

RECEIVED  
SDNY DOCKET UNIT  
2018 JUL 26 AM 8:46

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**STATE OF NEW YORK,  
STATE OF CONNECTICUT,  
STATE OF MARYLAND, and  
STATE OF NEW JERSEY,**  
Plaintiffs,

v.

**STEVEN T. MNUCHIN,  
in his official capacity as Secretary of  
the U. S. Department of Treasury;  
UNITED STATES  
DEPARTMENT OF TREASURY;  
DAVID J. KAUTTER,  
in his official capacity as Acting  
Commissioner of the United States  
Internal Revenue Service; the  
UNITED STATES INTERNAL  
REVENUE SERVICE; and the  
UNITED STATES OF AMERICA,**  
Defendants.

Case No. **18-cv-6427**

**MOTION FOR LEAVE  
TO FILE AMICUS  
CURIAE BRIEF IN  
SUPPORT OF  
DEFENDANTS**

**AMICUS CURIAE**

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC # _____ DATE FILED: 7-25-18
---

**MOTION FOR LEAVE  
TO FILE AMICUS CURIAE BRIEF  
IN SUPPORT OF DEFENDANTS**

1. Comes now, THOMAS T. SCAMBOS, JR., a.k.a. THOMAS FREED, resident of Jeffersonston, Virginia, writing on behalf of *We the People* of the Commonwealth of Virginia, who hereby *moves* this honorable court for leave of the court to file the attached brief as *amicus curiae* in support of the defendants, addressing the district court's **lack** of *original jurisdiction* over the entire civil action under Article III, Section 2, clause 2 of the U.S. Constitution.


2. This Court has discretion to accept amicus curiae briefs. *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008). The participation of an amicus curiae is appropriate “when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Id.* at 137 (quoting *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1064 (7th Cir. 1997)). In particular, courts have “permitted parties to file amicus briefs where ‘the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.’” *In re Search of Info. Associated with [redacted]@mac.com that is Stored at Premises Controlled by Apple, Inc.*, 13 F. Supp. 3d 157, 167 (D.D.C. 2014) (quoting *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003)); see also *Hard Drive Prods., Inc. v. Does 1-1*, 495, 892 F. Supp. 2d 334, 337 (D.D.C. 2012).

3. Mr. Scambos asks for the Court’s permission to submit this brief on behalf of the citizens of the Commonwealth of Virginia because they, like the citizens of every state in the nation, have an equal, and just as particularly strong an interest as the plaintiff states themselves, in the disposition and final outcome of the case in the district court proceedings. The *amicus* brief will help inform the Court on the very important **key** and *controlling* points of the Supreme Law of the U.S. Constitution, which are vital to the proper resolution of this action in the district court.

4. For the foregoing reasons, the motion for leave to file a brief as *amicus curiae* should be granted. If such relief is granted, it is requested that the accompanying brief be considered filed as of the date of this motion’s filing.

5. The proposed *amicus* brief is attached as Exhibit 1 to this motion. A proposed order is attached as Exhibit 2.

Respectfully submitted,



Thomas T. Scambos, Jr.  
Writing For *We the People*  
of the Commonwealth of Virginia

RECEIVED  
SDNY DOCKET UNIT

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,  
STATE OF CONNECTICUT,  
STATE OF MARYLAND, and  
STATE OF NEW JERSEY,  
Plaintiffs,

v.

STEVEN T. MNUCHIN,  
in his official capacity as Secretary of  
the U. S. Department of Treasury;  
UNITED STATES  
DEPARTMENT OF TREASURY;  
DAVID J. KAUTTER,  
in his official capacity as Acting  
Commissioner of the United States  
Internal Revenue Service; the  
UNITED STATES INTERNAL  
REVENUE SERVICE; and the  
UNITED STATES OF AMERICA,  
Defendants.

Case No. 18-cv-6427

BRIEF OF  
AMICUS CURIAE IN  
SUPPORT OF  
DEFENDANTS ON THE  
*LACK OF*  
*original jurisdiction*  
OF THE COURT

AMICUS CURIAE

BRIEF OF AMICUS CURIAE

1. Federal Rules of Civil Procedure, Rule 12(b), provides that a district court can *dismiss a Complaint* for ***lack*** of a granted *subject-matter jurisdiction* or for a “*failure to state a claim upon which relief can be granted by the court*”, if the court in which a *Complaint* is filed fundamentally **lacks** jurisdiction over the civil action, **or** the parties to the action.

2. Under Article III, Section 2, Clause 2 of the United States Constitution there is a clear **lack of** a *subject-matter jurisdiction* in this case that can be taken by this district court over this civil action (and *Complaint*), because of an irrefutable *constitutional* **lack** of any granted “*original jurisdiction*” of the district court over the *Complaint* that has been filed in this court by the named plaintiff States.

3. Article III, Section 2, Clause 2 of the United States Constitution plainly and clearly states:

“In all Cases affecting Ambassadors, other public Ministers and Consuls, **and those in which a State shall be a party, the supreme Court shall have original Jurisdiction**”

(emphasis added)

4. By this provision of the Constitution of the United States of America, the federal district Courts **are entirely removed from any and all exercisable jurisdiction to both** hear the action or entertain **any** arguments in this matter, because the named plaintiff States of New York, New Jersey, Connecticut, and Maryland have filed their *Complaint* in the **wrong** court.

5. The plaintiffs err in asserting jurisdiction under only the statutes invoked in their *Complaint* (page 8, Dkt. #1), *i.e.*: Title 28 U.S.C. Sections 1331, 1340 and 2201.

“It remains rudimentary law that “[a]s regards all courts of the United States inferior to this tribunal [United States Supreme Court], two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it. . . .” [Emphasis in original.] *Finley v. United States*, 490 U.S. 545 (1989).

“So, we conclude, as we did in the prior case, that, although these suits may sometimes so present questions arising under the Constitution or laws of the United States that the Federal courts will have jurisdiction, yet the mere fact that a suit is an adverse suit authorized by the statutes of Congress is not in and of itself sufficient to vest jurisdiction in the Federal courts.” *Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 513 (1900).

"Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen V. Guardian Life ins. Co. of America*, 511 US 375 (1994)

6. In fact Section 2201 explicitly removes itself from applicability to civil actions of the nature of this one, challenging federal tax law and seeking declaratory relief.

### **§ 2201 Creation of Remedy**

a.) In a case of actual controversy within its jurisdiction, **except with respect to Federal taxes** ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

7. Where the issue of the foundational jurisdiction of the court is not properly or fully addressed by the plaintiffs, or where it is asserted by the plaintiffs **in error**, the district court itself has the legal duty to address and determine the presence of a jurisdiction that the court may lawfully take, **or the lack thereof**.

"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." *Latana v. Hopper*, 102 F.2d 188; *Chicago v. New York*, 37 F.Supp. 150

"The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F.2d 416

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." *Melo v. U.S.*, 505 F.2d 1026 (1974)

"Lack of jurisdiction cannot be waived and jurisdiction cannot be conferred upon a federal court by consent, inaction, or stipulation. If

parties do not raise question of lack of jurisdiction, it is the duty of the federal court to determine the manner *sua sponte*." Title 28 U.S.C.A. §§ 1331, 1332."

"Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen V. Guardian Life ins. Co. of America*, 511 US 375 (1994)

## Conclusion

8. Therefore, under Article III, Section 2, clause 2 of the Constitution of the United States of America, this district court should dismiss this civil action in its entirety, with *prejudice*, from the lower federal district court for **lack** of any grant of the constitutionally required *original jurisdiction* of the district court that exists over the civil action.

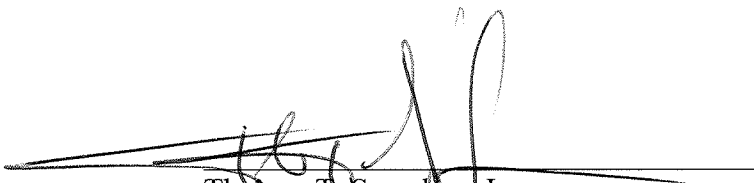
In a long and venerable line of cases, the Supreme Court has held that, without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit. See, *e.g.*, *Capron v. Van Noorden*, 2 Cranch 126; *Arizonans for Official English v. Arizona*, 520 U.S. 43, (1997). *Bell v. Hood*, *supra*; *National Railroad Passenger Corp. v. National Assn. of Railroad Passengers*, 414 U.S. 453, 465, n. 13; *Norton v. Mathews*, 427 U.S. 524, 531; *Secretary of Navy v. Avrech*, 418 U.S. 676, 678 (per curiam); *United States v. Augenblick*, 393 U.S. 348; *Philbrook v. Glodgett*, 421 U.S. 707, 721; and *Chandler v. Judicial Council of Tenth Circuit*, 398 U.S. 74, 86-88, distinguished. For a court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an *ultra vires* act. Pp. 93-102. *Steel Co., aka Chicago Steel & Picking Co. v. Citizens for a Better Environment*, No. 96-643, 90 F.3d 1237 (1998)

9. The four plaintiff States have filed their *Complaint* in the wrong court.

A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. 46 Am. Jur. 2d, Judgments § 25, pp. 388-89.

10. If the plaintiff States truly wish to proceed with their filed civil action, then, under Article III, Section 2, clause 2 of the U.S. Constitution, the *Complaint* must be filed in the Supreme Court of the United Sate of America, and nowhere else, as no other court in America possesses the *original jurisdiction* necessary under the U.S. Constitution to lawfully entertain and adjudicate the civil action as filed.

Respectfully submitted,



Thomas T. Scambos, Jr.  
Writing For *We the People*  
of the Commonwealth of Virginia

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF NEW YORK**

**STATE OF NEW YORK,  
STATE OF CONNECTICUT,  
STATE OF MARYLAND, and  
STATE OF NEW JERSEY,  
Plaintiffs,**

**v.**

**STEVEN T. MNUCHIN,  
in his official capacity as Secretary of  
the U. S. Department of Treasury;  
UNITED STATES  
DEPARTMENT OF TREASURY;  
DAVID J. KAUTTER,  
in his official capacity as Acting  
Commissioner of the United States  
Internal Revenue Service; the  
UNITED STATES INTERNAL  
REVENUE SERVICE; and the  
UNITED STATES OF AMERICA,  
Defendants.**

Case No. **18-cv-6427**

**[PROPOSED] ORDER GRANTING THE MOTION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS**

It is ORDERED that the motion of Thomas T. Scambos, Jr. for leave to file an *amicus curiae* brief in support of the Defendants, filed with this Court on or about July 25th, 2018, is hereby GRANTED; and it is further



ORDERED that the Brief of Amicus Curiae in Support of the Defendants is deemed filed in the above-captioned proceeding.

IT IS SO ORDERED.

---

United States District Judge

Dated: \_\_\_\_\_, 2018

**CERTIFICATE OF SERVICE**

I, Thomas T. Scambos, Jr., certify that a true copy of the attached *Motion for Leave, amicus curiae Brief* on the *original jurisdiction* of the Supreme Court over this entire civil action, and *Proposed Order* have all been served via Certified Mail to all of the following:

BARBARA D. UNDERWOOD, NY *Attorney General*  
New York Office of the Attorney General  
28 Liberty Street, 23rd Floor  
New York, New York 10005

Certified Mail # 7014 2120 0000 1188 6388

GEORGE JEPSEN, CT *Attorney General*  
Connecticut Office of the Attorney General  
55 Elm Street, P.O. Box 120  
Hartford, Connecticut 06141

Certified Mail # 7014 2120 0000 1188 6418

BRIAN E. FROSH, MD *Attorney General*  
Maryland Office of the Attorney General  
Civil Division  
200 St. Paul Place, 20th Floor  
Baltimore, Maryland 21202

Certified Mail # 7014 2120 0000 1188 6401

GURBIR S. GREWAL, NJ *Attorney General*  
New Jersey Office of the Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street, 8th Floor, West Wing  
Trenton, New Jersey 08625

Certified Mail # 7014 2120 0000 1188 6395

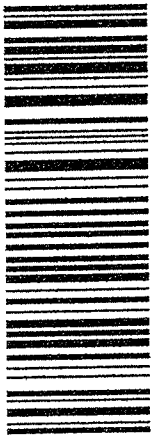
US Attorney General →  
Jeff Sessions  
US Dept. Treas.  
950 Pennsylvania Ave  
Wash. DC. 20530-0001

7015 0640 0003 3363 7037

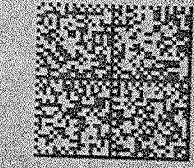
Thomas T. Scambos, Jr.  
19400 Walnut Hills Rd  
Jeffersonton, VA 22724  
(540) 937-3098

July 22<sup>nd</sup>, 2018

Thomas Freed  
10400 Walnut Hills Road  
Jefferson, VA 22724



7014 2120 0000 1168 6368



02 1P  
0001915969  
MAILED FROM ZIP

US<sup>TM</sup> P<sub>3</sub>  
SDNY

RECEIVED  
JUL 25 PM 2:43  
CLERK'S OFFICE  
S.D.N.Y.

RUBY J. KRAJICK, Clerk of Court  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Page

RECEIVED  
SDNY DOCKET UNIT  
2018 JUL 26 AM 8:46