

NO. 11-2012  
(CIV. A. NO. 1:10-CV-00322-CCB, D. MD.)

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

ANCIENT COIN COLLECTORS GUILD, Appellant,

v.

U.S. CUSTOMS AND BORDER PROTECTION, *et al.*, Appellees.

**MOTION OF AMERICAN COMMITTEE FOR CULTURAL POLICY  
AND INTERNATIONAL ASSOCIATION OF DEALERS IN AN-  
CIENT ART FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*  
IN SUPPORT OF APPELLANT (SUPPORTING REVERSAL)**

PURSUANT TO Fed. R. App. P. 29, the American Committee for Cultural Policy (“ACCP”) and the International Association of Dealers in Ancient Art (“IADAA”) respectfully move for leave to file a brief *amicus curiae* in support of Appellant in the above-referenced appeal. The proposed brief is being electronically filed contemporaneously with this motion and favors reversal of the District Court’s order that is the subject of this appeal.

Pursuant to Fed R. App. P. 29(a), counsel for proposed *amici* inquired whether Appellant and Appellees would consent to the filing of the proposed *amicus* brief. Appellant agreed, but Appellees declined to give such consent.

## I. IDENTITY OF *AMICI CURIAE*

The ACCP is a newly-formed Delaware not-for-profit corporation, tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The ACCP was founded on the premise that the international art market in general, and the antiquities market in particular, serves as a medium of cultural exchange and education. The ACCP's purpose is to educate the public about the benefits resulting from a healthy, legal, international market in ancient art, and to advocate public policies and private practices that promote the trade and collection of ancient art and cultural materials. The ACCP hopes to serve as an umbrella group for those who wish to preserve and promote the trade and collection of ancient art and cultural materials. The ACCP anticipates that it will focus its fund-raising efforts on collectors, connoisseurs, dealers, curators, professionals and other members of the general public with an interest in ancient art and related policy issues. Filing this brief is among the ACCP's first post-incorporation activities.

The IADAA was formed in London in 1993. The IADAA is the international association of leading dealers in works of ancient art with high ethical standards. Members adhere to a stringent code of conduct designed to serve not only the interests of their clients but also the integrity of the objects themselves. At the present time, 29 members from nine countries belong to the IADAA. The IADAA's objectives are:

1. To encourage the study and interest throughout the world of ancient art and to address issues exclusively concerning works of ancient art from the Mediterranean civilizations and other civilizations directly in contact with them.

2. To encourage contacts between museums, archaeologists, collectors and the trade and to foster its relations with governmental and non-governmental international organizations.

3. To actively encourage the protection and preservation of ancient sites. The IADAA subscribes to the view put forward in the Preamble to the Hague Convention of the 14th May 1954 (249 U.N.T.S. 240) that “Damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.” The IADAA believes that a more liberal and rational approach to regulations on the import and export of works of art will help to protect world cultural heritage.

4. To organize mutual assistance between dealers in works of ancient art and official Institutions, by communicating to members of the IADAA all information needed to apply strictly to the code of ethics and practice.

5. To foster friendly relations between the members of the Association.

## II. STATEMENT OF *AMICI CURIAE*'S INTEREST IN CASE

This case presents an important question of first-impression under the Cultural Property Implementation Act (“CPIA”): whether the State Department has the initial burden of limiting import restrictions granted to a particular foreign nation under the CPIA to categories of “archaeological materials” “first discovered” in that nation or whether the CPIA permits the State Department to avoid making a “first discovery” analysis and shift to the importer of an unprovenanced object the burden of determining whether and when that object was exported from that nation in order to avoid seizure and forfeiture of the object under the CPIA.

Under the District Court’s holding, the government would be empowered to promulgate significantly overlapping import restrictions for multiple foreign nations and require importers, Customs agents, and competing foreign claimants to sort it out. For example, the “Memorandum of Understanding” between the United States and Italy could restrict import of Roman-style objects ordinarily first-discovered in Tunisia, Britain, Greece, Germany, or elsewhere, regardless of the facts and circumstances prevalent in those other countries. For the reasons stated below, *amici* believe that this result would violate the requirements of the CPIA and frustrate its purposes.

The ACCP and the IADAA believe that the outcome of this appeal has broad implications for all importers of archeological and ethnological materi-

als, including collectors, dealers, auction houses, museums, scholars, connoisseurs, and the general public, regardless whether their field of interest is in Graeco-Roman, Egyptian, Near Eastern, Asian, African, Tribal, or other materials.

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

The proposed *amicus* brief addresses the practical effect of a point addressed in Part D of the argument section of Appellant’s opening brief (pages 21 to 29). Appellant’s brief addresses why the District Court’s interpretation of the CPIA’s “first discovered” requirement violates canons of statutory construction and raises constitutional concerns. The CPIA places the burden on the *government* to determine whether the statute’s “first discovered” requirement is satisfied. The proposed *amicus* brief approaches the “first discovered” issue from a practical standpoint and explains why the District Court’s holding goes far beyond the CPIA’s intended scope and renders importation of artifacts with unknown “find spots” virtually impossible by—contrary to the statute’s requirements—requiring the importer to prove that the artifacts were not “first discovered” in a country from which importation is restricted.

The proposed *amicus* brief will assist the Court in understanding how the CPIA is intended to work and why the District Court’s holding would

frustrate Congress's intent in enacting the CPIA. This matter is relevant to the disposition of this case because affirmance of the District Court's order that is the subject of this appeal would have the practical effect of expanding the CPIA's scope far beyond what Congress intended, what the United Nations treaty implemented by the CPIA requires, and what is necessary or practical.

Distilled to its essence, the 1970 U.N. convention implemented by the CPIA contemplates that governments will enter into memoranda of understanding to help enforce each other's export controls on archaeological and ethnological artifacts. The U.S. ratification of that convention was subject to a reservation intended to preserve this country's "independent judgment" regarding "the need and scope of import controls." The CPIA therefore requires that countries asking the U.S. to impose import controls on cultural property make a threshold showing of circumstances requiring the controls, as described in Appellant's brief, and the statute further requires that the import controls be narrowly-constructed to apply only to the precise material found to be in danger of pillage.

The proposed *amicus* brief explains why the District Court's ruling upends the statutory scheme by allowing the U.S. government simply to presume that any artifact that *might* be capable of being "first discovered" in a country subject to import restrictions *was* "first discovered" in that country

unless the importer can prove otherwise. Moreover, such a presumption then allows the U.S. government to restrict importation even if the conditions allowing for import restrictions from one country have no application in another. Objects such as coins, for example, are inherently portable, and coins originating in one country are routinely found in other countries not subject to import restrictions. The proposed *amicus* brief explains why the burden of establishing that imported coins and other archaeological materials are “first discovered” in the country subject to import restrictions should fall on the government, and not on the importer.

### CONCLUSION

For the foregoing reasons, proposed *amici curiae* American Committee for Cultural Policy and International Association of Dealers in Ancient Art respectfully request that the Court grant them leave to file an *amicus* brief in support of Appellant.

DATED: November 7, 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* American Committee for Cultural Policy states as follows:

1. The American Committee for Cultural Policy is a newly-formed Delaware not-for-profit corporation and is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

2. The American Committee for Cultural Policy has no parent corporation, and no publicly-held corporation owns 10 percent or more of the Committee's stock.

3. The American Committee for Cultural Policy 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 American Committee for Cultural Policy 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* International Association of Dealers in Ancient Art states as follows:

5. The International Association of Dealers in Ancient Art is not a corporation and does not issue shares of stock to the public.

6. The International Association of Dealers in Ancient Art has no parent corporation, and no publicly-held corporation owns 10 percent or more of the Association's stock.

7. The International Association of Dealers in Ancient Art 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 International Association of Dealers in Ancient Art is a trade association of dealers in works of ancient art. The Association 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 SERVICE

I hereby certify that on the 7<sup>th</sup> day of November, 2011, I electronically filed the foregoing motion for leave to file *amicus curiae* brief. The Court's CM/ECF system will send notice of such filing to the following registered CM/ECF users:

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