

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

**ISOBEL BERRY CULP;
DAVID R. CULP,**

Petitioners-Appellants,

v.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent-Appellee.

No. 22-1789

**APPELLEE'S MOTION
TO STRIKE THE BRIEF OF AMICUS CURIAE**

Pursuant to Federal Rules of Appellate Procedure 27 and 29, appellee, the Commissioner of Internal Revenue, respectfully moves to strike the brief of amicus curiae, the Center for Taxpayer Rights (ECF No. 14).

The Commissioner filed a motion for summary affirmance on June 7, 2022 (ECF No. 10). The appellants, Isobel and David Culp, have not yet responded to the motion or filed their opening brief.

The amicus filed a brief in support of the appellants on June 13, 2022. Before its filing, the amicus had provided the Commissioner with

a draft of a brief, and the Commissioner had consented to the filing of an amicus brief without the need to seek leave of Court. *See* Fed. R. App. P. 29(a)(2). The Commissioner gave his consent based on his understanding that the brief would be filed at the merits briefing stage of this case (in the event that the Commissioner’s motion for summary affirmance were denied).

The amicus brief should now be stricken because it violates Federal Rule of Appellate Procedure 29. First, the amicus brief does not “support” the “principal brief of the [appellants].” Fed. R. App. P. 29(a)(6). The advisory committee’s note to Rule 29 confirms that the timing for amicus briefs “was adopted because it is long enough to permit an amicus to *review the completed brief* of the party being supported and *avoid repetitious argument.*” Fed. R. App. P. 29 advisory committee’s note to 1998 amendment (emphases added). The amicus brief here serves neither purpose—and is thus premature and impertinent—because the appellants have not yet filed their principal brief (or a response to the motion for summary affirmance).

Second, the brief exceeds the word limit to the extent that the amicus intends the Court to consider the brief in connection with the

Commissioner's pending motion. "Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief." Fed. R. App. P. 29(a)(5). The rules limit principal motion papers to 5,200 words. Fed. R. App. P. 27(d)(2)(A). So the amicus brief here would be over length by nearly 4,000 words.

CONCLUSION

This Court should strike the amicus's brief because it violates Federal Rule of Appellate Procedure 29.

Respectfully submitted,

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/s/ Isaac B. Rosenberg

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JUNE 13, 2022

CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Local Rule 28.3(d), it is hereby certified that, because the attorneys on this brief represent the Federal Government, the requirement that at least one attorney must be a member of the Bar of this Court is waived.

/s/ Isaac B. Rosenberg
ISAAC B. ROSENBERG
Attorney for the Appellee

CERTIFICATE OF COMPLIANCE

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f):

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3. The undersigned hereby further certifies that the foregoing brief filed electronically with the Court is in PDF searchable format, that the text of the PDF copy is identical to the text of the paper copy, that the PDF version has been electronically scanned for viruses with Microsoft Windows Defender (updated daily), and that, according to the program, no viruses were detected.

(s) /s/ Isaac B. Rosenberg

Attorney for Appellee

Dated: June 13, 2022

CERTIFICATE OF SERVICE

It is hereby certified that on June 13, 2022: (1) a PDF copy of this motion was electronically filed by CM/ECF; (2) service was made on all parties registered with CM/ECF; and (3) service was made via first-class U.S. mail upon the following addressee(s):

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