
No. 12-1398

**IN THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT**

AMERICAN PETROLEUM INSTITUTE, *et al.*,

Petitioners,

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,

Respondent,

and

OXFAM AMERICA,

Intervenor-Respondent.

**MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE,
LEAVE TO FILE A SEPARATE *AMICUS CURIAE* BRIEF IN
SUPPORT OF RESPONDENT**

In accordance with D.C. Circuit Rules 29(b) and (d), on December 19, 2012, United States Senators Benjamin Cardin and Richard Lugar filed a notice of their intent to file a separate *amicus curiae* brief. Senators Cardin and Lugar now respectfully

submit this motion for clarification or, in the alternative, leave to file a separate *amicus curiae* brief of up to 7,000 words in length.¹

BACKGROUND

Senators Cardin and Lugar filed a notice of intent to file an *amicus curiae* brief in support of the Respondent on December 19, 2012. On January 9, 2013, Senator Lugar filed a Notice of Intent to Join as a Signatory to an *Amicus Curiae* Brief as a Private Citizen. On January 8, 2013, *amicus* U.S. Representative Edward Markey filed a Motion for Clarification, or, in the Alternative, Leave to File a Separate *Amicus Curiae* Brief in Support of the Respondent. In his Motion, Representative Markey sets out the remainder of the relevant background.

DISCUSSION

The Motion filed by Representative Markey sets forth in detail arguments related to the issue of the potential ambiguity of the Court's scheduling order and to the long history of Members of Congress filing separate *amicus curiae* briefs in this Court as "governmental entities". Senators Cardin and Lugar hereby adopt Representative Markey's arguments on these points.

In addition, as co-authors of the law at issue, the "Cardin-Lugar Amendment," Senators Cardin and Lugar have a distinct interest in its correct construction, as well as unique insight into its legislative history, including the consistency of the issuance of the Securities and Exchange Commission final rule with the substance and intent of the so-

¹ Respondent consents to the filing of a brief of up to 7,000 words. Petitioner objects to Senators Cardin and Lugar filings a brief separate from other *amici*.

called “Cardin-Lugar Amendment”. The path that this law took through the Senate makes it impractical for Senators Cardin and Lugar to combine with other *amici*.

CONCLUSION

For the foregoing reasons, Senators Cardin and Lugar respectfully request that this Court enter an order authorizing them and any additional signatories from the Senate to file an independent and separate *amicus* brief in support of the Respondent, of up to 7,000 words in length.

Dated: January 9, 2013

Respectfully Submitted,

/s/ Eric L. Lewis

Eric L. Lewis
Bar Number 39627
Lewis Baach PLLC
1899 Pennsylvania Avenue, NW
Suite 600
Washington, D.C. 20009
Tel.: (202) 833-8900
eric.lewis@lewisbaach.com
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on this day I caused a true copy of the above document to be filed through the CM/ECF system and sent electronically to the registered participants as identified on the NEF and paper copies will be sent to those indicated as non-registered participants on the date indicated below.

Date: January 9, 2013

/s/ Eric L. Lewis