Beyond the Statute's Bounds: The Case Against Private Equitable Relief Under Civil RICO

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ABSTRACT

This paper argues that civil plaintiffs do not have access to private equitable relief under the Racketeer Influenced and Corrupt Organizations Act (RICO). Different from money damages, private equitable relief is when a private party asks a court to change another party's behavior: either to make them do something or stop them from doing something. Over the past two decades, a federal circuit split has emerged over whether RICO's civil remedies section (§ 1964)—already a potent tool for plaintiffs—permits individuals to seek both monetary and equitable remedies. Aligning with those circuits that find against private equitable relief, this paper lays out three arguments: (1) statutory interpretation of RICO forbids private equitable relief, (2) Court precedent bars extratextual remedies when Congress intended otherwise, and (3) limits on federal equity powers prevent reading private equitable relief into civil RICO.

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I. INTRODUCTION

On October 14, 1970, Congress passed RICO to address America's epidemic of organized crime. Organized crime—particularly the Italian American *Cosa Nostra*[1]—"extensively and deeply involved [itself] in legitimate business and in labor unions."[2] It infiltrated nearly every facet of economic life, operating far above the petty street-level crime of its early twentieth-century predecessors. [3]

RICO, Title IX of the larger Organized Crime Control Act, provided civil and criminal remedies for addressing acts performed by criminal syndicates.[4] President Richard Nixon called it a necessary and powerful tool in the "war against organized crime,"[5] signing it into law on October 15, 1970. Addressing a wide range of illegal activities, including extortion, bribery, and fraud, RICO's innovation lay in allowing leaders of criminal organizations to be held accountable for crimes committed by their subordinates, as they are all part of the same criminal enterprise.[6]

It provided governmental remedies and private individual remedies in the fight against racketeering. However, the statute has proven to be complex and not easily understood in all aspects. In recent years, RICO's civil remedies section—§ 1964—has been a source of contention among federal courts. This contention has resulted in a circuit split over what remedies the statute provides to private plaintiffs to fight racketeering.

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1. *See* James B. Jacobs & Lauryn P. Gouldin, *Cosa Nostra: The Final Chapter?*, 25 CRIME & JUST. 129, 139 (1999). Beginning with Italian immigrants in the early 20th century, the *Cosa Nostra*, known also as the American Mafia, developed into a network of criminal enterprises with a "distinctive, even unique...penetration of labor unions, legitimate industry, and politics." *Id.*

2. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, TASK FORCE ON ORGANIZED CRIME 1 (1967).

3. *See id*. at 3-12.

4. *See* 18 U.S.C. §§ 1961–1968 (1970).

5. United Press International, *Nixon Signs Bill to Combat Crime*, N.Y. TIMES, Oct. 16, 1970, at 18.

6. *See* 18 U.S.C. § 1962(c) (1970).

The current circuit split revolves around whether § 1964—and the larger Organized Crime Control Act it is a part of—allows private equitable relief in a civil context. In particular, the split focuses on whether the Organized Crime Control Act's "liberal construction clause" and § 1964(a)–(d) provide access to private equitable relief for private plaintiffs.[7] The Second and Seventh Circuits have ruled that civil equitable relief is permitted,[8] while the Fourth and Ninth Circuits have ruled that it is not.[9] The split proves so apparent that the Court acknowledged it in 2016: "[we] ha[ve] never decided whether equitable relief is available to private RICO plaintiffs...we express no opinion on the issue today."[10]

Circuits finding civil RICO endorses private equitable remedies justify their interpretation on several grounds. First, they rely on a novel interpretation of § 1964,[11] specifically subsection (a), which states that the statute provides remedies that "prevent and restrain" organized crime.[12] These circuits argue that this subsection grants both the Attorney General and individuals access to private equitable relief. Second, they argue that the Organized Crime Control Act's liberal construction clause—which reads "[t]he provisions of this title shall be liberally construed to effectuate its remedial purpose"[13] —permits remedies under § 1964 that should extend beyond the plain text.[14] Lastly, precedent encouraging vigorous individual enforcement of civil RICO[15] and federal courts' traditional

7. *See Hengle v. Treppa*, 19 F.4th 324, 353–55 (4th Cir. 2021) (circuit court ruling against private equitable relief); *Chevron Corp. v. Donziger*, 833 F.3d 74, 137-39 (2d Cir. 2016) (circuit court ruling for private equitable relief); Organized Crime Control Act of 1970, Pub. L. No. 91–452, § 904(a), 84 Stat. 947, 947 (1970); 18 U.S.C. § 1964(c).

8. *See Donziger*, 833 F.3d at 139; *Nat'l Org. For Women, Inc. v. Scheidler*, 267 F.3d 687, 698–99 (7th Cir. 2001), *rev'd*, 537 U.S. 393 (2003).

9. *See Hengle*, 19 F.4th at 353–55; *Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1082–83 (9th Cir. 1986).

10. *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 354 n.13 (2016).

11. *See Donziger*, 833 F.3d 74 at 137 ("We read subsection (a) of § 1964 as expansively authorizing federal courts to exercise their traditional equity powers..."); *Scheidler*, 267 F.3d 687 at 697 ("Given that the government's authority to seek injunctions comes from the combination of the grant of a right of action to the Attorney General in § 1964(b) and the grant of district court authority to enter injunctions in § 1964(a), we see no reason not to conclude...that private parties can also seek injunctions under the combination of grants in §§ 1964(a) and (c).").

12. *Donziger*, 833 F.3d at 137; *Scheidler*, 267 F.3d at 696.

13. Organized Crime Control Act of 1970, Pub. L. No. 91–452, § 904(a), 84 Stat. 947, 947 (1970).

14. *See Scheidler*, 267 F.3d at 698 ("RICO's liberal-construction clause has particular force, as the Supreme Court has stated, when we are construing § 1964, the civil remedy provision, because it is in this section that 'RICO's remedial purposes are most evident.'").

15. *See Rotella v. Wood*, 528 U.S. 549, 557 (2000) ("The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity.").

equity powers[16] have convinced such circuits that RICO permits private equitable relief.

The following three arguments find that—contrary to the findings of the Second and Seventh Circuits—RICO not only denies private equitable relief but forbids it.

II. STATUTORY INTERPRETATION COMPELS THE EXCLUSION OF PRIVATE EQUITABLE RELIEF

To establish that civil RICO forbids private equitable relief, this Part analyzes the statute according to the rules of statutory interpretation. First, Section A examines the text of § 1964 and finds that it confines civil remedies to compensatory monetary damages only. Section B examines the text of the liberal construction clause and concludes that it does not permit private equitable relief. Finally, Section C explores RICO's legislative history, finding that Congress' focus on criminal remedies and monetary damages excludes equitable relief for private plaintiffs.

A. The Text of Section 1964 Clearly Denies Private Equitable Remedies

Contrary to the findings of some circuit courts,[17] the text of § 1964 does not allow civil equitable relief. Statutory analysis begins with the text, which serves as the indicator of Congress' purpose in enacting the statute.[18] It ends immediately if the text provides an unambiguous answer.[19] In this case, RICO does not mention private equitable relief.[20] Section 1964(b) grants the U.S. Attorney General a broad range of civil remedies.[21] Section 1964(c) permits individuals to "sue" in a civil capacity.[22] However, the text of § 1964(c) only specifies "treble damages"[23] and a "reasonable attorney's fee"[24] as a remedy.[25] This is a fact acknowledged by circuit courts finding that RICO contains no private

16. *See Donziger*, 833 F.3d at 137 ("We read subsection (a) of § 1964 as expansively authorizing federal courts to exercise their traditional equity powers.").

17. *See id.* at 137-39; *Scheidler*, 267 F.3d at 698–99, *rev'd*, 537 U.S. 393.

18. *See Van Buren v. United States*, 593 U.S. 374, 381 (2021) ("[W]e start where we always do: with the text of the statute.").

19. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999) ("Where the statutory language provides a clear answer, [statutory analysis] ends there as well.").

20. *See* 18 U.S.C. § 1964(c) (1970).

21. *See* 18 U.S.C. § 1964(b) (1970).

22. 18 U.S.C. § 1964(c) (1970).

23. *Id*.

24. *Id*.

25. *Id.*

equitable relief.[26] Thus, according to the statute's text, individuals do not have a private equitable remedy. Next, the analysis considers the liberal construction clause.

B. The Text of the Liberal Construction Clause Does Not Permit Private Equitable Relief

A textual analysis of the liberal construction clause reveals no support for private equitable remedies. The statute reads: "[t]he provisions of this title shall be liberally construed to effectuate its remedial purpose."[27] Circuit courts finding RICO contains private equitable relief argue that this clause empowers courts to go beyond the text of § 1964(c) and provide plaintiffs with private equitable relief. However, the circuits are split on the meaning of the liberal construction clause's terms "liberally," "effectuate," and "remedial" as RICO does not define these terms.[28]

The terms' contemporaneous, ordinary meanings should control. In *Perrin v. U. S.*, the Court held that "[a] fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."[29] In such cases, the Court has relied upon dictionaries from the time of a statute's passage to determine potentially ambiguous meaning.[30] Given decades have elapsed since RICO's passage, looking to contemporaneous, respected legal dictionaries proves helpful. The Revised Fourth Edition of Black's Law Dictionary from 1968—published two years before RICO's passage––defines "liberal" as "free in giving; generous; not mean or narrow-minded; not literal or strict."[31] It defines "effect" as "to do; to produce; to make; to bring to pass; to execute; enforce; accomplish."[32] It defines "remedy" as the "means by which a right is enforced or the violation of a right is prevented, redressed, or compensated."[33]

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26. *See Religious Tech. Ctr. v. Wollersheim*, 796 F.2d 1076, 1088 (9th Cir. 1986) ("There is no indication in the language of section 1964 that civil RICO was not intended, as its plain wording states, to limit private plaintiffs only to damages, costs, and fees.").

27. Organized Crime Control Act of 1970, Pub. L. No. 91–452, § 904(a), 84 Stat. 947, 947 (1970).

28. 18 U.S.C. §§ 1961–1968 (1970); *see* GREGORY P. JOSEPH, CIVIL RICO: A DEFINITIVE GUIDE 4–6 (5th ed. 2019) (discussion about the circuit split).

29. *Perrin v. United States*, 444 U.S. 37, 42 (1979).

30. *See, e.g., Wisconsin C. Ltd. v. U.S.*, 585 U.S. 274, 277-78 (2018). This is a recent case in which the Court used an early edition of a legal dictionary to find a term's contemporaneous ordinary meaning. *See id.*

31. *Liberal*, BLACK'S LAW DICTIONARY (4th ed. 1968).

32. *Effect*, BLACK'S LAW DICTIONARY (4th ed. 1968).

33. *Remedy*, BLACK'S LAW DICTIONARY (4th ed. 1968).

The liberal construction provision orders strenuous enforcement of the statute's explicit civil remedies. The kind of remedy mentioned in § 1964(c) falls into the "compensated" category the definition of "remedy" invokes.[34] It does not seek to change a private individual's damages type from "compensated" to the equitable relief implied by "redressed" or "prevented."[35] Monetary relief is categorically different from equitable relief. Nowhere does the liberal construction clause advocate for such a change in remedy. The liberal construction clause could act as a potential multiplier effect for monetary damages, not a transformative mechanism. A definition-based reading, as permitted by the Court, may permit a clever plaintiff to sue for a more liberal quantity. However, the dictionary definition of "liberal" does not say "categorically different."[36] It just promotes wider use of an existing feature.[37] The text of the liberal construction clause does not provide private equitable relief but reinforces text-based civil remedies.

This strict interpretation of RICO's statutory text aligns with established judicial precedent, where courts have consistently refrained from expanding statutory remedies without clear legislative authorization.[38] Having established that the text of the liberal construction clause does not provide for private equitable relief, a review of RICO's legislative history further underscores Congress' intent to limit such remedies exclusively to the Attorney General.

C. RICO's Legislative History Reveals Congress' Intent to Exclude Private Equitable Relief

RICO's legislative history does not support the inclusion of private equitable relief. While "legislative history is not the law"[39] it may assist in interpreting ostensibly ambiguous statutes.[40] During RICO's passage,

34. *Id.*

35. *Id.*

36. *See Liberal*, BLACK'S LAW DICTIONARY (4th ed. 1968).

37. *See id.*

38. *See Karahalios v. Nat'l Fed'n of Fed. Emps., Loc. 1263*, 489 U.S. 527, 533 (1989) ("Where a statute expressly provides a remedy, courts must be especially reluctant to provide additional remedies."); *Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 19 (1979) ("...where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it."); *Nat'l R. R. Passenger Corp. v. Nat'l Ass'n of R. R. Passengers*, 414 U.S. 453, 458 (1974) ("A frequently stated principle of statutory construction is that when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.").

39. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018).

40. *See Milner v. Dept. of Navy*, 562 U.S. 562, 572 (2011) ("Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text.").

legislators focused primarily on organized crime,[41] not civil remedies.[42] Even opponents of private injunctive relief never anticipated that civil RICO could evolve to include private equitable relief. For example, Representative Abner Mikva offered a floor amendment which proposed: "if it turns out that the suit is frivolous or filed for the purpose of harassment, the defendant ought to be entitled to recover treble damages for any damage that he suffered to his business or his property."[43] This proposal demonstrates that even legislators concerned about potential overreach in civil RICO did not foresee the statute providing private equitable relief to plaintiffs. This suggests that such relief was never meaningfully considered as a possibility.[44]

Beyond this, RICO's legislative history reveals lawmakers' ambivalent, narrow interpretation of the civil remedies section. Specifically, the legislative history of § 1964(c) reveals the limited scope legislators intended. Sparse debate occurred only in the House.[45] Even in their critiques and proposed amendments, opponents of § 1964(c) envisioned its abuse only in frivolous monetary suits.[46] Once through the House, it quietly passed through the Senate.[47] Those supporting § 1964(c) did so with an ambivalent consent, evidenced by the lack of any comment or discussion.[48] Despite a subsequent amendment[49] and fifty-four years to add an equitable relief clause, Congress has never done so.[50] Thus, the legislative history reveals Congress' narrow-minded attitude toward § 1964(c). Statutory interpretation and legislative history strongly indicate that private equitable relief was never intended under RICO. Court precedent further confirms this by rejecting judicial expansions of remedies without explicit legislative provision.

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41. *See Hearings on Measures Relating to Organized Crime Before the Subcomm. on Crim. Laws and Procedures of the S. Comm. on the Judiciary*, 91st Cong. 2–5 (1969).

42. *See Russello v. U.S.*, 464 U.S. 16, 26 (1983) ("The legislative history clearly demonstrates that the RICO statute was intended to provide new weapons of unprecedented scope for an assault upon organized crime and its economic roots.").

43. *See* 116 CONG. REC. 35342 (1970).

44. *See id.*

45. *See* David Kurzweil, *Criminal and Civil RICO: Traditional Canons of Statutory Interpretation and the Liberal Construction Clause*, 30 COLUM. J.L. & SOC. PROBS. 41, 60 (1996).

46. *See id.*

47. *See id.*

48. *See* James J. Brudney, *Collateral Conflict: Employer Claims of RICO Extortion Against Union Comprehensive Campaigns*, 83 S. CAL. L. REV. 731, 748 n.89 (2010).

49. *See* 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107–273, § 4005(f)(1), 116 Stat. 1758, 1813 (2002).

50. *See* Crime Control Act of 1990, Pub. L. No. 101-647, § 3559, 104 Stat. 4862, 4862–68 (1990).

A counterargument might emerge, suggesting that American jurisprudence sometimes permits courts to read private rights of action into statutes, even when they are not explicitly stated. For example, in *Superintendent of Insurance v. Bankers Life & Casualty Co.*, the Court held that the Securities and Exchange Act allowed a private right of action for 10(b)-5 securities fraud claims, despite the statute's silence on this matter. [51] From this decision, a robust body of law conferring a private right of action emerged, grounded in the explicit legislative intent to protect investors.[52] So why shouldn't civil RICO similarly confer an implied private right of action?

Such an interpretation, however, should not apply to RICO. Unlike the Securities and Exchange Act—which explicitly sought to preserve market integrity—civil RICO's text and legislative history indicate that only the Attorney General, not private individuals, should be authorized to use equitable remedies to combat Mafioso racketeering. Expanding remedies aligns with the spirit of the Securities and Exchange Act, but not with the intent of RICO. Thus, this counterargument is ultimately flawed.

III. SUPREME COURT PRECEDENT PROHIBITS THE CREATION OF PRIVATE EQUITABLE REMEDIES UNDER RICO

Court precedent bars a plaintiff from equitable relief under civil RICO. To do otherwise would require courts to read an implicit private remedy into the statute, thus rewriting existing law. However, the Court has already ruled against this type of judicial action.

First, without strong congressional proof to the contrary, the Court will not fashion a new statutory remedy legislators have not created.[53] After all, "it is not the proper role of the courts to rewrite the laws passed by Congress and signed by the President,"[54] as RICO was.

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51. *See Superintendent of Ins. v. Bankers Life & Casualty Co*., 404 U.S. 6, 14 (1971).

52. *See* Jamie Heine, *The Whittling Away of the Private Right of Action under Rule 10b-5: The PSLRA, Janus, and the Financial Crisis*, 48 CREIGHTON L. REV. 23, 24 (2014) ("While not explicitly provided by statute, the judiciary has long read the private right of action into Section 10(b). This right of action allows private individuals to sue and recover for securities fraud.").

53. *See Cannon v. U. of Chicago*, 441 U.S. 677, 696–97 (1979) ("It is always appropriate to assume that our elected representatives...know the law."); *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255, 265-66 (2020) ("Every citizen is presumed to know the law…[this] applies to whatever work legislators perform in their capacity as legislators." (quoting *Nash v. Lathrop*, 6 N.E. 559, 560 (Mass. 1886))).

54. *Nasrallah v. Barr*, 590 U.S. 573, 583 (2020).

Second, it is not the judiciary's role to refashion constitutionally valid laws, like RICO.[55] As the Court established in *Middlesex Cnty. Sewerage Authority v. National Sea Clammers*: "in the absence of strong indicia of a contrary congressional intent, it must be concluded that Congress provided precisely the remedies it considered appropriate."[56] Barring overwhelming evidence, the Court assumes that legislators proscribed the exact remedies they passed.[57] Congress provided many remedies within RICO. It drew inspiration from previous antitrust bills and new executive recommendations.[58] However, given the statute's Mafioso focus,[59] it follows that the legislation's novel weapons never included private equitable relief. As shown, the legislative history proves relatively sparse on the question of private equitable relief.

Pro-equitable relief circuit courts allege Congress modeled the civil remedies section off previous antitrust measures which included private equitable remedies.[60] However, one must consider that a model serves as a mere shadow of the original. A model train may look and sound authentic. Yet it carries no tonnage, transports no people, burns no diesel. We must assume legislators knew the law they passed and the law they modeled RICO off. Knowing this, they did not include an equitable remedy mechanism nor strongly imply inclusion of one. Therefore, the Court must not read in an implicit remedy when law-minded legislators already decided the question.

Reading an equitable remedies provision into RICO constitutes an undemocratic, extra-textual recasting of law. However potentially helpful, the Court cannot rewrite constitutionally valid federal statutes.[61] RICO is constitutionally valid. In the twenty-eight legislative election cycles since RICO's passage, Congress has declined to add a private equitable remedy

55. *See id*.

56. *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers*, 453 U.S. 1, 2 (1981).

57. *See id.*; *Cannon*, 441 U.S. at 696-97.

58. *See* Randy D. Gordon, *RICO had a Birthday! A Fifty-Year Retrospective of Questions Answered and Open*, 105 MARQ. L. REV. 131, 151–56 (2021) (discussing anti-trust statute's influence on RICO).

59. *See* Bianca Ciarroni, *From the Italian Mafia to Suppressing Societal Challenges: The Evolution of Federal Criminal RICO and the Constitutional Objections Against It*, 51 J. MARSHALL L. REV. 647, 674 (2018) ("[RICO is a] statute that was initially created to combat the organized crime of the Italian Mafia..."); *see also* Sheldon J. Plager & Ilene H. Nagel, *RICO, Past and Future: Some Observations and Conclusions*, 52 U. OF CIN. L. REV. 456, 457 (1983) ("The legislative history of RICO amply demonstrates its parentage, and the preoccupation of its sponsors with the syndicate, Mafia-sponsored criminal collusion, and the problem of the infiltration of legitimate businesses by organized crime.").

60. *See Hengle v. Treppa*, 19 F.4th 324, 355 (4th Cir. 2021).

61. *See Nasrallah v. Barr*, 590 U.S. 573, 583 (2020).

to the statute. Recently, certain circuits have decided to create an equitable remedy out of thin air.[62] The American people, via their elected leaders, ought to have this power to decide. The judiciary must not assume the role of legislature and should not fashion an entirely new remedy. While Court precedent establishes limits on judicial power to expand statutory remedies, it is equally crucial to consider how traditional equity principles further prevent the granting of private equitable relief under RICO.

IV. LIMITS ON TRADITIONAL EQUITY POWERS PREVENT GRANTING PRIVATE EQUITABLE RELIEF UNDER RICO

Traditional equitable powers allow federal courts to provide remedies beyond strict legal relief, focusing on fairness and justice over rigid statutory rules.[63] Courts use these powers to issue injunctions, compel specific actions, or prohibit certain behaviors to prevent harm or provide relief where no adequate legal remedy exists.[64] Rooted in English common law, traditional equity enables courts to tailor decisions to the specific needs of a case, applying flexibility in pursuit of fairness.[65] However, these powers operate within longstanding principles and judicial restraint, especially when statutes provide clear directives.

Federal courts lack the equity power to grant private equitable relief under civil RICO. Federal courts respect the limitations of their traditional equitable powers, specifically when the legislature has expressly defined the scope of available remedies. As the Court stated in *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund*, "we do not question the proposition that equity is flexible; but in the federal system, at least, that flexibility is confined within the broad boundaries of traditional equitable relief."[66] While equity may be malleable, federal courts are bound by the traditional confines of equitable power, particularly when Congress has not authorized an extension—such as in § 1964(c). *Grupo Mexicano* further emphasized that "[w]hen there are indeed new conditions that might call for a wrenching departure from past practice, **Congress** is in a much better position **than we** both to perceive them and to design the

62 *See Chevron Corp. v. Donziger*, 833 F.3d 74, 138-39 (2d Cir. 2016); *Nat'l Org. for Women, Inc. v. Scheidler*, 267 F.3d 687, 700 (7th Cir. 2001), *aff'g* 897 F. Supp. 1047, 1083 (N.D. Ill. 1995).

63. *See* Samuel L. Bray, *The System of Equitable Remedies*, 63 UCLA L. REV. 530, 532–35 (2016).

64. *See id*. at 545-47.

65. *See* Owen W. Gallogly, *Equity's Constitutional Source*, 132 YALE L.J. 1213, 1231 (2023) ("Historical English practice might also help to define the content of '[t]he judicial Power.' The English court system served as a model for the Founders and undergirded their understanding of both judicial authority and the role of courts.").

66. *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999).

appropriate remedy…any substantial expansion of past practice [regarding remedies should be left] to Congress."[67] Thus, the authority to create new forms of equitable relief under RICO belongs to the legislature alone. Courts may not assume this role—even with their broad equity powers—without undermining the statutory framework that Congress has carefully designed.

Traditional equity powers operate under a presumption of deference to "clear"[68] congressional intent, permitting courts expansive equity powers so long as it does not contradict the unambiguous "commands"[69] of the legislature. This deference is particularly apparent when Congress proscribes a statutory remedy that derives from an enumerated Article I power, such as the commerce clause[70]—as in RICO.[71] As noted in *Califano v. Yamasaki*, "[a]bsent the **clearest command** to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction."[72] This means that courts maintain traditional equity powers, so long as Congress does not expressly "command"[73] otherwise.[74] After all, courts cannot "arrogate to [themselves] unlimited equitable power."[75] Courts cannot simply "expand upon [their] equitable jurisdiction if...[they] are restricted by the statutory language."[76] As RICO's text does not mention private equitable relief, and its legislative history explicitly rejects its inclusion,[77] traditional equitable powers should not be able to conjure such a remedy from thin air.

Additionally, traditional equity powers are more limited in cases involving private interests, like civil RICO, than in those affecting the

67. *Id*. at 322–329 (emphasis added).

68. *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979).

69. *Id*.

70. *See* John Harrison, *Federal Judicial Power and Federal Equity Without Federal Equity Powers*, 97 NOTRE DAME L. REV. 1911, 1925-26 (2022) ("Congress's power over federal equity nevertheless is significantly limited, because it sometimes is a power only over remedies and not the primary rule."); *see also* 18 U.S.C. § 1962 (1970) ("...or the activities of which affect, interstate or foreign commerce.").

71. *See* 18 U.S.C. § 1962(a) (1970).

72. *Califano*, 442 U.S. at 705 (emphasis added).

73. *Id*.

74. *See* Robert von Moschzisker, *Equity Jurisdiction in the Federal Courts*, 75 U. PA. L. REV. 287, 300 (1927) ("[F]ederal equity jurisdiction, though very broad, is limited accordingly; it is limited also by the rule that it is to be given effect only when no plain, complete and adequate remedy exists at law.").

75. *United States v. Philip Morris USA, Inc.*, 396 F.3d 1190, 1197 (D.C. Cir. 2005) (internal citation omitted).

76. *Id*.

77. *See* Michael T. Morley, *The Federal Equity Power*, 59 B.C. L. REV. 217, 250 (2018) ("When federal statutes authorize equitable relief, a court may presume that Congress intended to apply traditional principles from the English Court of Chancery absent a clear statement in a statute's text or legislative history to the contrary.").

public interest. The Court has recognized that traditional equity powers prove more "flexible" [78] when a case involves public welfare. It enumerated this principle in *Porter v. Warner Holding Corporation*, stating that "a district court has increased equitable powers in a case that implicates the public interest, as opposed to just private parties."[79] Private RICO claims, accordingly, are not public in nature, meaning the "broader and more flexible"[80] powers recognized in *Porter* prove inapplicable. Equitable relief in RICO is explicitly designated for the Attorney General under § 1964(b), which follows, given these are cases serving the public interest. Given RICO's text delineates public from private remedies, extending equitable relief to private plaintiffs would contradict Congress' intent to limit such remedies to public cases.

Finally, traditional equity powers must adhere to some modicum of judicial restraint. Courts cannot legislate from the bench under their equity powers when "clear" congressional "command" says otherwise.[81] Justice Oliver Wendell Holmes' famous dissent in *Southern Pacific Company v. Jensen* explained this limitation: "judges do and must legislate, but they can only do so interstitially; they are confined from molar to molecular motions."[82] This observation plays a crucial role in equity powers, which traditionally confine themselves to incremental, interpretive applications. Extending equitable relief to private plaintiffs under civil RICO would create a shift—far beyond the "molecular" —that judicially alters the statute's remedial scope. Given RICO's text lacks explicit authorization for private equitable relief, such an expansion would overstep the judiciary's role, diverging from an exercise of federal equitable power that respects legislative prerogatives.

Therefore, RICO's statutory construction, legislative history, and the limited scope of federal equity jurisdiction preclude private equitable relief under civil RICO. "Congress must speak clearly to interfere with the historic equitable powers of the courts,"[83] and RICO does exactly that. Allowing private plaintiffs to seek equitable remedies would be a "departure from past practice,"[84] unsupported by Congress, and would fundamentally alter RICO's intended scope.

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78. *Porter v. Warner Holding Corp.*, 328 U.S. 395, 398 (1946).

79. Adam M. Snyder, *Equitable Remedies in Civil RICO Actions: In Support of Allowing District Courts to Order Disgorgement*, 74 U. CHI. L. REV. 1057, 1070 (2007).

80. *Porter*, 328 U.S. at 398.

81. *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979).

82. *S. Pac. Co. v. Jensen*, 244 U.S. 205, 221 (1917) (Holmes, J., dissenting).

83. Kristi R. Culver, *Civil RICO: Should Private Plaintiffs Be Granted Equitable Relief?*, 18 PAC. L.J. 1199, 1204 (1987).

84. *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund*, 527 U.S. 308, 322 (1999).

V. POLICY CONSIDERATIONS DISFAVOR PRIVATE EQUITABLE RELIEF UNDER CIVIL RICO

Policy arguments against private equitable relief center around the heightened risks it creates for civil defendants, its potential misuse in the context of RICO, and its erosion of constitutional norms. These arguments conflict with RICO's original purpose, encourage overreach by plaintiffs, and harm the careful balance the 91st Congress sought to strike between compensating victims and safeguarding legitimate interests.

The broad and punitive nature of RICO's provisions underscores the risks of allowing private equitable relief. Originally crafted as a powerful weapon against organized crime, RICO's civil remedies were specifically designed to compensate victims and deter future misconduct through treble damages and attorney's fees. These monetary remedies created strong incentives for private enforcement of anti-racketeering laws. However, Congress never intended for RICO to include private equitable remedies. Instead, it sought to encourage private enforcement solely through financial penalties: "RICO's private enforcement mechanism was, of course, 'intended by Congress... to encourage private enforcement of the laws on which RICO is predicated... [and to] provide strong incentives to civil litigants... in deterring racketeering.'"[85] Expanding RICO's reach to include private equitable relief would create disproportionate risks for defendants, particularly given that "an allegation of racketeering may have a debilitating effect upon a legitimate business."[86] Unlike monetary damages, the stigma associated with such quasi-criminal accusations can irreparably harm reputations, permanently disrupt businesses, and continuously intrude upon personal lives, even before a case is resolved.

Courts have noted the growing misuse of RICO's vague civil provisions, particularly in cases far removed from its original mafioso purpose. For example, contrary to the statute's original focus on mafioso racketeering, private equitable relief is now being misused against protestors and international business transactions.[87] As detailed by scholar Kristi Culver, "[w]hile the denial of private equitable relief may not decrease the number of civil RICO actions brought, a limitation on civil RICO may discourage potential plaintiffs from arguing to further expand the already broad provisions of civil RICO."[88] Denying private equitable

85. G. R. Blakey & Scott D. Cessar, *Equitable Relief Under Civil RICO: Reflection on Religious Technology Center v. Wallersheim: Will Civil RICO Be Effective Only Against White-Collar Crime?*, 62 NOTRE DAME L. REV. 526, 558 (1987).

86. Culver, *supra* note 76, at 1223.

87. *See Chevron Corp. v. Donziger*, 833 F.3d 74, 137-39 (2d Cir. 2016); *Nat'l Org. For Women, Inc. v. Scheidler*, 267 F.3d 687, 698–99 (7th Cir. 2001).

88. Culver, *supra* note 76, at 1223.

relief thus serves as a critical check, preventing the statute from being stretched even further beyond its original intent. Such restraint is essential to preserving the balance between effectively deterring organized crime and safeguarding legitimate businesses and individuals from unwarranted legal harassment.

VI. CONCLUSION

RICO represented a significant expansion of federal and plaintiff power even before the circuit split—described by one scholar as one of the "most powerful threats a civil plaintiff can wield."[89] Given that the statute already allows a potent combination of treble damages and attorney's fees for private individuals, defendants are already at a significant disadvantage. Introducing private equitable relief would only deepen this imbalance, creating onerous risks and responsibilities for civil defendants.

Thus, statutory interpretation, Court precedent, and traditional understandings of the limits of federal equity power reveal that individuals are not entitled to equitable remedies under civil RICO. Both policy and law dictate such a result. Ultimately, the circuit split is unfounded. The Fourth and Ninth Circuits are correct: private plaintiffs should not be entitled to equitable relief.

89. *See* Brodie Smith, *Pleading Civil RICO Effectively*, LANZA L. FIRM BLOG, https://perma.cc/73PH-Z4YU (Mar. 19, 2011) ("But once past the pleading stage, civil RICO, with its treble damages, can be among the most powerful threats a civil plaintiff can wield.").