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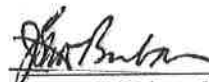
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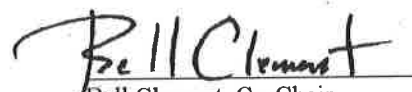
Steering Committee:
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SUMMARY OF AMICUS CURIAE BRIEF BY THE D.C. AFFAIRS COMMITTEE
IN BANNER, ET AL. V. U.S., BEFORE THE U.S. DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

The D.C. Affairs Section intends to join former Bar presidents in a memorandum (and motion for leave to file the memorandum) as *amici curiae* in support of the Plaintiffs' Opposition to Defendant's Motion to Dismiss.¹ Plaintiffs' lead counsel is former Bar president John W. Nields, Jr., and he is joined by steering committee member Walter S. Smith. The Amicus Brief was prepared by Arent Fox and section member Jon S. Bouker is of counsel. The D.C. Affairs Section, which is concerned with issues relating to the laws and government of the District of Columbia, has a longstanding interest in a strong, economically viable home rule in the District, and has filed amicus briefs on issues relating to home rule. This brief focuses on the fundamental principle of law that a jurisdiction has the legal authority to tax income earned within its borders. Denying only the District, alone among all U.S. jurisdictions, the benefit of taxing all income earned within its borders requires judicial scrutiny. Because the District is prohibited from taxing the income of non-residents, it must attempt to make up for this lost revenue by "over-taxing" D.C. residents in order to address what the General Accounting Office recently concluded was a "structural imbalance" in the District's fiscal system. The amici support Plaintiffs' challenge to the Prohibition and urge the court to consider the merits of Plaintiffs' claims. The section has been advised that the brief is due on Tuesday, December 16, and, therefore, is requesting an expedited review. A majority of the steering committee has consented to filing the brief. Co-chairs James S. Bubar and Bell Clement contributed to the brief.


James S. Bubar, Co-Chair
D.C. Affairs Section


Bell Clement, Co-Chair
D.C. Affairs Section

¹ The views expressed represent only those of the individual past presidents and the D.C. Affairs Section of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
DEC 16 PM 3:03

JACQUELYN
MAYER-WHITTINGTON
CLERK

JAMES M. BANNER, JR., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 03-01587 (ESH)
)	
THE UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Defendants.)	

**MOTION FOR LEAVE TO FILE A MEMORANDUM OF *AMICI CURIAE* IN SUPPORT
OF PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS**

The District of Columbia Affairs Section of the District of Columbia Bar (the "D.C. Affairs Section") and the former presidents of the District of Columbia Bar listed below respectfully move for leave to file the memorandum submitted herewith as *amici curiae* in support of the Plaintiffs' Opposition to Defendants' Motion to Dismiss.¹ In support of this motion, the amici state the following:

1. Amici support the Plaintiffs' challenge to the authority of the United States Congress to impose a discriminatory taxation scheme on the District of Columbia. Congress has prohibited the District from imposing "any tax on the whole or any portion of the personal income ... of any individual not a resident of the District" D.C. Official Code § 1-206.02(a)(5) (the "Prohibition"). The Prohibition seriously impedes the ability of the District to maintain its fiscal health. The General Accounting Office recently concluded that the Prohibition has resulted in a "structural imbalance" in the District's fiscal system of up to \$1.1

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billion per year. The Prohibition prevents the District from raising the funds needed to provide normal levels of services, forcing over-taxation of District residents who have no representation in the legislative body that mandated the Prohibition.

2. The D.C. Affairs Section is the section of the D.C. Bar concerned with issues relating to the laws and government of the District of Columbia. The section has had a longstanding interest in a strong, economically viable home rule in the District.

3. The former presidents of the D.C. Bar who support Plaintiffs in this action are:

E. Barrett Prettyman, Jr.	Robert E. Jordan III
Charles T. Duncan	Philip Allen Lacovara
John W. Douglas	Sara-Ann Determan
Daniel R. Rezneck	Jamie S. Gorelick
Charles R. Work	Mark H. Tuohey III
Robert L. Weinberg	Pauline A. Schneider
John H. Pickering	Robert N. Weiner
Stephen J. Pollak	Myles V. Lynk
Jacob A. Stein	Andrew H. Marks
David Isbell	Joan H. Strand
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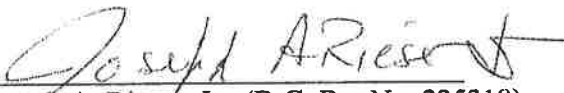
4. Amici have a vested interest in the District's economic stability and growth. A key factor in promoting such economic stability and growth is assuring that the residents of the District of Columbia, through their local government, have resources sufficient to provide an adequate level of government services, including such basic services as educating its young people (and future work force), assuring the public safety of its residents and visitors, and

providing well-maintained (and, particularly this time of year, well-plowed and salted) streets and roads.

5. Amici believe that the continued federal imposition of a ban on the District's ability to collect revenue in the same manner as all other jurisdictions in the United States jeopardizes the District's economic future and the economic viability of home rule. Therefore, amici urge the Court to consider the merits of the case brought by the Plaintiffs.

6. The Court has clear authority to receive the memorandum submitted herewith. Acceptance of an amicus curiae brief is within the Court's discretion. *Cobell v. Norton*, 246 F. Supp. 2d 59, 61 (D.D.C. 2003) (citing *United States v. Microsoft Corp.*, 2002 WL 319366 at *2 (D.D.C. 2002)). Courts generally allow an amicus curiae brief when the amicus has a unique perspective on the case. See *Cobell*, 246 F. Supp. 2d at 61 (citing *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir. 1997)). The D.C. Affairs Section has particular expertise in the interpretation of the District of Columbia Home Rule Act and the importance of an economically viable home rule government in the District of Columbia. Moreover, all Defendants have consented to the filing of this motion. Accordingly, this motion should be granted and *amici curiae* should be given leave to file the memorandum submitted herewith.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2003 a copy of the foregoing Motion for Leave to File a Memorandum Of Amici Curiae In Support of Plaintiffs' Opposition to Defendants' Motions to Dismiss, and the accompanying memorandum, was served via first class mail on:

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