

NO. 11-2012
(CIV. A. NO. 1:10-cv-00322-CCB)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ANCIENT COIN COLLECTORS GUILD, *Appellants,*

v.

U.S. CUSTOMS AND BORDER PROTECTION,
DEPARTMENT OF HOMELAND SECURITY;
COMMISSIONER, U.S. CUSTOMS AND BORDER
PROTECTION; U.S. DEPARTMENT OF STATE;
AND ASSISTANT SECRETARY OF STATE,
EDUCATIONAL AND CULTURAL AFFAIRS, *Appellees.*

**MOTION OF THE INTERNATIONAL ASSOCIATION OF
PROFESSIONAL NUMISMATISTS, THE AMERICAN NUMISMATIC
ASSOCIATION, ANCIENT COINS FOR EDUCATION, INC. FOR LEAVE
TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF APPELLANTS
(SUPPORTING REVERSAL)**

PURSUANT TO Circuit Rule 29 and Fed. R. App. P. 29, the International Association of Professional Numismatists, the American Numismatic Association, and Ancient Coins for Education, Inc. (“*amici curiae*”) respectfully move for leave to file a brief *amicus curiae* in support of Appellants (supporting reversal) in the above-referenced appeal. The proposed brief is being electronically filed

contemporaneously with this motion and supports reversal of the District Court's order that is the subject of this appeal.

Pursuant to Fed. R. App. P. 29(a), counsel for *amici curiae* inquired whether Appellant would consent to the filing of the proposed brief *amicus curiae*. Counsel for Appellant did consent to the filing. Pursuant to Fed. R. App. P. 29(a), counsel for *amici curiae* inquired whether Appellee would consent to the filing of the proposed brief *amicus curiae*. Counsel for Appellee did not consent to the filing.

I. IDENTITY OF AMICI CURIAE

The International Association of Professional Numismatists (IAPN), the American Numismatic Association (ANA), and Ancient Coins for Education, Inc. (ACE) (collectively, "*amici curiae*") have a profound interest in this case because the international trade of ancient coins is an essential part of the research, study and understanding of world history. The IAPN is a non-profit organization of the leading international numismatic firms founded in 1951 and based in Brussels, Belgium. The objectives of the IAPN are the development of a healthy and prosperous numismatic trade conducted according to the highest standards of business ethics and commercial practice. The ANA is a nonprofit educational organization based in Colorado Springs, Colorado and is dedicated to educating and encouraging people to study and collect money and related items. With nearly 33,000 members, the ANA serves the academic community, collectors and the

general public with an interest in numismatics. ACE was founded as an all-volunteer, not-for-profit, charitable educational organization to receive donations of ancient coins from private collectors and dealers and distribute them along with scholastic materials, on-line help, and in-person visits from numismatists, to interested schools and educational venues of all types. ACE, in its ninth years of existence, has put well over 50,000 genuine ancient coins in the hands of nearly 35,000 students and teachers in approximately 550 school classes and educational venues throughout the United States.

II. STATEMENT OF MOVANTS' INTEREST

This case presents an important question of whether the United States Department of State ("State Department") and Assistant Secretary of State for Educational and Cultural Affairs ("Assistant Secretary") are limited to imposing import restrictions under the Convention on Cultural Property Implementation Act, 19 U.S.C. § 2601 *et seq.* ("CPIA") to archaeological materials only "first discovered with" in the State Party making the request.

The District Court decided that State Department and Assistant Secretary did not exceed their authority under the CPIA in listing and restricting the importation of ancient coins from Cyprus and China without establishing that such coins are only "first discovered within" those countries. The *amici curiae* believe the State Department and Assistant Secretary did exceeded their authority under the CPIA in

listing and restricting the importation of ancient coins from Cyprus and China without establishing that such coins are only “first discovered within” those countries. Therefore, as professional numismatic organizations whose members are involved in the international trade and/or collecting and study of ancient coins, *amici curiae* believe the District Court’s decision should be reverse and remanded for further proceedings consistent with the plain meaning of the “first discovered within” requirement.

III. STATEMENT OF DESIRABILITY OF AMICUS BRIEF AND OF RELEVANCE TO DISPOSITION OF THIS CASE.

As professional numismatic organizations whose members are involved in the international trade and/or collecting and study of ancient coins, *amici curiae* are uniquely situated (a) to address the practical operation of CPIA as it applies to the trade of ancient coins, and (b) to discuss how the District Court’s decision is harmful to the continued trade in and study of ancient coins.

The proposed brief *amicus curiae* will assist the Court in understanding the operation of the CPIA and the harm that is caused when the State Department and Assistant Secretary fail to operate within the statutory guidelines of the CPIA. For example, the CPIA provides that the State Department and Assistant Secretary may only list and restrict the importation of ancient coins that are only “first discovered within” the State Party making the request. 19 U.S.C. § 2601(2). However, in this case State Department and Assistant Secretary exceeded their authority under the

CPIA by listing and restricting the importation of ancient coins from Cyprus and China without establishing that such coins are only “first discovered within” those countries.

The matters to be addressed by the brief *amicus curiae* are relevant to the disposition of this case because the District Court failed to find that the State Department and Assistant Secretary exceeded their authority under the CPIA by listing and restricting the importation of ancient coins from Cyprus and China without establishing that such coins are only “first discovered within” those countries. The CPIA does not recognize a “moral right” in favor of modern States to objects that originate in ancient cultures and the “first discovered within” requirement is the only valid basis for public policy in this arena. The “first discovered within” requirement limits import restrictions to those objects which are only known to be discovered in the State Party. The District Court was incorrect in assuming that the “first discovery within” requirement is obviated by a lack of information about the object being imported. Furthermore, the District Court was incorrect in assuming that because objects can be listed by “type” instead of a particular “form” that the “first discovered within” requirement is negated. The CPIA’s core purpose is to deter looting subject to certain mechanisms within the statute and the statutory construction should not be overridden by general intent.

The international trade, collecting and study of ancient coins will be severely impacted if this court does not require the District Court to enforce the plain meaning of the “first discovered within” requirement.

CONCLUSION

For the foregoing reasons, the *amici curiae* respectfully request that the Court grant them leave to file a brief *amicus curiae* in support of Appellants (supporting reversal).

DATED: 7 November 2011

Respectfully submitted,
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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Local Rule 26.1, *amicus curiae* the International Association of Professional Numismatists states as follows:

1. The International Association of Professional Numismatists is a non-profit international organization established within the terms of points 60 to 72 of the Swiss Civil Code.
2. The International Association of Professional Numismatists has no parent corporation, and no publicly-held corporation owns 10 percent or more of the Association's stock.
3. The International Association of Professional Numismatists is not aware of any publicly-held corporation that has a direct financial interest in the outcome of this litigation and has been advised by Appellant that no publicly-held corporation has such an interest.
4. The International Association of Professional Numismatists is a trade association and knows of no publicly-held member whose stock or equity value could be affected substantially by the outcome of this proceeding.

Also pursuant to Fed. R. App. P. 26.1 and Local Rule 26.1, *amicus curiae* the American Numismatic Association states as follows:

5. The American Numismatic Association is a federally chartered non-profit educational organization.
6. The American Numismatic Association has no parent corporation, and no publicly-held corporation owns 10 percent or more of the Association's stock.
7. The American Numismatic Association is not aware of any publicly-held corporation that has a direct financial interest in the outcome of this litigation and has been advised by Appellant that no publicly-held corporation has such an interest.
8. The American Numismatic Association is not a trade association and knows of no publicly-held member whose stock or equity value could be affected substantially by the outcome of this proceeding.

Also pursuant to Fed. R. App. P. 26.1 and Local Rule 26.1, *amicus curiae* Ancient Coins for Education, Inc. states as follows:

9. The Ancient Coins for Education, Inc. is a Pennsylvania not-for-profit corporation and is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

10. The Ancient Coins for Education, Inc. has no parent corporation, and no publicly-held corporation owns 10 percent or more of the company's stock.

11. The Ancient Coins for Education, Inc. is not aware of any publicly-held corporation that has a direct financial interest in the outcome of this litigation and has been advised by Appellant that no publicly-held corporation has such an interest.

12. The Ancient Coins for Education, Inc. is not a trade association and knows of no publicly-held member whose stock or equity value could be affected substantially by the outcome of this proceeding.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 7th day of November, 2011, I caused this Motion of The International Association of Professional Numismatists, the American Numismatic Association, Ancient Coins for Education, Inc. For Leave to File a Brief Amicus Curiae in Support of Appellants (Supporting Reversal) to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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