



ACTC Amicus Brief Policy

As part of its mission to improve the tax system and the administration of the tax laws, consistent with sound tax policy the American College of Tax Counsel frequently provides input to courts by appearing as amicus curiae and filing amicus briefs in selected tax cases. The Amicus Briefs Committee of the College makes the initial determination of whether to enter an appearance as amicus curiae, which must be approved by the Board of Regents. Once approved, amicus briefs are submitted by the College's Board of Regents, and do not necessarily reflect the views of all Fellows of the College.

General Standards Applied in Considering Amicus Requests. In determining whether to appear in a case, the Amicus Briefs Committee and the Board of Regents apply general standards. The threshold consideration is whether a particular position would improve the tax system and the administration of the laws, consistent with sound policy. An amicus brief should aim to make a useful contribution to assist the court in making its decision; fill gaps that would benefit from specialist lawyers' expertise to fill; and avoid partisanship, meaning unnecessary advocacy of one party's position.

In applying these general standards, the Amicus Briefs Committee and the Board of Regents may consider whether a large majority of the Fellows of the College would support the amicus brief, keeping in mind that these Fellows include practitioners, government lawyers, and academics. The position taken by ACTC in an amicus brief (including the support of one, the other, or neither party) will be based on independent consideration by the Amicus Briefs Committee and the Board of Regents.

Amicus Consideration Process. Subject to consent of all parties or leave of a court to accept the appearance of the College as amicus curiae, consideration of a request for the College to appear in a case as amicus curiae involves the following four step process:

- (1) request by a Fellow, a court, or a party to a case for the appearance of the College as amicus,
- (2) Amicus Briefs Committee approval,
- (3) Board of Regents approval, and
- (4) follow-up steps to supervise brief drafting by skilled tax lawyers prior to Board of Regents approval of the final brief for submission to the court.

Request for the consent of all parties or leave of a court to accept the appearance of the College as amicus curiae may be submitted after the Amicus Briefs Committee and the Board of Regents have approved the appearance, in those cases where blanket authority has not been granted.

The actions that may be taken by the Amicus Briefs Committee, and ultimately the Board of Regents in approving the appearance of the College as amicus curiae in a case, include the following:

- Consideration of requests from Fellows and non-Fellows, as well as requests proposing support of litigating positions of taxpayers, the government, or neither party.
- Review of the pleadings and the briefs of the parties filed to date and decisions of the lower courts.
- Consideration of appropriate amicus brief requirements of the court, such as size and length.
- Consideration of the timeline for considering the request as well as for providing a final draft to the Amicus Briefs Committee and the Board of Regents for review.
- Consideration of the facts of the case, the legal issues presented, and the potential impact of the decision on a broader class of taxpayers or tax administration generally.
- Providing an opportunity for members of the Committee to have a full discussion of whether the specific and general substantive criteria are met, for instance by requesting that a committee member state the case against the College's writing of the brief in order to promote complete consideration of the issues.
- Selecting the principal drafter(s) of a proposed brief, subject to the approval of the Board of Regents.
- Establishing a follow-up process: e.g., involving an appointed member of the Amicus Briefs Committee to supervise the drafting process, recommend edits to ensure substantive guidelines are followed, ensure the tone of the brief remains nonpartisan and expert, and report to the Amicus Briefs Committee and the Board of Regents regarding whether the final brief should be approved and filed.

Requests for Appearance of the College as Amicus Curiae. To request the College's consideration of an amicus appearance, please submit a brief letter or memorandum to C. Wells Hall, III, chair of the ACTC Amicus Briefs Committee, at amicuschair@actconline.org. The letter or memorandum should contain the following:

- a. Brief summary of the facts and procedural history of the case that is relevant to the position proposed.
- b. The position proposed and an outline of the arguments to be made in the proposed brief.
- c. Brief statement of why the proposed position would support the fair administration of tax law and constitute sound tax policy.

- d.* An explanation of how an ACTC brief will make a significant contribution to the court's consideration of the issue(s) it must address, e.g., by making arguments not otherwise made in the case (including by other possible amicus briefs) and as to which ACTC has particular expertise.
- e.* A statement as to whether blanket approval of amicus appearances has been approved by the court.
- f.* The date upon which any brief prepared by ACTC would be due, if one is filed. Please note that any request should be submitted to ACTC sufficiently in advance of the due date in order to provide time for evaluation of the request as well as the preparation and filing of the brief by skilled ACTC tax lawyers.
- g.* Copies or links to the relevant court opinions and briefings.

Any questions about the College's Amicus Brief Policy may be directed to the chair of the Amicus Brief Committee (amicuschair@actconline.org), or any Officer of the College (<https://www.actconline.org/governance/>)

List of past Amicus Briefs filed by ACTC: <https://www.actconline.org/amicus-curiae-briefs/>