ORAL ARGUMENT NOT YET SCHEDULED

In the

United States Court of Appeals

for the

District of Columbia Circuit

Case No. 17-1119
consolidated with No. 17-1120

WHISTLEBLOWER 21276-13W,

Petitioner-Appellee,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES TAX COURT,
T.C. NO. 21276-13W

BRIEF OF UNITED STATES SENATOR CHARLES E. GRASSLEY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER-APPELLEE AND AFFIRMANCE

BRYAN C. SKARLATOS
USMAN MOHAMMAD
KOSTELANETZ & FINK, LLP
Seven World Trade Center
New York, New York 10007
Tel.: (212) 808-8100
Fax: (212) 808-8108
Email: bskarlatos@kflaw.com

NANCY GERTNER
RETIRED US DCT JUDGE (DMASS)
SENIOR LECTURER HARVARD
LAW SCHOOL
Office: Langdell Library 328
1525 Massachusetts Avenue
Cambridge, Massachusetts 02239
Tel.: (617) 496-5487
Email: ngertner@law.harvard.edu

Attorneys for Amicus Curiae

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28, undersigned counsel certifies as follows:

(A) Parties and Amici

Except for the *amici* that have filed notices of intent to participate in this appeal -- which includes (i) *amicus* Senator Charles E. Grassley, and (ii) *amici* consisting of several former federal prosecutors and/or Tax Court practitioners -- all parties, intervenors, and *amici* appearing before the United States Tax Court and in this Court are listed in the Brief for Appellant.

The names of those former federal prosecutors and/or Tax Court practitioners that have filed a notice of intent to participate as *amici* in this appeal are as follows: Joseph A. DiRuzzo, III; Justin K. Gelfand; Marcos Jimenez; Jeffrey E. Marcus; Ryon M. McCabe; Matthew J. Mueller; Jeffrey A. Neiman; Daniel L. Rashbaum; Loren Washburn; John R. Byrne; and Daren H. Firestone.

(B) Rulings Under Review

The rulings under review in this appeal are listed in the Brief for Appellant.

(C) Related Cases

There are no related cases under D.C. Circuit Rule 28(a)(1)(C).

(D) Applicable Statutes and Regulations

The applicable statute, 26 U.S.C. § 7623, is contained in the Addendum to the Brief for Appellant.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases (cont'd):

Statutes:

Regulations:

Other Authorities:

GLOSSARY

IRS	Internal Revenue Service
IRS Whistleblower Statute	26 U.S.C. § 7623
SEC	Securities and Exchange Commission

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Pursuant to Fed. R. App. P. 29(a)(2), undersigned counsel for *amicus curiae*, United States Senator Charles E. Grassley, represents that all parties have consented to Senator Grassley's filing of a brief as *amicus curiae*.

Pursuant to D.C. Circuit Rule 29(d), undersigned counsel for Senator Grassley certifies that a separate brief is necessary. The main issue in this appeal is the scope of the term "collected proceeds" as used in 26 U.S.C. § 7623(b)(1) of the IRS Whistleblower Statute. *Amicus Curiae* Senator Grassley is a senior United States Senator, who was the principal drafter of § 7623(b) prior to its passage by Congress in 2006. Senator Grassley is thus uniquely qualified to provide the Court with background on the text, structure, and history of the provision. In particular, Senator Grassley can provide insight into how the structure of the provision was designed to achieve its goal of encouraging whistleblowers to provide valuable information about major tax fraud. *Amicus* Senator Grassley thus has a unique knowledge about, and a strong interest in, the question in this case.[1]

---

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), undersigned counsel for *amicus curiae* Senator Grassley certifies that (i) no party's counsel authored this brief in whole or in part; (ii) no party or a party's counsel contributed money that was intended to fund preparing or submitting this brief; and (iii) no person—other than the *amicus curiae*, or its counsel—contributed money that was intended to fund preparing or submitting this brief.

INTEREST OF THE *AMICUS CURIAE*

This case involves an effort by the Internal Revenue Service ("IRS") to narrowly define the term "collected proceeds" as used in 26 U.S.C. § 7623(b)(1) of the IRS Whistleblower Statute, and thereby restrict the types and amounts of whistleblower awards that can be paid under that statute. Senator Grassley, as the principal drafter of § 7623(b), submits this amicus brief in order to assist the Court's interpretation of the term "collected proceeds." Senator Grassley's position is that "collected proceeds" should be read broadly to give effect to Congress's purpose in enacting that portion of the IRS Whistleblower Statute.

Senator Grassley is the co-founder and chairman of the Whistleblower Protection Caucus in the United States Senate, a senior member and former chairman of the Senate Committee on Finance, and the current chairman of the Senate Judiciary Committee. Throughout his 36-year tenure in the United States Senate, Senator Grassley has played an instrumental role in sponsoring and drafting key whistleblower legislation in this country. In addition to his work on § 7623(b), Senator Grassley introduced the False Claims Amendments Act of 1986, which empowered whistleblowers to bring *qui tam* lawsuits on behalf of the

government and increased the monetary awards for such suits.[2] He also co-sponsored the Fraud Enforcement and Recovery Act of 2009, which further strengthened the federal False Claims Act by correcting prior judicial holdings inconsistent with congressional intent. Senator Grassley also co-authored the corporate whistleblower provisions of the Corporate and Criminal Fraud Accountability Act, a provision within the Sarbanes-Oxley Act of 2002 that protects employees of publicly traded companies from punitive actions by their employers for reporting SEC violations or shareholder fraud.

Senator Grassley was the principal sponsor in the Senate of the 2006 amendments to the IRS Whistleblower Statute, codified at 26 U.S.C. § 7623. The 2006 amendments created § 7623(b) of the statute, a provision designed to incentivize whistleblowers to report major tax fraud by making it easier to collect whistleblower awards. As a means to that end, the provision mandates awards for whistleblowers when certain conditions are met and provides for judicial oversight

---

[2] Those amendments have been credited with leading to the recovery of more than $20 billion on behalf of the government since at least 2009. *See* Department of Justice New Release, *Justice Department Recovers Over $4.7 Billion From False Claims Act Cases in Fiscal Year 2016, Third Highest Annual Recovery in FCA History* (December 14, 2016)("From January 2009 to the end of fiscal year 2016, the government recovered nearly $24 billion in settlements and judgments related to *qui tam* suits and paid more than $4 billion in whistleblower awards during the same period")(available at <https://www.justice.gov/opa/pr/justice-department-recovers-over-47-billion-false-claims-act-cases-fiscal-year-2016>).

of IRS decisions denying such awards.[3] As the original drafter of § 7623(b), Senator Grassley is especially familiar with the purpose and legislative history of the provision.

SUMMARY OF ARGUMENT

Senator Grassley's position, as the principal author of the mandatory award provision of the IRS Whistleblower Statute, § 7623(b)(1), is that the provision was designed to be broad and to include awards for criminal fines, forfeitures and other amounts collected as a result of the information submitted by a whistleblower. Section 7623(b)(1) uses the term "collected proceeds" to identify the triggering event that entitles a whistleblower to a mandatory award. The term "collected proceeds" is not defined or otherwise limited in the text of the statute because Congress intended it to be broad and sweeping in scope, an interpretation reinforced by the use of other expansive language to surround the term in the statute, and by the purpose of the mandatory award provision, which is to motivate whistleblowers to report major tax fraud. In addition, the IRS Whistleblower Statute has long been understood and implemented to include awards for criminal fines and forfeitures. Nothing in the 2006 amendments that resulted in the creation

[3] The 2006 amendments also created a formal IRS Whistleblower Office to oversee the processing of whistleblower claims.

of the mandatory award provision of the statute, § 7623(b), undermines this long-accepted interpretation.

Finally, interpreting the term "collected proceeds" to include criminal fines and forfeitures will incentivize whistleblowers to come forward with information regarding major tax frauds, which are precisely the types of whistleblower cases that § 7623(b) was intended to generate. By contrast, if the term "collected proceeds" is interpreted narrowly to exclude criminal fines and forfeitures, whistleblowers will be discouraged from reporting major tax fraud, because they may be precluded from receiving a reward if the case they report becomes a criminal tax case. Such an approach to the IRS Whistleblower Statute will undermine the statute's effectiveness as a tool for detecting major tax fraud, thereby thwarting Congress's purpose in creating § 7623(b).

ARGUMENT

I. The Plain Language of the IRS Whistleblower Statute and Its History Demonstrate That the Statute Includes Awards for Criminal Fines and Forfeitures

A. The Plain Language of Section 7623(b)(1) is Broad and Includes Awards for Criminal Fines and Forfeitures

Section 7623(b)(1) states, in relevant part:

> "(1) In general. If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the *collected proceeds* (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. . . ."

26 U.S.C. § 7623(b)(1) (emphasis added).

Section 7623(b)(1) uses the term "collected proceeds" to identify the triggering event that entitles a whistleblower to a mandatory award under the statute. Congress declined to specifically define or otherwise limit the term "collected proceeds" in the text of the statute, demonstrating its intent that the IRS should broadly apply the term to maximize the award available to whistleblowers who help the government combat tax fraud. *See* Senator Grassley Website, *Grassley Outlines Shortcomings in Proposed IRS Whistleblower Regulations* (January 29, 2013) (criticizing IRS's "overly narrow definitions of what counts as

'collected proceeds' for the purpose of issuing a whistleblower reward");[4] *see also Smith v. Commissioner*, 148 T.C. No. 21 (2017) (recognizing that Tax Court has accepted "expansive view" of the term "collected proceeds"); *Whistleblower 21276-13W v. Commissioner*, 147 T.C. 121, 129 (2016) (recognizing that term "collected proceeds" is a "sweeping term"). The term should be interpreted consistent with this clear intent. *See Salinas v. United States*, 522 U.S. 52, 56 (1997) (where statute used "expansive, unqualified language," court construed statute broadly because there was "no textual basis for limiting the reach" of the statute); *California v. Am. Stores Co.*, 495 U.S. 271, 279, n. 4 (1990) ("when Congress uses broad generalized language" in a statute, then "a court should interpret the provision generously so as to effectuate the important congressional goals"); *Cent. Mach. Co. v. Arizona State Tax Commission*, 448 U.S. 160, 166, 100 S. Ct. 2592, 2596, 65 L. Ed. 2d 684 (1980) (courts must give broadly worded statute "a sweep as broad as [their] language," and "interpret them in light of the intent of the Congress that enacted them").

The language surrounding the term "collected proceeds" reinforces its broad and sweeping nature. The statute provides that a whistleblower is entitled to a mandatory award when the Secretary collects proceeds "resulting" from "*any*

[4] Available at < https://www.grassley.senate.gov/news/news-releases/grassley-outlines-shortcomings-proposed-irs-whistleblower-regulations >.

administrative or judicial action" based on the whistleblower's information, or from "*any* related actions," or from "*any* settlement in response to such action." 26 U.S.C. § 7623(b)(1) (emphasis added). These are not words of limitation, but of expansion. *See United States v. Gonzales*, 520 U.S. 1, 5 (1997) (recognizing that use of the word "any" in a statute "has an expansive meaning"); *see also* Letter from Senator Grassley to Acting Treasury Secretary Neal Wolin, p.3 (January 28, 2013) ("The broad use of the word 'any' throughout the statute is also another reason why non-Title 26 penalties can and should be considered for awards under the IRS whistleblower program").[5]

Had Senator Grassley and his colleagues in Congress intended to restrict the triggering event that results in a mandatory whistleblower award, they would have done so. Congress could have defined the term "collected proceeds" to include only those amounts collected under Title 26 of the United States Code, or to include only those amounts consisting of tax, penalties, interest, or additions to tax, or it could have limited the term to only "civil" collections. But Congress

[5] Available at <https://www.grassley.senate.gov/sites/default/files/about/upload/WB-Regs.pdf>. Although the parenthetical that follows the term "collected proceeds" states that it is "including penalties, interest, additions to tax, and additional amounts," those items do not limit what counts as collected proceeds, but are instead intended to be non-exclusive examples of different possible types of collected proceeds. *See, e.g., Wnuck v. Commissioner*, 136 T.C. 498, 506 (2011) ("Anyone fluent in English knows that the word 'includes' cannot be assumed to mean 'includes only'").

did not restrict the term in this manner, and neither should this Court. *See* Letter from Senator Grassley to Acting Treasury Secretary Neal Wolin, p.3 (January 28, 2013) (rejecting IRS's position that the term "collected proceeds" is limited to collections under Title 26, remarking that "[i]t appears that the decision to limit the definition to proceeds under Title 26 is based on the IRS' view that legislative text requires this result. As I have made clear in previous statements, I do not believe the language, nor the intent behind the law, mandates this outcome").[6]

The absence of any such limitations on the term "collected proceeds" is also consistent with the purpose of the 2006 amendments to the whistleblower law, which was to motivate whistleblowers to report major tax fraud. *See, e.g.*, Charles Grassley Website, *Grassley Presses Treasury Department and IRS to Effectively Implement Whistleblower Program* (June 21, 2012) (noting that "[t]he 2006 legislation was intended to obtain valuable information about major tax fraud and prevent the IRS from shortchanging whistleblowers");[7] *Smith v. Commissioner*, 148 T.C. No. 21 (2017) ("It also appears that the 2006 mandatory

[6] Available at <https://www.grassley.senate.gov/sites/default/files/about/upload/WB-Regs.pdf>.

[7] Available at <https://www.grassley.senate.gov/news/news-releases/grassley-presses-treasury-department-and-irs-effectively-implement-whistleblower>.

award additions to section 7623 were intended to motivate whistleblowers to come forward so that additional collections of tax would occur").

For the foregoing reasons, the term "collected proceeds" in § 7623(b)(1) must be interpreted broadly, and any money collected as a result of the IRS's investigation of a whistleblower's information must be included in the mandatory award paid under the statute. This includes criminal fines, forfeitures, and other amounts that are collected as a result of the information submitted by a whistleblower. *See Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) ("when the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms") (internal quotations omitted); *Smith v. Commissioner*, 148 T.C. No. 21 (2017) ("Where the statute has been expressed in plain terms, that language should be given effect").[8]

---

[8] The IRS promulgated whistleblower regulations in 2014 that provide that "Collected proceeds are limited to amounts collected under the provisions of title 26, United States Code." *See* 26 C.F.R. § 301.7623–2(d)(1)(effective as of September 26, 2014). However, as the Tax Court noted in its August 3, 2016 decision in this case (*see* 147 T.C. No. 4), both the IRS (the appellant) and the whistleblower (the appellee) agree that those regulations do not apply in this case because the IRS denied the whistleblower-appellee's claim for an award in 2013, almost a year before those regulations were enacted. In any event, even if the IRS's regulations were at issue, they are not valid because they conflict with the plain language and intent of the statute. *See Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 85 (2002) (finding that "regulation was in conflict with the

B. The History of Section 7623 Demonstrates That the Whistleblower Statute Includes Awards for Criminal Fines and Forfeitures

Section 7623 has always contemplated, and the courts have always understood, that whistleblower awards are available for information leading to criminal fines and forfeitures. The earliest versions of the IRS whistleblower law can be traced back to legislation enacted in 1867, which authorized the payment of a discretionary award for information leading to the conviction of persons for criminal violations of the tax laws. *See* IRS Whistleblower Office, *Annual Report To Congress* (2009), at p. 3 (noting that the 1867 law "provided the Secretary with the authority 'to pay such sums as he deems necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same'"); *see also Whistleblower 21276-13W v. Commissioner*, 147 T.C. 121, 125 (2016)(noting same). Use of the words "guilty" and "punishment" demonstrate the criminal orientation of this law.

Congress formally codified the IRS Whistleblower Statute at 26 U.S.C. § 7623 in 1954. That version of the whistleblower law also expressly provided for whistleblower awards in connection with criminal tax cases, stating that the Secretary was "authorized to pay such sums . . . as he may deem necessary

---

statute and invalid"); *Muniz v. Sabol*, 517 F.3d 29, 34 (1st Cir. 2008) ("[i]f the regulations conflict with the statute, the regulations are invalid").

for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same . . . ." *See* Law of August 16, 1954, ch. 736, 68A Stat. 904 (codified at 26 U.S.C. § 7623 (1954)).

In 1996, Congress amended the Whistleblower Statute to *expand* the authorization of whistleblower awards to cases involving purely civil tax violations. *See* Pub. L. No. 104–168, 110 Stat. 1473 (July 30, 1996) (codified at 26 U.S.C. § 7623 (1996)) (adding provision for whistleblower awards for "detecting underpayments of tax," which was in addition to pre-existing provision providing for whistleblower award for "detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same"); *see also* H.R. Rept. No. 104-506, at 51 (1996), 1996-3 C.B. 49, 99 (legislative history for 1996 amendment to § 7623, stating that "[t]he bill clarifies that rewards may be paid for information relating to civil violations, *as well as criminal violations*") (emphasis added).

Moreover, the regulations issued in 1998 to implement the IRS whistleblower law – regulations in effect until February 21, 2012 – expressly noted that § 7623 provides for whistleblower awards for information that results in *criminal fines*. *See* 26 C.F.R. § 301.7623-1 (as announced in 63 FR 44778, Aug. 21, 1998) ("(c) Amount and payment of reward. . . . *Partial reward payments*, without waiver of the uncollected portion of the taxes, penalties, or fines involved,

may be made when a criminal fine has been collected prior to completion of the civil aspects of a case . . . .") (emphasis added).

In fact, the 1998 version of the regulations for § 7623 actually required whistleblowers to submit their information in the first instance to the IRS's Criminal Investigation Division, which only reinforces the notion that amounts recovered in a criminal case would serve as the basis for a whistleblower award. *See* 26 C.F.R. § 301.7623-1 (as announced in 63 FR 44778, Aug. 21, 1998) ("(d) Submission of information. *A person that desires to claim a reward under section 7623 and this section may submit information relating to violations of the internal revenue laws, in person*, to the office of a district director, *preferably to a representative of the Criminal Investigation Division. . . .*") (emphasis added).

When Congress amended the IRS Whistleblower Statute in 2006 by creating § 7623(b), it did so within this clear historical context. *See, e.g., Lorillard v. Pons*, 434 U.S. 575, 581 (1978)(recognizing that "Congress normally can be presumed to have had knowledge of the interpretation given to" a particular law when incorporating it into a new law). Nothing in the 2006 amendments undermines the long accepted interpretation of the IRS Whistleblower Statute as permitting whistleblower awards based on recoveries in criminal tax cases, including recoveries in the form of criminal fines or related sanctions. In fact, consistent with the statute's history, for many years following the passage of the

2006 amendments, the IRS continued to construe the statute as providing for whistleblower awards based on recoveries in criminal cases, including related penalties and fines. Thus, the version of the whistleblower regulations implemented in February 2012 continued to expressly recognize that § 7623 provides for whistleblower awards for information that results in criminal fines. *See* 26 C.F.R. § 301.7623-1 (as announced in 77 FR 10371, Feb. 22, 2012)("(c) Amount and payment of reward. . . . *Partial reward payments*, without waiver of the uncollected portion of the taxes, penalties, or fines involved, *may be made when a criminal fine has been collected prior to completion of the civil aspects of a case* . . . .") (emphasis added).

It was not until 2014 that the IRS changed these regulations to expressly exclude criminal fines from the ambit of the IRS Whistleblower Statute. *See* 26 C.F.R. § 301.7623-2 (as announced in 79 FR 47266, Aug. 12, 2014) ("(4) Criminal fines. Criminal fines deposited into the Victims of Crime Fund are not collected proceeds and cannot be used for payment of awards."). However, the IRS does not have the authority to overturn or disregard the plain terms and intent of a statute. Only Congress can do that, and it has not done so. *See Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 85 (2002) (finding that "regulation was in conflict with the statute and invalid"); *Chem. Mfrs. Ass'n v. Nat. Res. Def.*

Council, Inc., 470 U.S. 116, 125 (1985) ("if Congress has clearly expressed an intent contrary to that of the Agency, our duty is to enforce the will of Congress").

II. The IRS Whistleblower Statute Must Be Interpreted to Include Award Payments for Criminal Fines and Forfeitures To Encourage Whistleblowers to Come Forward

Interpreting the term "collected proceeds" to include criminal fines and forfeitures, consistent with the text of the law and intent of Congress, will incentivize whistleblowers to come forward with information regarding major tax crimes. The strongest whistleblower cases are those in which the alleged misconduct is so egregious and the information supplied by the whistleblower is so overwhelming that the government can bring a criminal prosecution to enforce the tax law. These are precisely the types of whistleblower cases that the 2006 amendments were intended to generate. *See, e.g.*, Charles Grassley Website, *Grassley Presses Treasury Department and IRS to Effectively Implement Whistleblower Program* (June 21, 2012) (noting that "[t]he 2006 legislation was intended to obtain valuable information about major tax fraud and prevent the IRS from shortchanging whistleblowers").[9] The principal way to incentivize whistleblowers to report such major tax fraud is by assuring them that whatever money the government collects based on their information, including fines,

[9] Available at <https://www.grassley.senate.gov/news/news-releases/grassley-presses-treasury-department-and-irs-effectively-implement-whistleblower>.

penalties and forfeitures collected in a criminal tax case, will be used as the basis for the whistleblower award. *See Smith v. Commissioner*, 148 T.C. No. 21 (2017) (recognizing that "the 2006 mandatory award additions to section 7623 were intended to motivate whistleblowers to come forward so that additional collections of tax would occur"); Department of Justice Press Release, *Justice Department Recovers Over $4.7 Billion From False Claims Act Cases In Fiscal Year 2016* (December 14, 2016) (recognizing that in *qui tam* context, large whistleblower awards "provide a valuable incentive to industry insiders who are uniquely positioned to expose fraud"); *see also* Alexander Dyck et al., *Who Blows the Whistle on Corporate Fraud?*, University of Chicago CRSP Working Paper No. 618, p. 41 (January 2007) (studying whistleblowing activity in 230 reported cases of alleged corporate frauds between 1996 and 2004, and noting that when "whistleblowers are rewarded, employees play a much bigger role in revealing fraud").[10]

By contrast, if the term "collected proceeds" is interpreted narrowly to exclude criminal fines and forfeitures, whistleblowers will be discouraged from reporting major tax fraud. Under such an approach, whistleblowers with the strongest cases will understand that their reward interests could easily be undercut

[10] Available at <http://faculty.chicagobooth.edu/finance/papers/who%20blows%20the%20whistle.pdf>.

not by the quality of their assistance but by the nature of the case the government chooses to pursue, and they will be less likely to come forward. Whistleblowers already must overcome legitimate fear of reprisal by the subject taxpayer, which is often their employer. There is no reason to create additional disincentives. *See, e.g.*, *United States v. Overseas Shipholding Grp., Inc.*, 625 F.3d 1, 9 (1st Cir. 2010) (purpose of "award to whistleblowers" is "to create incentives for the whistleblower to take risks that may disadvantage the whistleblower in his relationship to his employer"). As such, interpreting the term "collected proceeds" to exclude criminal fines and related sanctions will undermine the IRS Whistleblower Statute's effectiveness as a tool for ferreting out major tax fraud. This is not what Congress intended.

CONCLUSION

The Court should affirm the Tax Court's decision that the term "collected proceeds" in the mandatory whistleblower award provision of 26 U.S.C. § 7623(b)(1) is broad and includes awards for criminal fines and civil forfeitures that are collected in a criminal tax case.

Dated: October 24, 2017

Respectfully submitted,

/S/ Bryan C. Skarlatos
Bryan C. Skarlatos
Usman Mohammad
Kostelanetz & Fink, LLP
7 World Trade Center
New York, New York 10007
Telephone: (212) 808-8100
Fax: (212) 808-8108
Email: bskarlatos@kflaw.com

-and-

Nancy Gertner
Retired US DCT Judge (DMass)
Senior Lecturer Harvard Law School
Office: Langdell Library 328
1525 Massachusetts Avenue
Cambridge, Massachusetts 02239
Telephone: (617) 496-5487
Email: ngertner@law.harvard.edu

Counsel for Amicus Curiae
United States Senator Charles E. Grassley

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B).

__x__ The brief contains 3,863 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii),or

____ The brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6).

__x__ The brief has been prepared in a proportionally spaced typeface using MS Word 2007 in a 14 point Times New Roman font or

____ The brief has been prepared in a monospaced typeface using MS Word 2002 in a ___ characters per inch_____ font.

/S/ Bryan C. Skarlatos
Bryan C. Skarlatos
Kostelanetz & Fink, LLP

United States Court of Appeals
for the District of Columbia Circuit

CERTIFICATE OF SERVICE

I, Robyn Cocho, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by KOSTELANETZ & FINK, LLP, Attorneys for Amicus Curiae to print this document. I am an employee of Counsel Press.

On October 24, 2017, Counsel for Petitioners have authorized me to electronically file the foregoing Brief of United States Senator Charles E. Grassley as Amicus Curia in Support of Petitioner-Appellee and Affirmance with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

Felipe S. Bohnet-Gomez (FBohnet-Gomez@ZMFLaw.com)
Dean Zerbe (dzerbe@zffjlaw.com)
Zerbe, Miller, Fingeret, Frank & Jadav LLP
1455 Pennsylvania Avenue, NW
Suite 300
Washington DC 20004
713-552-5561

Stephen Martin Kohn (sk@kkc.com)
David Keith Colapinto (dc@kkc.com)
Kohn, Kohn & Colapinto, LLP
3233 P Street, NW Washington DC 20007-2756
202-342-6980

Attorneys for Petitioner-Appellee

Teresa E. McLaughlin (Appellate.Taxcivil@usdoj.gov)
Deborah Krauss Snyder (deborah.k.snyder@usdoj.gov)
U.S. Department of Justice
PO Box 502 Washington DC 20044
202-514-4342

Attorneys for Respondent-Appellant

Unless otherwise noted, 8 paper copies will be sent to the Court via Express Mail within 24 hours of filing with the CM/ECF System.

October 24, 2017

/s/ Robyn Cocho
Robyn Cocho
Counsel Press