

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA
DEPARTMENT OF REVENUE, et al.,

Petitioners,

Case No. SC15-1249
L.T. Nos. 1D13-5444,
1D14-0292

v.

DIRECTV, INC., et al.,

Respondents.

**UNOPPOSED MOTION FOR LEAVE TO FILE AMICUS BRIEF
IN SUPPORT OF RESPONDENTS**

Pursuant to Florida Rule of Appellate Procedure 9.370(d), Satellite Broadcasting and Communications Association (“Amicus”), respectfully move this Court for the entry of an order permitting them to appear as Amicus Curiae in support of the Respondents’ position, and as grounds therefore, states as follows:

1. This case is before this Court for discretionary review of a question certified to be of great public importance by the First District Court of Appeal regarding whether Florida’s differential taxation of satellite and cable television providers violates the Commerce Clause of the United States Constitution.

2. **Interest of Amicus Curiae:** The Amicus is the Satellite Broadcasting & Communications Association (“SBCA”). SBCA is the national trade organization representing the consumer satellite industry. Its goal is to ensure fair and reasonable access to satellite services and to improve the long-term growth and

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sustainability of its over 650 members, such as satellite service providers (including Respondents here), satellite equipment manufacturers, distributors, retailers, and national and regional distribution companies and technicians. The SBCA is committed to expanding consumer use of satellite technology for the delivery of video, audio, data, music, voice, interactive, and broadband services.

The interest of SBCA in this lawsuit is straightforward: the success of member businesses is inextricably linked to consumer demand for satellite TV service, which itself is frequently linked to the monthly cost to the consumer for his or her television programming. In 2000, the Florida Legislature, in response to lobbying from the cable industry, replaced what was once an evenhanded tax of 6% on all pay-TV subscribers under section 212.05, Florida Statutes, with section 202.11(4), Florida Statutes, which provides for a differential tax scheme based on where a pay-TV provider locates the infrastructure it uses to package TV signals into programming and then distribute such programming. *See id.* (“Communications Services Tax” or “CST”). Under the new law, pay-TV services are subject to a 10.8% sales tax if they arrive “by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process of the satellite.” *Id.* (incorporating 47 U.S.C. § 303(v)). If they are delivered through ground-receiving and distribution equipment, the tax is only 6.8%. As a result,

residents of Florida who choose satellite are subjected to a significantly higher tax than residents who choose cable.

3. **Issues Amicus Curiae Will Address:** The Amicus will support the position of Respondents DIRECTV, Inc. and DISH Network and will address how satellite and cable television providers are similarly situated for Commerce Clause purposes yet are taxed differently. The brief will explain in detail the services provided by and regulatory burdens faced by satellite and cable providers in order to demonstrate that they are similarly situated. It will also explain the taxes imposed on each of these providers in Florida and explain why the tax imposed on satellite providers is discriminatory.

4. **How Amicus Curiae Can Assist the Court:** The Amicus can assist the Court in understanding the impact its decision in this case will have beyond the parties. Florida's tax scheme has caused significant problems not just for Respondents, but also for other SBCA members—businesses that do not directly provide satellite TV programming to consumers, but are responsible for marketing, installing, and servicing the equipment needed to receive satellite programming. The incentive created by Florida's Communications Services Tax has altered the competitive balance in Florida's pay-TV market, disfavoring SBCA's membership as well as Respondents. Amicus has particular knowledge from its members on the chilling effect of Florida's differential sales tax, which raises the comparative costs

of satellite programming and thus negatively impacts their businesses.

5. Counsel for the Amicus has conferred with Allen Winsor, Esq., Rachel Nordby, Esq., and J. Clifton Cox, Esq., counsel for Petitioner Fla. Department of Revenue, Amelia Rudolph, Esq., counsel for Petitioner Florida Cable Telecommunications Association, and with Katherine Giddings, Esq., counsel for Respondents, and is authorized to represent that all parties consent to the relief requested in this motion.

WHEREFORE, the Court should grant Southeastern Broadcasting and Communications Association leave to appear as amicus curiae and file a brief in support of Respondents.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to the following attorneys on November 17, 2015:

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