff can prove a pattern based on a predicate offense. *Id.*

12. § 1951(b)(2).

13. 537 U.S. 393 (2003).

14. *Id.* at 393.

15. Nat'l Org. for Women, Inc. v. Scheidler, 510 U.S. 249, 253 (1994), *rev'd*, 537 U.S. 393 (2003). *National Organization for Women, Inc.* was the first time these parties met before the Supreme Court.

16. *See* § 1951(b)(2); *Nat'l Org. for Women, Inc.*, 510 U.S. at 253. The tactics of aggressive abortion protesters have often included torching, bombing, or vandalizing clinics. Nona LaPlante, *Clinic Blockades: What is the Problem? What is the Harm? What is the Solution?*, 3 CIRCLES: BUFF. WOMEN'S J. L. & SOC. POL'Y 15, 20 (1995).

17. *See generally* Parker, *supra* note 1, at 820–30 (discussing the critical elements of the Hobbs Act). "Obtaining" and "property" are two critical terms in 18 U.S.C. § 1951(b)(2) that must be read broadly to apply the Hobbs Act in the abortion protest context. *See* § 1951(b)(2).

18. *Scheidler*, 537 U.S. at 404. The description of the competing interpretations ("narrow" and "broad") used in this Recent Development is based on the amount of activity theoretically covered by the adoption of each term. The "narrow" interpretation would restrict the activity covered by the Hobbs Act by requiring the plaintiff to prove two elements. The "broad" interpretation would allow the Hobbs Act to be applied to a greater spectrum of activity by requiring only one element.

property from the victim.[19] The broad interpretation would require only deprivation.[20] Under the narrow interpretation of "obtaining," the Hobbs Act does not cover the traditional actions[21] of abortion protesters.[22] The majority based its narrow interpretation of "obtaining" on three rationales: (1) Congress adopted the common law meaning of "obtaining" when it enacted the Hobbs Act,[23] (2) a 1973 Supreme Court decision supported the narrow definition,[24] and (3) to define "obtaining" as only requiring deprivation would collapse the difference between coercion and extortion and run contrary to congressional intent.[25]

Scheidler will have a significant impact on the use of RICO against abortion protesters. The greater impact, however, will likely be on the general application of RICO. As opposed to recent decisions, which fueled expansion,[26] the *Scheidler* Court's adoption of the narrow definition of "obtaining" will likely slow the expansion of RICO. Plaintiffs and prosecutors will no longer be able to cite Hobbs Act extortion as the predicate offense against protesters. Accordingly, it will be difficult to apply RICO within the protest context.[27] This Recent Development examines *Scheidler* as a departure from the trend of expanding civil RICO. It analyzes each rationale underlying the Court's decision and finds two of the three persuasive. In addition, it argues that the position offered by the dissent is not convincing. Finally, it proposes an alternate rationale in support of the Court's holding.

A familiarity with the basic facts of *Scheidler* is necessary in order to understand the fundamental difference between the

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19. *See id.*

20. *See id.*

21. *See infra* notes 28–29 and accompanying text.

22. *See Scheidler*, 537 U.S. at 409. The fact pattern in *Scheidler* is consistent with the traditional abortion protest fact pattern. *See infra* notes 28–29 and accompanying text. After applying the narrow definition of "obtaining," the Court held "[b]ecause we find that petitioners did not obtain or attempt to obtain property from respondents, we conclude that there was no basis upon which to find that they committed extortion under the Hobbs Act." *Scheidler*, 537 U.S. at 409. The decision to narrowly interpret "obtaining," therefore, prevents application of the Hobbs Act in the traditional abortion protest context.

23. *Scheidler*, 537 U.S. at 402–04.

24. *Id.* at 404.

25. *Id.* at 405–08.

26. *See* Parker, *supra* note 1, at 830 (arguing that recent interpretations of Hobbs Act terms have greatly expanded the application of RICO); *Id.* at 838 (arguing that recent interpretations of RICO terms have greatly expanded the application of RICO).

27. *See* Beltran, *supra* note 6, at 297–98 (arguing that the Hobbs Act could, under pre-*Scheidler* case law, be used to hold protesters liable).

rationales of the majority and dissenting opinions. Simply put, it is important to note which facts are present and which facts are not. The facts that traditionally appear in aggressive abortion protests are present. The protesters aimed to force the clinics to close and convince women not to have abortions.[28] As described by the Seventh Circuit:

> [T]he protest missions also involve illegal conduct: protesters do everything from sitting or lying in clinic doorways and waiting to be arrested to engaging in more egregious conduct such as entering the clinics and destroying medical equipment and chaining their bodies to operating tables to prevent the tables from being used. In a few instances, protesters apparently have physically assaulted clinic staff and patients. In addition to staging these protests, the defendants have issued letters and statements to other clinics threatening to stage missions at those clinics unless they voluntarily shut down.[29]

Absent, however, is the physical transfer of property between the parties,[30] a traditional aspect of an extortion case.[31] The absence of a physical transfer of property marks the difference between situations characterized as mere deprivation and situations involving both acquisition and deprivation.

In addition to a basic grasp of the facts, an understanding of how *Scheidler* fits into the overall debate concerning RICO expansion is essential to appreciating the nature and significance of the decision. RICO was initially designed to combat organized crime.[32] To prevail on a RICO claim, a plaintiff must demonstrate that "the defendant,

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28. Nat'l Org. for Women, Inc., v. Scheidler, 510 U.S. 249, 253 (1994), *rev'd*, 537 U.S. 393 (2003).

29. Nat'l Org. for Women, Inc. v. Scheidler, 267 F.3d 687, 693 (7th Cir. 2001) (using the term "protest missions" as a neutral description of the protestors' actions), *rev'd*, 537 U.S. 393 (2003).

30. *See Nat'l Org. for Women, Inc.*, 510 U.S. at 253–54.

31. *See* United States v. Nardello, 393 U.S. 286, 290 (1969) (agreeing with appellant that acts "generically classified as extortionate" include "obtaining something of value from another"); United States v. Jannotti, 673 F.2d 578, 595 (3d Cir. 1982) (en banc) (finding that "[a]t common law, extortion was defined as 'any officer's unlawfully *taking*, by color of his office, from any man, any money or thing of value that is not due to him' " (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES *141 (emphasis added))); Peter J. Henning, *Public Corruption: A Comparative Analysis of International Corruption Conventions and United States Law*, 18 ARIZ. J. INT'L & COMP. L. 793, 846–50 (2001) (discussing the requirement of payment to the extortionist).

32. Racketeer Influenced and Corrupt Organizations Act, Pub. L. No. 91-452, 84 Stat. 941 (codified as amended at 18 U.S.C. §§ 1961–1967 (2000)); Daniel Luccaro et al., *Racketeer Influenced and Corrupt Organizations*, 38 AM. CRIM. L. REV. 1211, 1212 (2001).

through the commission of two or more acts constituting a pattern of racketeering activity, directly or indirectly invested in, maintained an interest in, or participated in, an enterprise, the activities of which affected interstate or foreign commerce."[33] The underlying racketeering activity is generally referred to as the predicate offense.[34] As mentioned above, RICO expansion is directly related to both the breadth of its predicate offenses and the interpretation of its own statutory language.[35] The predicate offense most often applied to protesters is violation of the Hobbs Act.[36]

The interpretation of "property" used in the Hobbs Act offers an example of a term given a broad reading.[37] Courts have read "property" to include not only the traditional conception of property, but also intangible property and rights that more closely resemble traditional civil rights.[38] This interpretation is moving toward its maximum breadth.[39] The breadth of the Hobbs Act increases as its terms are broadly interpreted.

Courts also interpret the enterprise requirement of RICO broadly.[40] According to one commentator, courts read the requirement "in its absolute broadest manner."[41] Courts interpret it in such a way as to cover almost any organized group working toward a common purpose.[42] RICO becomes applicable in more situations as its statutory language is broadly interpreted and the breadth of its predicate offenses increases.

Scheidler concerns a term from one of the predicate offenses:

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33. Luccaro, et al., *supra* note 32, at 1215.

34. *Id.*; *see also* Parker, *supra* note 1, at 820 (noting that the criminal statutes referenced by RICO are collectively known as the predicate offenses).

35. Parker, *supra* note 1, at 820–21.

36. *Id.* at 822.

37. *Id.* The Hobbs Act mentions "property" in the context of extortion: "the obtaining of property from another." 18 U.S.C. § 1951(b)(2) (2000). It is important to appreciate the distinction between "property" and "obtaining." "Property" is offered here only as an example of a Hobbs Act term. It is not offered as a substitute for, or as any part of the analysis of, "obtaining." Below, this Recent Development discusses the broad definition of "property" in the context of the *Scheidler* dissent. *See infra* notes 109–20 and accompanying text. The example here is wholly separate from the later discussion.

38. Parker, *supra* note 1, at 820 (describing the right to democratically participate in a labor union as falling within the category of traditional civil rights).

39. *See id.* at 830.

40. *Id.* at 838.

41. *Id.*; *see also* Beltran, *supra* note 6, at 297 (discussing the broad interpretation of the enterprise requirement and its application in the environmental setting). For a general discussion of RICO terms, see Artie Jones et al., *Racketeer Influenced and Corrupt Organizations*, 39 AM. CRIM. L. REV. 977, 983–95 (2002).

42. *See* Parker, *supra* note 1, at 836–38.

"obtaining" as used in Hobbs Act extortion.[43] The breadth of the Hobbs Act extortion provision—and with it, the applicability of RICO—depends on whether "obtaining" is interpreted broadly to require only deprivation or narrowly to require both deprivation and acquisition.[44] The broad interpretation increases the applicability of RICO by requiring a plaintiff to prove only one element, while the narrow interpretation restricts its reach by requiring a plaintiff to prove two.

The Court slowed the expansion of RICO by adopting the narrow definition of "obtaining."[45] The majority employed three rationales to support its holding. First, the Court found that Congress adopted the common law meaning of extortion when it enacted the Hobbs Act.[46] The pre-Hobbs Act common law definition included the requirement that property must be "obtained."[47] Precedent cited by the Court indicated this "obtaining" requirement included both deprivation and acquisition.[48] The Court therefore interpreted "obtaining" to require both elements.[49]

Second, the majority cited *United States v. Enmons*,[50] a 1973 decision supporting the narrow definition.[51] The *Scheidler* Court determined that the Court in *Enmons* read the extortion provision of the Hobbs Act as requiring acquisition in addition to deprivation.[52] This settled the definition for the purposes of *Scheidler*.[53]

Finally, the Court found that to define "obtaining" as only requiring deprivation would collapse the difference between coercion and extortion.[54] Coercion, the majority determined, entails the use of force to limit another's "freedom of action," whereas extortion requires the extortionist to receive property from the victim.[55] The Court found removing the acquisition requirement would leave the two crimes practically identical and allow coercion to be included

43. Scheidler v. Nat'l Org. for Women, Inc., 537 U.S. 393, 397 (2003) (finding for petitioners because they did not "obtain" property).

44. *See* Parker, *supra* note 1, at 827.

45. *Scheidler*, 537 U.S. at 404.

46. *Id.* at 402.

47. *Id.* at 402–03.

48. *Id.* at 403 (citing People v. Ryan, 133 N.E. 572, 573 (N.Y. 1921), and People v. Weinseimer, 102 N.Y.S. 579, 588 (N.Y. App. Div. 1907)).

49. *See id.* at 404.

50. 410 U.S. 396 (1973).

51. *Scheidler*, 537 U.S. at 404.

52. *Id.*

53. *Id.*

54. *See id.* at 405.

55. *See id.* at 405–06.

under the Hobbs Act.[56] Because Congress intentionally *included* extortion and *excluded* coercion when the Hobbs Act was passed, the Court interpreted "obtaining" narrowly to preserve congressional intent.[57]

Analysis of the Court's reasoning demonstrates that the holding is correct. Satisfying the "obtaining" element in Hobbs Act extortion cases requires an acquisition and deprivation[58] of property, not simply a deprivation. The Court's first rationale—the Hobbs Act uses the common law definition of extortion, which requires acquisition—and the third rationale—adopting the broad definition would collapse the difference between extortion and coercion, and would therefore be contrary to congressional intent—are persuasive. However, the second rationale—*Enmons* already defined "obtaining"—is not.

The first rationale convincingly uses an established method of statutory interpretation to define "obtaining." A court presumes a statutory term has its common law meaning unless Congress has provided other direction.[59] Because Congress provided no direction concerning the specific interpretation of "obtaining,"[60] the Court correctly adopted the common law definition.

Furthermore, congressional endorsement of the common law definition of extortion supports the adoption of the common law definition of "obtaining." In *Evans v. United States*,[61] the Court determined that the Hobbs Act extended the common law definition of extortion.[62] In *Evans*, an elected official accepted money from an undercover FBI agent posing as a real estate developer.[63] The money was accepted with the understanding that it was offered in exchange

56. *See id.* at 405–08.

57. *Id.* at 407–08. For a discussion of the congressional consideration, see *infra* notes 60–69 and accompanying text.

58. The acquisition of property by the extortionist implies depriving the victim of property. Therefore, as used in the analytical section of this Recent Development, "acquisition" represents both deprivation and acquisition.

59. *See* Taylor v. United States, 495 U.S. 575, 592 (1990) (observing the "maxim that a statutory term is generally presumed to have the common-law meaning"); Morissette v. United States, 342 U.S. 246, 263 (1952) (finding that Congress presumably "knows and adopts" the ideas associated with the common law definition of a statutory term and that courts should interpret the term in line with the common law definition unless otherwise directed by Congress).

60. *See Scheidler*, 537 U.S. at 402–08 (discussing Hobbs Act's congressional history and failing to directly cite a reference to "obtain"); United States v. Culbert 435 U.S. 371, 376–80 (1978) (discussing Hobbs Act congressional debate and failing to directly cite a reference to "obtain").

61. 504 U.S. 255 (1992).

62. *Id.* at 261.

63. *Id.* at 257.

for the public official's support of an effort to rezone a tract of land, an exercise of his official power.[64] The expansion of the common law definition referenced in *Evans* concerned broadening extortion to cover "acts by private individuals."[65] It did not alter the definition of "obtaining."[66] In formulating the Hobbs Act, Congress adopted the common law definition of extortion and expanded it to cover private acts, but left its essential elements, including the common law understanding of "obtaining," untouched.

After adopting the common law definition, the *Scheidler* Court properly determined that "obtaining," as defined at common law, required acquisition. Congress used the Penal Code of New York and the Field Code, a nineteenth century model code, in crafting the Hobbs Act.[67] As defined in New York before passage of the Hobbs Act, "obtaining" required acquisition as well as deprivation.[68] Congress adopted the narrow common law definition, and the narrow definition is therefore applicable in *Scheidler.*

The *Scheidler* Court's third rationale also employs an established method of statutory construction—examining congressional intent. Adopting the broad definition of "obtaining"—which finds deprivation alone to be sufficient—would collapse the distinction between coercion and extortion that existed when Congress enacted the Hobbs Act. *Extortion*, as defined in New York when Congress adopted the New York provision as part of the Hobbs Act, required acquisition of property.[69] However, *coercion* under New York law did not include acquisition as an element, but contained every other element of extortion.[70] Accordingly, removing the acquisition

64. *See id.*

65. *Id.* at 261; *see* Lindgren, *supra* note 10, at 889–90 (noting "Congress chose a standard definition of extortion" when formulating the Hobbs Act).

66. *Evans*, 504 U.S. at 261–62 (finding that essential aspects of the common law extortion definition were maintained for purposes of the Hobbs Act).

67. *Id.* at 262 n.9. *But see* Lindgren, *supra* note 10, at 889–92 (arguing that the degree to which Congress relied on the New York statute when formulating the Hobbs Act has been overstated).

68. 4 REPORT OF THE COMMISSIONERS OF THE CODE, PROPOSED PENAL CODE OF THE STATE OF NEW YORK § 584 note, at 210 (Proposed Draft 1865) (reprint 1998) [hereinafter FIELD CODE] (using "expressly" to require acquisition). Furthermore, case law following the Field Code interpreted "obtaining" narrowly. *See* People v. Ryan, 133 N.E. 572, 573 (N.Y. 1921) (recognizing that extortion requires acquisition); People v. Weinseimer, 102 N.Y.S. 579, 588 (1907) (finding that "the material issue [in an extortion prosecution] was not whose money was it, but did the defendant receive it from the complainant").

69. *See Ryan*, 133 N.E. at 572 (equating "to extort" with to "gain any money or other property").

70. *See* Scheidler v. Nat'l Org. for Women, Inc., 537 U.S. 393, 405–06 (2003)

requirement from extortion by adopting the broad definition of "obtaining" leaves only coercion.

The collapse of the two definitions is contrary to congressional intent. Congress intended the Hobbs Act to *include* extortion and *exclude* coercion. The predecessor to the Hobbs Act was the Anti-Racketeering Act.[71] The Anti-Racketeering Act included both extortion and coercion.[72] After deliberate revision, Congress replaced the Anti-Racketeering Act with the Hobbs Act,[73] which did *not* maintain the specific reference to coercion, but did maintain the reference to extortion.[74] In light of the careful consideration Congress gave to the reformation of the law, it is safe to conclude that Congress did not intend to include coercion. Applying the broad definition of "obtaining," requiring only deprivation, would allow prosecutors and plaintiffs to label what is actually coercion as extortion and expand the reach of the Hobbs Act further than Congress intended. The Court therefore had to adopt the narrow definition to preserve congressional intent.

While the first and the third rationales offered by the Court are persuasive, the second is not. The Court, in only one paragraph that directly cited only one opinion, declared that *Enmons* had settled the definition of "obtaining."[75] In *Enmons*, the Court used the term "taking" while referring to extortion.[76] The case involved striking utility workers who used violent acts, such as shooting company transformers and blowing up a company transformer substation, to obtain higher wages and other benefits.[77] The question addressed by

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(distinguishing extortion and coercion based on the lack of acquisition as an element of coercion).

71. *Evans*, 504 U.S. at 261; Parker, *supra* note 1, at 823.

72. The Anti-Racketeering Act did not specifically prohibit extortion and coercion by name, but its language is equivalent to the common law definition. Anti-Racketeering Act, ch. 569, §§ 2(a)–(b), 48 Stat. 979 (1934) (current version at 18 U.S.C. § 1951 (2000)) (prohibiting acts equivalent to coercion in § 2(a) and acts equivalent to extortion in § 2(b)). The *Scheidler* Court explicitly recognized the equivalence of the Anti-Racketeering Act language and the common law definition of extortion and coercion. *Scheidler*, 537 U.S. at 406–07.

73. *See* United States v. Culbert, 435 U.S. 371, 378 (1978) (observing that "many Congressmen praised the bill because it set out with more precision the conduct that was being made criminal"); Parker, *supra* note 1, at 822–24 (describing the passage of the Hobbs Act as a response to a particular United States Supreme Court decision).

74. Hobbs Act, 18 U.S.C. § 1951 (2000) (containing no reference to coercion); *Scheidler*, 537 U.S. at 407 (discussing the creation of the Hobbs Act and demonstrating the inclusion of extortion and the exclusion of coercion).

75. *Scheidler*, 537 U.S. at 404.

76. United States v. Enmons, 410 U.S. 396, 399–400 (1973).

77. *Id.* at 398.

the Court was whether the Hobbs Act applied to acts of violence used during a legal strike for the purpose of achieving legitimate collective-bargaining demands.[78]

The *Scheidler* Court found the consideration of "taking" in *Enmons* sufficient to conclusively settle the definition of "obtaining."[79] There are two reasons why this conclusion is incorrect. First, "obtaining" was not interpreted in *Enmons*. *Enmons* mentions "taking" in a sentence intended to interpret the term "wrongful."[80] The *Scheidler* Court rests the current interpretation of "obtaining" on this previous mention of "taking." Its conclusion is not persuasive. Second, the majority opinion fails to sufficiently address other possible interpretations of "obtaining." While this Recent Development will later argue that the broad interpretation of "obtaining" does not enjoy the widespread judicial support referenced in the dissent, there is at least one case, *United States v. Arena*,[81] that directly interprets "obtaining" in a broad fashion, requiring only deprivation.[82] The Court relegates its assessment of *Arena* to the footnotes of its opinion[83] instead of addressing it thoroughly.

A court *could* read the *Enmons* interpretation of "taking" to support the holding in *Scheidler*. The Court's argument, if not directly stated, is that "obtaining" and "taking" can be used interchangeably in the extortion context. Therefore, the *Enmons* opinion, by implicitly adopting the traditional understanding of "taking"—requiring both deprivation and acquisition—could be cited as support for the broad "obtaining" definition.[84]

Nevertheless, to find the definition of "obtaining" *conclusively* settled based on *Enmons*, and without thoroughly addressing *Arena*,

78. *Id.* at 399.

79. *Scheidler*, 537 U.S. at 404.

80. *See Enmons*, 410 U.S. at 400. Even though it is the only case the *Scheidler* Court references, the Court does not directly cite *Enmons*. *Scheidler*, 537 U.S. at 404 (using "*See*" to signal that the line in the *Enmons* decision on which the *Scheidler* Court relies does not directly state the proposition it claims).

81. 180 F.3d 380 (2d Cir. 1999).

82. *Id.* at 394. There are other cases that provide strong support for the broad interpretation of "obtaining," but do not specifically address the direct interpretation. *E.g.*, Libertad v. Welch, 53 F.3d 428, 438 n.6 (1st Cir. 1995) (holding that the blockading tactics of abortion protesters constitute extortion); United States v. Lewis, 797 F.2d 358, 364 (7th Cir. 1986) (stating that the extortionist did not have to intend to receive the funds demanded and the defendant would have been guilty of violating § 1951 if "he had simply demanded that [the victim] burn [the money]").

83. *See Scheidler*, 537 U.S. at 403–04 n.8.

84. *See supra* note 31 and accompanying text.

is erroneous. The Court's second rationale, therefore, does not support defining "obtaining" narrowly.

Regardless, the Court's holding is correct. Even if the second rationale fails, the first and the third sufficiently demonstrate that "obtaining," in the context of the Hobbs Act, requires both acquisition and deprivation.

The Court was not unanimous in its judgment that "obtaining" requires both deprivation and acquisition. Justice Stevens, the lone dissenter in *Scheidler*, argued the Court should have interpreted the term broadly to require only deprivation.[85] His argument relied on three fundamental propositions: (1) "obtaining," properly interpreted, requires only deprivation; (2) courts have uniformly applied the broad interpretation throughout the country; and (3) a consistently relied upon, uniform interpretation should remain law until Congress changes it.[86] While seemingly straightforward, the dissenting opinion is not persuasive. Justice Stevens's arguments supporting his first two propositions fail. His third conclusion could be considered convincing, but it is not persuasively supported in the text.

Each of Justice Stevens's propositions relies on the next for justification. If the second proposition—a universal interpretation exists—is true, it is only persuasive if the third proposition—a universal interpretation should be adopted unless Congress alters it—is true. In the same way, the persuasiveness of the first proposition—"obtaining" requires only deprivation—relies on the truth of the second proposition. Accordingly, the most efficient way to consider the dissenting opinion is to address the argument in reverse order. In the third proposition, Justice Stevens argued the uniform interpretation of the Hobbs Act that has prevailed for decades should remain "unless and until" Congress decides to alter the statute.[87] His conclusion, in general, could be considered persuasive,[88] but he failed

85. *Scheidler*, 537 U.S. at 412–17 (Stevens, J., dissenting).

86. *See id.* (Stevens, J., dissenting) (arguing the "obtaining" requirement can be met by forcing a victim to surrender control and adopting the broad *Arena* interpretation of "obtaining").

87. *Id.* at 416–17 (Stevens, J., dissenting).

88. Justice Stevens has argued this point in many opinions. *See* Reves v. Ernst & Young, 494 U.S. 56, 74 (1990) (Stevens, J., concurring) (stating that a settled construction of an important statute should not be disturbed until Congress decides to do so); Chesapeake & Ohio Ry. Co. v. Schwalb, 493 U.S. 40, 50–51 (1989) (Stevens, J., concurring) (stating that the uniform and consistent decisions reached by the Court of Appeals in interpreting the Longshore and Harbor Workers Compensation Act's status requirement has created a reasonably clear rule of law that should be respected); McNally v. United States, 483 U.S. 350, 376–77 (1987) (Stevens, J., dissenting) (stating that a long-

to support the argument with convincing authority, citing only four opinions, none of which were majority opinions.[89]

Justice Stevens, however, failed to establish the second proposition of his opinion, that there exists a generally agreed-upon definition of "obtaining." "[F]ederal courts in virtually every circuit" have *not* cited with approval the broad interpretation of "obtaining," as Justice Stevens claims.[90] He attempted to demonstrate widespread adoption by citing *United States v. Tropiano*,[91] *United States v. Provenzano*,[92] *United States v. Green*,[93] *United States v. Hathaway*,[94] *Libertad v. Welch*,[95] *United States v. Lewis*,[96] and *United States v. Arena*,[97] among others.[98] For these cases to support Justice Stevens's argument, each must support the broad definition of "obtaining." *Lewis*,[99] *Arena*,[100] and *Libertad*[101] required only deprivation and support his claim. In *Lewis*, the defendant claimed responsibility for the Tylenol poisoning crisis of 1982.[102] The Seventh Circuit found acquisition of property unnecessary, holding "loss to the victim is the

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standing, consistent interpretation of a federal statute should not be rejected unless Congress clearly intends such a result); Comm'r v. Fink, 483 U.S. 89, 101 (1987) (Stevens, J., dissenting) (stating the strong "general interest in ensuring that the responsibility for making changes in settled law rests squarely on the shoulders of Congress"). Justice Stevens gives great weight to the reliance of the public on a long-standing interpretation of a statute—one significant point in support of judicial deference to Congress. This Recent Development addresses neither the issue of whether the judicial branch should ever defer to Congress on matters of interpretation, nor the issue, if deference is appropriate, of how long an interpretation must exist before Justice Stevens's envisioned deference is triggered.

89. *Id.* at 417 (Stevens, J., dissenting).

90. *Schiedler*, 537 U.S. at 414 (Stevens, J., dissenting). Justice Stevens argues there is widespread acceptance of the broad definition of "obtaining property." *Id.* There is consensus on the definition of "property." *See* Parker, *supra* note 1, at 826–27. However, from this one cannot draw a consensus interpretation of the term "obtaining" or the phrase "obtaining property."

91. 418 F.2d 1069 (2d Cir. 1969).

92. 334 F.2d 678 (3d Cir. 1964).

93. 350 U.S. 415 (1956).

94. 534 F.2d 386 (1st Cir. 1976).

95. 53 F.3d 428 (1st Cir. 1995).

96. 797 F.2d 358 (7th Cir. 1986).

97. 180 F.3d 380 (2d Cir. 1999).

98. Scheidler v. Nat'l Org. for Women, Inc., 537 U.S. 393, 413–16 (2003) (Stevens, J., dissenting).

99. *See Lewis*, 797 F.2d at 364 (stating that the defendant would have been guilty of violating § 1951 if "he had simply demanded that [the victim] burn [the money]").

100. *Arena*, 180 F.3d at 394. For the facts of *Arena*, see *infra* notes 104–05 and accompanying text.

101. *See* Libertad v. Welch, 53 F.3d 428, 438 n.6 (1st Cir. 1995) (holding the blockading tactics of abortion protesters constitute extortion).

102. *Lewis*, 797 F.2d at 362–63.

gravamen of the offense."[103] *Arena* concerned attacks on abortion clinics in which one defendant secretly poured butyric acid in clinics.[104] The acid produced a powerful odor and forced the clinics to close.[105] The Second Circuit found that an extortionist may "obtain" property even if she receives nothing from the victim.[106] The court in *Libertad* considered five separate abortion protests where protesters forced clinics to close by physically obstructing the entrances, issuing death threats and harassing patients.[107] The First Circuit found it "difficult to conceive" facts that better demonstrate extortion than preventing plaintiffs from "conducting . . . lawful activities."[108]

The other four cases cited in the dissent, however, do not support Justice Stevens's argument. Rather, they focus on the definition of "property" rather than "obtaining." In *Tropiano*, the main case referenced in the dissent, the defendants, through threats of violence, prevented the victim from operating his business in competition with the defendants.[109] *Tropiano* recognized that intangible goods, such as the right to solicit business, constitute "property."[110] *Hathaway* concerned public officials extorting money in exchange for public contracts[111] and simply endorsed the *Tropiano* interpretation of "property."[112] Neither opinion directly supports a broad definition of "obtaining," and therefore neither supports the dissent's claim that there is a widely adopted definition.

Provenzano, cited in both *Tropiano* and the *Scheidler* dissent for its support of a broad *property* definition, held only that the alleged extortionist does not necessarily have to receive a "benefit" from the extortion.[113] The court in *Provenzano* considered a situation where

103. *See id.* at 364.
104. *Arena*, 180 F.3d at 386–88.
105. *Id.*
106. *Id.* at 394.
107. Libertad v. Welch, 53 F.3d 428, 433–34 (1st Cir. 1995).
108. *Id.* at 438 n.6.
109. United States v. Tropiano, 418 F.2d 1069, 1074 (2d Cir. 1969) ("[the victim's] agreement to surrender this plan was due to fear for himself and his family").
110. *Id.* at 1076.
111. United States v. Hathaway, 534 F.2d 386, 389–90 (1st Cir. 1976).
112. *Id.* at 396 (citing *Tropiano*, 418 F.2d at 1076).
113. United States v. Provenzano, 334 F.2d 678, 686 (3d Cir. 1964). *Provenzano* has three possible interpretations. In the light most favorable to the dissent, "benefit" and "property" represent the same idea and *Provenzano* can be used as support. *Provenzano* can also be read to leave the "benefit"-"property" relationship ambiguous because the opinion does not directly discuss the transfer of property. Finally, it can be read to support a narrow definition of "obtaining." Defendants' representative received money from the victim. *See id.* Considering the defendant and its representative as one legal entity allows one to find support for the narrow definition.

union officials were convicted of extorting money from a local business owner.[114] The Supreme Court considered a similar situation in *Green*, where a local union and its officials were convicted of using threats of force to extort unnecessary wages from a local business.[115] In *Green*, the extorting parties acquired money from the victim.[116] *Green* also held acquisition of a "benefit" unnecessary for an extortion conviction.[117] This indicates that the *Green* Court considered the situation to be one in which extortionists could acquire "property" (money), but no "benefit." Therefore, *Green* established a theoretical separation between "property" and "benefit."[118] *Provenzano*, by citing *Green*, adopted this theory.[119] Because

114. *Id.* at 680.

115. United States v. Green, 350 U.S. 415, 417 (1956). Consideration of Hobbs Act extortion within the labor context not only raises questions concerning Justice Stevens's interpretation of "obtaining," it raises the question of whether the Hobbs Act is applicable to abortion protesters under any circumstances. The Court in *Enmons* found the Hobbs Act inapplicable when defendants were pursuing "legitimate labor ends." United States v. Enmons, 410 U.S. 396, 401 (1973) (finding "[t]he legislative framework . . . dispels any ambiguity . . . and makes it clear that the [Hobbs] Act does not apply to the use of force to achieve legitimate labor ends").

The distinction between *Enmons* and *Green* is important. In *Enmons* the striking workers were seeking a legitimate increase in wages. *Id.* at 398. In *Green*, an example of a labor case in which the Hobbs Act was applied, the wages were for superfluous and fictitious services. *Green*, 350 U.S. at 417.

The "ends" of abortion protesters are subject to interpretation. If framed as to convince patients not to seek and doctors not to perform abortions or to close clinics, the "ends" are probably legitimate. *See* Nat'l Org. for Women, Inc., v. Scheidler, 510 U.S. 249, 253 (1994), *rev'd*, 537 U.S. 393 (noting that the aim of the protesters was to shut down abortion clinics and persuade women not to have abortions). It is only the means that are objectionable. Given the legitimate goals of the protesters, a broad reading of the holding in *Enmons* may require ruling abortion protesters entirely out of the reach of RICO.

116. *Green*, 350 U.S. at 417 ("[A]ttempts to obtain from the . . . employer 'his money, in the form of wages' " (quoting the indictment)).

117. *Id.* at 420 ("[E]xtortion . . . in no way depends upon having a direct benefit conferred on the person who obtains the property").

118. While Justice Stevens cites *Green*, a case in which "property" and "benefit" are separated, courts have not always followed or clearly marked this separation. *See, e.g.*, United States v. O'Grady, 742 F.2d 682, 684–87 (2d Cir. 1984) (using the terms "property" and "benefit(s)" interchangeably in reference to "forty fully paid trips to various resorts throughout the country, two 'all events' season tickets to Madison Square Garden, countless rounds of free golf, meals and other benefits, altogether worth in excess of $34,000").

119. *Provenzano*, 334 F.2d at 685–86. The Third Circuit's support for the division of "property" and "benefit" is also directly demonstrated in *Provenzano*. The majority held "it is not necessary to prove that the extortioner himself, directly or indirectly, received the fruits of his extortion or any benefit therefrom." *Id.* at 686. The court separates the "fruits" from the "benefits." Initially, this finding may also seem to indicate support for Justice Stevens's position that acquisition is unnecessary. However, the court immediately also found "it is enough that payments were made at the extortioner's direction to a person named by him." *Id. Provenzano* requires acquisition, just not a direct transfer to

"property" and "benefit" can be theoretically separated, authorities finding acquisition of a "benefit" unnecessary for extortion do *not* directly support finding acquisition of "property" unnecessary. The dissent depends on this missing connection. Analysis of "benefit" acquisition must be de facto analysis of "property" acquisition for *Green* and *Provenzano* to endorse the broad interpretation of "obtaining." Stated in a different way, if "benefit" and "property" could *not* be separated, any authority finding acquisition of a "benefit" an unnecessary element of extortion would also support finding acquisition of "property" an unnecessary element. Because this is not the case, Justice Stevens cannot accurately cite *Green* and *Provenzano* as signals of his national consensus. Justice Stevens cannot rely on any of these four cases to support his second proposition. His claim that there is a national consensus on the "commonsense"[120] interpretation of "obtaining" fails, therefore, for two reasons: (1) *Tropiano* and *Hathaway* addressed the interpretation of "property" rather than "obtaining," and (2) the theoretical technique used in *Green* and *Provenzano* eliminates their applicability in *Scheidler*.

Finally, Justice Stevens supported his first proposition, that courts should read "obtaining" to require only deprivation, with two unconvincing arguments. Initially, he established a broad definition of "property" by arguing this broad interpretation covers the intangible property right of exclusive control of business assets.[121] Justice Stevens then made a troublesome leap. He argued that forcing someone to surrender control of an intangible right—such as the exclusive control of business assets—is "an appropriation of control" *of* that intangible right.[122] Therefore, the party applying the force *obtains* control of the right once the other party surrenders it. Justice Stevens did not cite any authority for this claim[123] and interpreted "obtaining" as if there were only one possible definition due to the expanding "property" interpretation. Authority, in fact, supports exactly the opposite—forcing a party to surrender control of an intangible right is coercion, not extortion.[124] For example, in

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the extortionist. *See id.*

120. Scheidler v. Nat'l Org. for Women, Inc., 537 U.S. 393, 412 (2003) (Stevens, J., dissenting).

121. *Id.* (Stevens, J., dissenting). The majority does not disagree with this definition, but insinuates Justice Stevens might expand it too far. *See id.* at 402.

122. *Id.* at 416 (Stevens, J., dissenting).

123. *Id.* at 412 (Stevens, J., dissenting).

124. *See, e.g.*, People v. Kaplan, 240 A.D. 72, 76–77 (N.Y. App. Div. 1934) (demonstrating a situation in which defendants were convicted of coercion for forcing

People v. Kaplan,[125] members of a local union were convicted of *coercion* for forcing other union members to drop a lawsuit.[126] In other words, the victims were forced to surrender an intangible right. By upholding the *coercion* convictions in *Kaplan*, the New York court implied that acquisition was absent from the fact pattern.[127] Precedent, therefore, differs from, and does not support, Justice Stevens's assessment, which reads acquisition into a similar fact pattern.

Justice Stevens's second argument adopted the argument in *Arena*.[128] The *Arena* court cited two definitions from Webster's Dictionary: "obtain" and "disposal."[129] According to the dictionary cited in *Arena*, "obtain" includes " 'attain[ing] . . . disposal of.' "[130] "Disposal" means " 'the regulation of the fate . . . of something.' "[131] The *Arena* court then combined these two definitions to interpret "obtaining" as "to attain regulation of the fate of."[132] Adopting this definition would require only deprivation. However, to adopt this as the accurate interpretation, one would have to endorse it over the "familiar" definition,[133] find it more persuasive than the majority's use of the common law definition, and deny the applicability or substance of the rule of lenity.[134] The universal adoption of the *Arena*

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victims to sacrifice an intangible right); People v. Podolsky, 496 N.Y.S.2d 619, 623–25 (N.Y. Sup. Ct. 1985) (finding "the alleged intentional conduct of the defendants created an atmosphere of coercion designed to deprive the tenants of their" contractual right of possession).

125. 240 A.D. 72 (N.Y. App. Div. 1934).

126. *Id.* at 76.

127. *Id.* at 79–80 (affirming the coercion convictions). The difference between coercion and extortion is acquisition. Extortion requires acquisition, while coercion does not. *See supra* notes 69–70 and accompanying text. By affirming the conviction, the court implied that in a case where one party forces the other to sacrifice an intangible right, acquisition is absent.

128. *Scheidler*, 537 U.S. at 415–16 (2003) (Stevens, J., dissenting).

129. United States v. Arena, 180 F.3d 380, 394 (2d Cir. 1999).

130. *Id.* (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1559 (1976)).

131. *Id.* (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 654 (1976)).

132. *Id.*

133. *See Scheidler*, 537 U.S. at 403 n.8 (describing "to gain possession of" as a more familiar definition than the definition cited in the dissent and *Arena*); BLACK'S LAW DICTIONARY 1078 (6th ed. 1990) (defining "obtain" as "[t]o get hold of by effort; to get possession of; to procure; to acquire, in any way"); WEBSTER'S NEW WORLD DICTIONARY 996 (4th College ed. 1999) (defining "obtain" as "to get possession of by some effort; procure").

134. *Scheidler*, 537 U.S. at 403–04 n.8 (indicating that the rule of lenity is applicable). The rule of lenity is a rule of statutory construction. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 5.04 (3d ed. 2001). It requires the interpretation of a statute to be in favor of the defendant when the statute has multiple conflicting reasonable interpretations. *Id.* In this instance, the rule would require the narrow definition (finding

interpretation might justify rejecting the more accurate definitions,[135] yet, as discussed above, there is no national consensus.[136] Accordingly, the argument for the *Arena* definition is not convincing and Justice Stevens's first proposition fails. The central argument of the dissenting opinion, therefore, cannot withstand scrutiny.

Although the majority offers two compelling rationales to support its narrow interpretation of "obtaining," there is an alternate rationale that also supports the narrow definition. Previous opinions concerning extortion "under color of official right" support the narrow interpretation of "obtaining."[137] Consequently, the narrow interpretation was properly applied in *Scheidler*.

The Hobbs Act prohibits two types of extortion: coercive extortion and extortion "under color of official right."[138] The distinction between the two is based on the *means* by which property is "obtained."[139] A coercive extortionist obtains property by force or threat whereas an extortionist operating "under color of official right" obtains property through the illegitimate use of public office.[140] The Hobbs Act designates both means of extortion in the same provision, § 1951(b)(2): "The term 'extortion' means the *obtaining* of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear or under color of official right."[141] Both types of extortion under the Hobbs Act use the same word: "obtaining." Therefore, the interpretation of "obtaining" as used in reference to extortion "under color of official right" must be the same as that used in reference to coercive extortion. To reach any different conclusion requires the same word, used in the same statute, to mean something different depending on the situation. This result would run contrary to previous Supreme Court decisions.[142]

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the Hobbs Act inapplicable). The narrow definition, requiring both acquisition and deprivation, will prevent the application of the Hobbs Act in cases where the broad definition would allow it. *See supra* notes 19–22 and accompanying text.

135. *See supra* note 90 and accompanying text.

136. *See supra* notes 90–120 and accompanying text.

137. *See, e.g.*, Evans v. United States, 504 U.S. 255, 268 (1992) (noting "the offense is completed at the time when the public official receives a payment in return for his agreement to perform specific official acts").

138. 18 U.S.C. § 1951 (2000); Lindgren, *supra* note 10, at 817.

139. *See* Lindgren, *supra* note 10, at 817.

140. *See* McCormick v. United States, 500 U.S. 257, 267 (1991) (summarizing the initial separation of the two sorts of extortion and finding "[o]nly proof of the obtaining of property under claims of official right was necessary [for a conviction]"); Lindgren, *supra* note 10, at 817–18.

141. § 1951(b)(2) (emphasis added).

142. *See* Brown v. Gardner, 513 U.S. 115, 118 (1994) ("[T]here is a presumption that a given term is used to mean the same thing throughout a statute . . . a presumption surely at

The second type of Hobbs Act extortion, "under color of official right," was considered by the Supreme Court in *Evans* and has been considered by eleven circuits.[143] *Evans* and a substantial number of appellate opinions reference "acquisition of property" when considering extortion "under color of official right."[144] *Scheidler* considered coercive extortion.[145] Since the interpretation of "obtaining" must be the same for both types of extortion, adoption of the narrow interpretation is supported in this context.

The *Scheidler* Court interpreted "obtaining" to require the extortionist to acquire property from the victim, not just deprive the victim of property. Two of the three rationales employed by the Court are compelling: the Hobbs Act references the common law definition of extortion, which requires acquisition and deprivation; and adopting the broad definition would be contrary to congressional intent as it would collapse the difference between extortion and coercion. The narrow definition adopted in *Scheidler* will slow, or possibly end, the expansion of Hobbs Act extortion. This will make it more difficult for prosecutors and plaintiffs to apply RICO to

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its most vigorous when a term is repeated within a given sentence"); Atl. Cleaners & Dyers, Inc. v. United States, 286 U.S. 427, 433 (1932) (finding "there is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning" and the presumption is overcome only when the word is used in "different parts of the act with different intent"). Interpretation of "obtaining" in the Hobbs Act, therefore, would require an even greater presumption since the term is only used once.

143. Evans v. United States, 504 U.S. 255, 258–59 (1992) (endorsing the view of nine circuits regarding "passive acceptance" as a sufficient basis for a Hobbs Act violation and noting the contrary opinion of two other circuits).

144. *Id.* at 265. *Evans* and decisions from the Second, Fifth, Sixth, Eighth, and Eleventh Circuits discuss inducement as a requirement for extortion. *See id.* at 258–59, 259 n.2 (discussing the opinion of the Eleventh Circuit Court of Appeals regarding inducement in the context of extortion and noting similar statements of law in other circuits). There is no consensus concerning inducement; yet, both sides of the argument reference the requirement of receipt by the extortionist. *See, e.g.*, United States v. Evans, 910 F.2d 790, 796–97 (11th Cir. 1990) (stating that extortion under color of official right is proven when the "public official has accepted [property] in return for a requested exercise of official powers"); United States v. O'Grady, 742 F.2d 682, 687 (2d Cir. 1984) (stating that "[a]lthough receipt of benefits by a public official is a necessary element of the crime, there must also be proof that the public official did something, under color of his public office, to cause the giving of benefits"); United States v. French, 628 F.2d 1069, 1072 (8th Cir. 1980) (reinstating an earlier judgment for conviction where defendant "received a wrongful fee for himself"); United States v. Williams, 621 F.2d 123, 123 (5th Cir. 1980) (noting defendant was convicted of extortion after "soliciting and receiving" property to which he was not entitled); United States v. Butler, 618 F.2d 411, 417 (6th Cir. 1980) (noting defendant "concedes ... the sole motivation underlying his receipt of these ... payments").

145. Nat'l Org. for Women, Inc. v. Scheidler, 510 U.S. 249, 253 (1994), *rev'd*, 537 U.S. 393 (2003).

protesters.[146] Within the abortion protest context, traditional protesters will be protected from RICO actions. The decision will make it more difficult to stretch RICO to cover environmental protesters.[147] Other protesters, such as anti-war demonstrators, are also now less likely to be charged under RICO.[148] In short, when commerce alone has been disrupted, *Scheidler* prevents the application of Hobbs Act extortion. Unless plaintiffs and prosecutors can prove an attempt to actually acquire property from the victim, a RICO conviction or award will not withstand appeal. Consequently, the expansion of RICO application will also be decelerated.

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146. *See* Parker, *supra* note 1, at 844.

147. A parallel can be drawn between aggressive abortion protesters, such as those in *Scheidler*, and environmental protesters resorting to "eco-sabotage." *See* Beltran, *supra* note 6, at 282 (noting a pattern similar to the abortion protest context: "what was once identifiable as direct action [environmental] protest is today blurring into highly questionable protest tactics"). Some courts and commentators have supported applying RICO to aggressive environmental protesters. *Id.*

148. The Hobbs Act "affects commerce" requirement also poses a large hurdle for those prosecutions. 18 U.S.C. § 1951(a) (2000).