

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

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SUPREME  
DISTRICT OF  
COLUMBIA  
TAX

THE HERITAGE FOUNDATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 5491-93
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Respondent.	)	

MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I.

Introduction

The issue before the Court in this action is whether THE HERITAGE FOUNDATION uses its real property, located at 214 Massachusetts Avenue, N.E., for "purposes of public charity principally in the District" and, to the extent it is used for such purposes, whether the property is exempt from District of Columbia real property taxes under D.C. Code Section 47-1002(8). This is the second time this exact issue has been before the Court. On April 19, 1993, the Court entered an order determining that the Foundation used the Massachusetts Avenue property "for purposes of public charity principally in the District" and, that to the extent it was used for such purposes, the property was exempt from District of Columbia real property taxes under D.C. Code Section 47-1002(8) for fiscal years 1990 through 1993. (The Heritage Foundation v. District of Columbia, Consolidated Docket Nos. 4432-

90, 4691-91, 5041-92 and 5501-92.)<sup>1</sup>

Following entry of the Court's April 19, 1993 order, the Foundation filed a fiscal year 1994 application for recognition of real estate tax exemption for the Massachusetts Avenue property with respondent DISTRICT OF COLUMBIA (hereinafter sometimes referred to as the "District"). Consistent with the Court's April 19, 1993 ruling, the Foundation asserted that the property was exempt from District of Columbia real property taxes under D.C. Code Section 47-1002(8) since it is used for "purposes of public charity principally in the District." The District denied the Foundation's application.

On September 17, 1993, the Foundation filed its Petition herein seeking a determination that it uses the Massachusetts Avenue property for "purposes of public charity principally in the District of Columbia" and, to the extent the property is used for such purposes, it is exempt from fiscal year 1994 District of

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<sup>1</sup> On July 1, 1993, the Court issued a corrective order reaffirming its entry of summary judgment in THE HERITAGE FOUNDATION's favor and its finding that the Foundation uses the Massachusetts Avenue property for purposes of public charity "principally" in the District. As discussed herein, respondent DISTRICT OF COLUMBIA appealed the Court's July 1, 1993 order to the District of Columbia Court of Appeals. (D.C. Court of Appeals Docket No. 93-TX-1029.) By its appeal, the District is contending that the Court erred when it found that the Foundation uses the Massachusetts Avenue property for "purposes of public charity principally in the District." On February 9, 1994, THE HERITAGE FOUNDATION filed a Motion for Summary Affirmance of the Court's July 1, 1993 order with the Court of Appeals. As grounds therefor, the Foundation asserted that no basis for the appeal exists since the District admitted in the underlying consolidated action that the Foundation's property was used for "purposes of public charity principally in the District".

Columbia real property taxes pursuant to D.C. Code Section 47-1002(8).<sup>2</sup> To date, the DISTRICT OF COLUMBIA has failed to file an answer to THE HERITAGE FOUNDATION's Petition.<sup>3</sup>

By this motion, the Foundation is seeking entry of summary judgment in its favor pursuant to Superior Court Rule 56. As discussed herein, under the doctrine of collateral estoppel, the Court's April 19, 1993 and July 1, 1993 determinations conclusively establish the issues in this matter and preclude their relitigation. Alternatively, summary judgment is appropriate since there are no material facts in issue and it is clear that THE HERITAGE FOUNDATION is entitled to judgment on its claim as a matter of law.

## II.

### Summary Statement of Undisputed Facts

Appellee THE HERITAGE FOUNDATION (hereinafter sometimes referred to as the "Foundation") was incorporated as a District of Columbia nonprofit corporation on February 16, 1973. (MF No. 14.)<sup>4</sup> The Foundation is organized and operated exclusively for charitable and educational purposes under the District of Columbia Nonprofit

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<sup>2</sup> THE HERITAGE FOUNDATION leases space in the Massachusetts Avenue property to for-profit and nonprofit groups and does not contend that the leased portion of its property is exempt from D.C. real property taxes.

<sup>3</sup> Pursuant to Tax Division Rule 7(a), the District's Answer was due on or before November 1, 1993.

<sup>4</sup> "MF" refers to the material facts set forth in THE HERITAGE FOUNDATION's Statement of Undisputed Material Facts filed in support of this Motion.

Corporations Act. (MF No. 15.) No part of THE HERITAGE FOUNDATION's net earnings inure to the benefit of its officers, directors or any private person. (MF No. 16.)

In 1973, the Internal Revenue Service recognized, and continues to recognize, THE HERITAGE FOUNDATION as an organization exempt from Federal income, estate and gift taxes under Internal Revenue Code Section ("IRC") 501(c)(3) and as a "public charity" under IRC 509(a). (MF No. 17.) The DISTRICT OF COLUMBIA recognizes THE HERITAGE FOUNDATION as exempt from District of Columbia personal property taxes, sales and use taxes and franchise and income taxes. (MF No. 18.)

In 1988, THE HERITAGE FOUNDATION acquired sole title to the real property (building and grounds) of Lot 849 in Square 755, located at 214 Massachusetts Avenue, N.E., Washington, D.C. (hereinafter referred to as the "Massachusetts Avenue property".) (MF Nos. 20-22.) Since 1983, the Massachusetts Avenue property has been the location of the Foundation's sole office and virtually all of its charitable activities are initiated, funded, administered, conducted and carried out from this property.<sup>5</sup> (MF No. 24.) The Foundation uses the Massachusetts Avenue property to house its

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<sup>5</sup> Although the Foundation relocated to the Massachusetts Avenue property in 1983, it did not acquire sole title to the property until 1988. (MF Nos. 20-22.) Prior to moving to the Massachusetts Avenue property, the Foundation's sole office was housed in its property located at 513 C Street, N.E. (Lot 808 in Square 838.) In 1979, the District granted the Foundation an exemption from District of Columbia real property taxes for the C Street property. This exemption continued until the Foundation moved its offices to the Massachusetts Avenue property. (MF No. 19.)

headquarters and staff; operate a library and newspaper morgue; host public policy working groups, lectures and seminars; conduct a summer intern program; and, prepare and distribute educational publications, books, periodicals, and monographs. (MF Nos. 28 - 33.) Specifically:

a) THE HERITAGE FOUNDATION sponsors more than 100 forums, lectures, seminars and similar public meetings annually at the Massachusetts Avenue property, substantially all of which are open to the public. Historically, more than half of the invitees and attendees of these forums reside or work in the District. (MF No. 29.)

b) THE HERITAGE FOUNDATION provides expert witnesses who testify before Congressional Committees holding hearings in the District of Columbia on public policy issues ranging from the environment, prison reform, health care reform and defense issues to social security, family issues, education reform, problems of the urban areas and welfare reform. Foundation analysts, who work at the Massachusetts Avenue property, routinely meet with Federal government policy makers to discuss various public policy issues such as homelessness, welfare reform, minority entrepreneurship and empowerment and public housing. (MF No. 30.)

c) THE HERITAGE FOUNDATION publishes a number of educational publications, the majority of which are researched, written and published at the Massachusetts Avenue property. These publications contain text regarding issues of Federal public policy concerns and are distributed, in large measure free, to persons who

work and/or live in the District. (MF No. 32.)

d) All of THE HERITAGE FOUNDATION's employees and volunteers work at the Massachusetts Avenue property. (MF No. 25.)

e) THE HERITAGE FOUNDATION sponsors public policy working groups which hold regular meetings at the Massachusetts Avenue property. Substantially all of the participants in these working groups work or reside within the District of Columbia. (MF No. 33.)

f) THE HERITAGE FOUNDATION sponsors an annual summer intern program for young people who come to the District of Columbia to live and learn about the workings of government. During the academic year, the Foundation also employs student interns from universities located in the District, including Georgetown, George Washington University, The American University and Catholic University. (MF No. 31.)

After acquiring sole title to the Massachusetts Avenue property, THE HERITAGE FOUNDATION timely filed complete applications for recognition of real estate tax exemption with the D.C. Department of Finance and Revenue for the tax years ending June 30, 1990, 1991, 1992 and 1993. The Foundation filed these applications pursuant to D.C. Code Section 47-1002(8) which provides that property used for "purposes of public charity principally in the District" is exempt from D.C. real property taxes. (MF No. 1.)

Respondent denied the Foundation's applications and issued real property tax bills for the Massachusetts Avenue

property for fiscal years 1990 - 1993. (MF No. 3.) Following the District's denial of its applications, THE HERITAGE FOUNDATION filed petitions in this Court for a determination that the Massachusetts Avenue property was exempt from D.C. real property taxes pursuant to D.C. Code Section 47-1002(8). (The Heritage Foundation v. District of Columbia, Docket No. 4432-90 (Fiscal year 1990); The Heritage Foundation v. District of Columbia, Docket No. 4691-91 (Fiscal year 1991); The Heritage Foundation v. District of Columbia, Docket No. 5041-92 (Fiscal year 1992); The Heritage Foundation v. District of Columbia, Docket No. 5501-92 (Fiscal year 1993).) (MF No. 4.) On May 18, 1992, THE HERITAGE FOUNDATION's actions against the District were consolidated. (MF No. 5.)

On April 19, 1993, this Court entered summary judgment in THE HERITAGE FOUNDATION's favor in the consolidated action. In entering judgment on the merits in favor of the Foundation, the Court held that the Massachusetts Avenue property was used for "purposes of public charity principally in the District" and was exempt from District of Columbia real property taxes under D.C. Code § 47-1002(8). The Court's order was based upon its findings that the "principal impact" of THE HERITAGE FOUNDATION's charitable activities is within the District of Columbia and that the District granted real property exemptions to organizations with activities identical to those of the Foundation. (MF No. 7.) In its order, the Court ordered the District to refund any real property tax overpayments made by the Foundation during the fiscal years at issue. (MF No. 8.)

On July 1, 1993, at the request of the District of Columbia, the Court issued a corrective order re-affirming its entry of summary judgment in THE HERITAGE FOUNDATION's favor and its finding that the Massachusetts Avenue property was used by the Foundation for "purposes of public charity principally in the District." (MF No. 7.) The Court's April 19, 1993 order and July 1, 1993 corrective order were final determinations on the merits. (MF No. 11.)

On July 31, 1993, the DISTRICT OF COLUMBIA appealed the Court's July 1, 1993 order to the District of Columbia Court of Appeals. (MF No. 12.) This appeal is pending in the Court of Appeals. (MF No. 12.) (See also, footnote 1, infra.)

On June 3, 1993, THE HERITAGE FOUNDATION timely filed a complete fiscal year 1994 application for recognition of exemption from District of Columbia real property taxes for the Massachusetts Avenue property with respondent. (MF No. 40.) As with its previous applications, the Foundation requested exemption on the ground that it uses its property for "purposes of public charity principally in the District." (MF No. 41.) In or about August, 1993, respondent issued a fiscal year 1994 real property tax bill for the Massachusetts Avenue property in the amount of \$206,765.50 to the Foundation, the first half of said bill was claimed to be due on or before September 15, 1993. (MF No. 43.) Issuance of this tax bill constitutes a denial of the Foundation's fiscal year 1994 application.

THE HERITAGE FOUNDATION's charitable activities and use

of its property are substantially the same today as they were in the years 1980 through 1983 and 1990 through 1993. (MF No. 45.)

On or about September 17, 1993, THE HERITAGE FOUNDATION filed its Petition herein. By its Petition, the Foundation is seeking a determination that the Massachusetts Avenue property is used for "purposes of public charity principally in the District" and, to the extent that it is used for such purposes, is exempt from fiscal year 1994 District of Columbia real property taxes pursuant to D.C. Code Section 47-1002(8). The DISTRICT OF COLUMBIA has failed to file a response to the Foundation's Petition.

### III.

#### THE HERITAGE FOUNDATION IS ENTITLED TO ENTRY OF SUMMARY

#### JUDGMENT

District of Columbia Superior Court Rule of Civil Procedure 56 provides in pertinent part:

"A party seeking to recover upon a claim, . . . may . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof."

Summary judgment is appropriate when there are no material issues of fact and the moving party is entitled to judgment as a matter of law. Lamphier v. Washington Hosp. Ctr., 524 A.2d 729 (D.C. App. 1987); Swann v. Waldman, 465 A.2d 844 (D.C. App. 1983), appeal after remand, 544 A.2d 683 (D.C. App. 1988); Maddox v. Bano, 422 A.2d 763 (D.C. App. 1980). As discussed below, under the doctrine of collateral estoppel, the Court's April 19,

1993 order and July 1, 1993 corrective order holding that THE HERITAGE FOUNDATION uses the Massachusetts Avenue property for "purposes of public charity" preclude relitigation of the issues involved in this matter and the Foundation is entitled to summary judgment as a matter of law. Alternatively, THE HERITAGE FOUNDATION is entitled to summary judgment since there are no material facts in issue and the Foundation is entitled to judgment on its claims as a matter of law.

V.

THE DOCTRINE OF COLLATERAL ESTOPPEL PRECLUDES RELITIGATION  
OF THE ISSUES INVOLVED IN THIS ACTION

Under the related doctrines of res judicata and collateral estoppel, when an issue of ultimate fact has been determined by a valid judgment, that issue can not be again litigated between the same parties in future litigation. Semler v. Psychiatric Institute of Washington, 188 U.S. App. D.C. 41, 575 F.2d 922 (1978). To preclude future relitigation of an issue, there must be: 1) a prior judgment rendered by a court of competent jurisdiction; 2) the prior judgment must be final and on the merits; and, 3) the same claims and parties are involved in both cases. Lane v. Peterson, 899 F.2d 737 (8th Cir. 1990), cert. denied, 111 S. Ct. 74 (1990); Peck v. CIR, 904 F.2d 525 (9th Cir. 1990); Semler, supra.

It is well-settled that a final trial court judgment bars relitigation of identical claims in a second case, even though an appeal from the first case has been taken and is pending. Wagner

v. Taylor, 266 U.S. App. D.C. 432, 836 F.2d 596 (1987); Martin v. Malhojt, 265 U.S. App. D.C. 89, 830 F.2d 237 (1987); Robi v. Five Platters, Inc., 838 F.2d 318 (9th Cir. 1988), appeal after remand, 918 F.2d 1439 (1990); see also, Blinder Robinson & Co., Inc. v. S.E.C., 267 U.S. App. D.C. 96, 837 F.2d 1099, n. 6 (1988), cert. denied, 109 S. Ct. 1172 (1989). A final trial court judgment retains all of its preclusive effect pending appeal. Erebia v. Chrysler Plastic Products Corp., 891 F.2d 1212 (6th Cir. 1989).

Since this Court's April 19, 1993 determination in the consolidated action was a final judgment on the merits and involved the identical facts, issues and parties present here, that determination is binding and conclusive and precludes relitigation of the issues involved in this case. The Court's judgment is final for collateral estoppel purposes, notwithstanding the District's pending appeal. Accordingly, as a matter of law, summary judgment should be entered in THE HERITAGE FOUNDATION's favor.

Alternatively, as discussed below, if the Court holds that its prior order does not preclude relitigation of the issues herein, the Foundation is entitled to summary judgment since there are no material facts at issue in this case and it is entitled to judgment as a matter of law.

VI.

THE HERITAGE FOUNDATION IS ENTITLED TO A REAL PROPERTY TAX  
EXEMPTION FOR THE MASSACHUSETTS AVENUE PROPERTY PURSUANT  
TO D.C. CODE SECTION 47-1002(8)

D.C. Code Section 47-1002(8) provides in pertinent part:

"The real property exempt from taxation in the District of Columbia shall be the following and none other:

\* \* \*

(8) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia."

It is undisputed that THE HERITAGE FOUNDATION is not operated for private gain and uses the Massachusetts Avenue property for "purposes of public charity". The only dispute between the parties is whether THE HERITAGE FOUNDATION uses the Massachusetts Avenue property for purposes of public charity "principally in the District of Columbia". As discussed below, under Court decisions interpreting the scope of D.C. Code Section 47-1002(8) and the District's own standards in recognizing property as exempt under this section, it is clear that the Foundation uses its property for charitable purposes "principally" in the District.

VII.

THE MASSACHUSETTS AVENUE PROPERTY IS USED FOR "PURPOSES OF PUBLIC CHARITY PRINCIPALLY IN THE DISTRICT OF COLUMBIA".

Under D.C. Code Section 47-1002(8), only organizations that use their property for charitable purposes "principally" in the District are entitled to exemption from D.C. real property taxes. Congress inserted this boundary requirement into the statute in 1942 to clarify the requirement that, to qualify for the exemption, the charitable impact of an organization's activities must be principally in the District, even though "some of the activities and benefactions of organizations devoted to public charity, must, of necessity, reach beyond the confines of the District of Columbia." H.R. Rep. No. 2635, 77th Cong., 2d Sess. 2 (1942); S. Rep. No. 1634, 77th Cong., 2d Sess. 3 (1942).

In National Medical Ass'n, Inc. v. District of Columbia, 611 A.2d 53 (D.C. App. 1992) ("NMA"), the Court of Appeals held that "the exemption provided in § 47-1002(8) is limited to those buildings owned and operated by charitable institutions and used for purposes of public charity having its principal impact within the District of Columbia." 611 A.2d at 55 (emphasis added).

Interpreting the legislative history of the statute, the NMA Court further concluded,

"[I]t is apparent that "principally" was specifically inserted to address the question of the geographic target and distribution of an institution's charitable activities located

in a given building, and not the proportion of a building's use devoted to charity as opposed to noncharitable or other activities, . . ."

611 A.2d at 56 (emphasis added).<sup>6</sup>

A. The "Principal Impact" of The Heritage Foundation's Charitable Activities Is Within The District of Columbia

THE HERITAGE FOUNDATION's charitable activities have their "principal impact" within the District of Columbia. The Foundation is located in the District of Columbia because it is the seat of the Federal government. Located blocks from the U.S. Capitol, THE HERITAGE FOUNDATION is readily accessible to Members of Congress, the Executive Branch and other policy makers in need of rigorous analyses or discussion of public policy issues. The Foundation's central purpose as a "public policy institute" is to educate policy makers about, and stimulate debate regarding, matters of national public policy. To that end, the Foundation prepares an array of publications and hosts seminars, conferences and discussion groups on diverse public policy issues affecting the United States and, a fortiori, the District of Columbia.

As discussed below, the principal targets of the

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<sup>6</sup> Prior to the NMA decision, this Court consistently held that organizations whose charitable activities have their principal locus, impact and target in the District of Columbia are entitled to the real property tax exemption under Section 47-1002(8). See, Carostead Foundation v. District of Columbia, Superior Court Tax No. 3853-86 (unpublished opinion filed April 17, 1990); Center for Community Change v. District of Columbia, Super.Ct. No. 3695-85 (opinion filed October 3, 1986); American Friends Service Comm. v. District of Columbia, Super.Ct. No. 1719-20 (opinion issued April 20, 1961).

Foundation's charitable activities are agents, officials and employees of the Federal government located in the District. (MF No. 36.) Other targets include persons working in the District of Columbia for the media and other public policy persons and organizations in the District who may have an impact on, or influence over, the Federal Government. (MF No. 37.) The Foundation's activities are designed to have their "principal impact" on these people located in the District. (MF No. 39.)

1. The "Principal Impact" of The Heritage Foundation's Publications is Within the District of Columbia.

Virtually all of THE HERITAGE FOUNDATION's publications are researched, written and edited at the Massachusetts Avenue property. These educational publications, which contain text regarding issues of Federal public policy concerns, are distributed, in large measure free, to persons who work and/or live in the District. (MF No. 32.)

In calendar year 1993, the Foundation mailed or delivered more than one-third of all its educational publications to addresses within the District. The Foundation's publications are intended to impact on and influence the Members of Congress, staff of Members of Congress, Executive Branch staff or officials, diplomatic missions, members of the media and other political, business and civic leaders who work in the District. (MF No. 35.)

Since the targeted audience of THE HERITAGE FOUNDATION's

publications is principally located in the District, and the recipients receive and, most likely, read, these publications in the District, it is clear that their "principal impact" is within the District of Columbia.

2. The "Principal Impact" of The Heritage Foundation's Seminars is Within the District of Columbia.

THE HERITAGE FOUNDATION sponsors over 100 forums, lectures, seminars and similar public meetings at the Massachusetts Avenue property annually. Substantially all these meetings are open to the public. Historically, more than one-half of the forums' invitees or attendees work or reside in the District. Speakers and panelists at these meetings often include Members of Congress, staffs of Members of Congress and other governmental and civic leaders who work and/or live in the District. (MF No. 29.)

Since THE HERITAGE FOUNDATION's seminars are held in the District, directed at persons who work and/or live in the District, led by persons who work and/or live in the District and attended by persons who work and/or live in the District, it is clear that their "principal impact" is within the District of Columbia.

3. The "Principal Impact" of THE HERITAGE FOUNDATION's Expert Witnesses is Within the District of Columbia.

As discussed above, HERITAGE FOUNDATION employees often testify as expert witnesses before Congressional Committees on Capitol Hill. (MF No. 30.) These witnesses are invited by our

Nation's lawmakers to testify before Congress on a broad range of public policy issues. Expert testimony is provided by Foundation analysts who work at the Massachusetts Avenue property. Since the testimony is prepared by employees who work at the Massachusetts Avenue property, presented on Capitol Hill and directed at elected officials and other individuals who work and/or live in the District, it is clear that the "principal impact" of this activity is within the District of Columbia.

4. The "Principal Impact" of The Heritage Foundation's Internship Program Is Within the District of Columbia.

THE HERITAGE FOUNDATION sponsors an annual summer internship program bringing college students from across the country to Washington to learn about the Federal government and issues of national public policy. During the academic year, the Foundation also sponsors interns from area colleges, including Georgetown, George Washington University, The American University and Catholic University. (MF No. 31.)

HERITAGE FOUNDATION interns work at the Massachusetts Avenue property and are actively involved in the Foundation's activities. Among other things, interns assist in preparing the Foundation's publications and seminars, the principal impact of which is within the District. Foundation interns often attend seminars and briefings at the White House, on Capitol Hill and at other policy institutes in the District. Students interning at THE HERITAGE FOUNDATION gain substantial insight into the workings of

the Federal government, the relationship between the Executive and Legislative branches and issues of national public policy. (MF No. 31.)

Since the Foundation's interns work and/or live in the District, work on charitable programs the "principal impact" of which is in the District, and attend seminars and conferences in the District, it is clear that the "principal impact" of THE HERITAGE FOUNDATION's internship program is within the District of Columbia.

5. THE HERITAGE FOUNDATION's Activities Satisfy the NMA "Principal Impact" Standard.

Under the standards enunciated in NMA, it is clear that THE HERITAGE FOUNDATION uses the Massachusetts Avenue property for purposes of public charity "having its principal impact within the District of Columbia." The Foundation's publications, seminars, expert witnesses and internship program all have their "principal impact" within the District of Columbia. The primary "targets" of THE HERITAGE FOUNDATION's publications and seminars are the nation's public policy decision makers and other government employees and persons who work and/or reside in the District. The Foundation's publications are primarily distributed to these persons and all its programs, seminars and other activities are geared and designed towards influencing, and having an impact on, them. (MF Nos. 36-39.)

VIII.

THE DISTRICT HAS RECOGNIZED ORGANIZATIONS WITH  
ACTIVITIES IDENTICAL TO THOSE OF THE HERITAGE FOUNDATION  
AS EXEMPT FROM D.C. REAL PROPERTY TAXES UNDER  
D.C. CODE SECTION 47-1002(8)

Although denying THE HERITAGE FOUNDATION's exemption application on the basis that does not use its building for charitable purposes "principally in the District of Columbia", the DISTRICT OF COLUMBIA has recognized the property of other nonprofit organizations whose activities are identical to those of the Foundation, as exempt from real property taxes under D.C. Code Section 47-1002(8).

On April 11, 1986, the DISTRICT OF COLUMBIA issued a real property tax exemption under Section 47-1002(8) to the Congressional Black Caucus Foundation, Inc. for its real property located at 1004 Pennsylvania Avenue, S.E. (Lot 807 in square 972). (MF No. 46.) In issuing this tax exemption, the District found that the Black Caucus Foundation used its Pennsylvania Avenue property for charitable activities "principally in the District of Columbia". (MF No. 47.) The Black Caucus Foundation's activities included: hosting an annual fundraising dinner; sponsoring an internship program for college students; conducting public policy research; hosting seminars open to the public; and, distributing a quarterly periodical. (MF No. 48.)

Similarly, on June 10, 1986, the DISTRICT OF COLUMBIA issued a real property tax exemption under Section 47-1002(8) to

the Congressional Hispanic Caucus, Inc. for its real property located at 504 C Street, N.W. (Lot 21 in Square 837). (MF No. 49.) The Hispanic Caucus' activities, which the District concluded were conducted "principally in the District of Columbia", included, hosting an annual fundraising dinner, sponsoring an internship program for students, publishing a quarterly newsletter for national distribution and hosting lectures for its interns. (MF No. 51.)

Although THE HERITAGE FOUNDATION's activities are identical to those of the Congressional Black Caucus Foundation, Inc. and the Congressional Hispanic Caucus, Inc. (MF No. 52), the DISTRICT OF COLUMBIA denied its exemption application. By the standards the District itself established when it issued real property tax exemptions to the Congressional Caucuses, THE HERITAGE FOUNDATION is entitled to a real property tax exemption for the Massachusetts Avenue Property. The District's denial of the Foundation's application was arbitrary, capricious, and an unlawful abuse of its discretion. The District cannot ignore the standards of D.C. Code Section 47-1002(8) and selectively bestow real property tax exemptions on organizations of its own choosing.

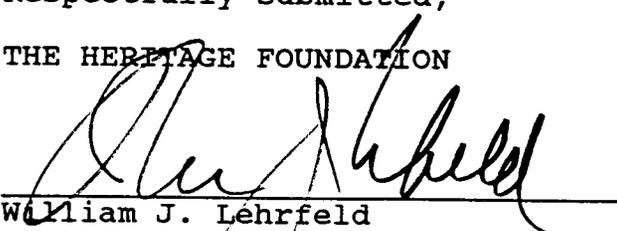
IX.

CONCLUSION

Based upon the foregoing, THE HERITAGE FOUNDATION respectfully requests that the Court enter summary judgment in its favor and against the DISTRICT OF COLUMBIA.

Respectfully submitted,

THE HERITAGE FOUNDATION



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February 11, 1994

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

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THE HERITAGE FOUNDATION,	)	
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Petitioner,	)	
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v.	)	Docket No. 5491-93
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DISTRICT OF COLUMBIA,	)	
	)	
Respondent.	)	

SUPRE  
DISTRICT  
TAX

STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Superior Court Rule of Civil Procedure 12-I(k), petitioner, THE HERITAGE FOUNDATION, files this Statement Of Undisputed Material Facts in Support Of Its Motion For Summary Judgment.

I.

Prior Litigation/Collateral Estoppel

1. THE HERITAGE FOUNDATION timely filed complete applications for exemption from D.C. real property taxes with the DISTRICT OF COLUMBIA for its real property (building and grounds) located at 214 Massachusetts Avenue, N.E. (hereinafter the "Massachusetts Avenue property") for fiscal years 1990, 1991, 1992 and 1993. (Declaration of William J. Lehrfeld ("Lehrfeld Declaration"), ¶ 2.)

2. THE HERITAGE FOUNDATION filed its exemption applications pursuant to D.C. Code Section 47-1002(8) which provides an exemption for buildings used "principally for purposes of public charity in the District of Columbia." (Lehrfeld

Declaration, ¶ 3.)

3. The DISTRICT OF COLUMBIA denied each of THE HERITAGE FOUNDATION's exemption applications. (Lehrfeld Declaration, ¶ 4.)

4. On March 29, 1990, THE HERITAGE FOUNDATION filed a Petition in this Court for a determination that the Massachusetts Avenue property was used for "purposes of public charity principally in the District of Columbia" and was exempt from fiscal year 1990 D.C. real property taxes pursuant to D.C. Code Section 47-1002(8). (The Heritage Foundation v. District of Columbia, Docket No. 4432-90.) THE HERITAGE FOUNDATION filed substantially similar Petitions with the Court seeking a similar determination for fiscal years 1991, 1992 and 1993. (The Heritage Foundation v. District of Columbia, Docket No. 4691-91; The Heritage Foundation v. District of Columbia, Docket No. 5041-92; The Heritage Foundation v. District of Columbia, Docket No. 5501-92.) (Lehrfeld Declaration, ¶ 5.)

5. On May 18, 1992, THE HERITAGE FOUNDATION's four separate actions were consolidated by the Court (hereinafter referred to as the "Consolidated Action"). (Lehrfeld Declaration, ¶ 6.)

6. On February 16, 1993, THE HERITAGE FOUNDATION filed a Motion for Summary Judgment in the Consolidated Action. By its motion, the Foundation sought a determination from the Court that it used the Massachusetts Avenue property was used for "purposes of public charity principally in the District" and, to the extent it was used for such purposes, was exempt from D.C. real property

taxes pursuant to D.C. Code Section 47-1002(8). (Lehrfeld Declaration, ¶ 7.)

7. On April 19, 1993, THE HERITAGE FOUNDATION's Motion for Summary Judgment was heard by the Court. After considering the papers and evidence filed in support of, and in opposition to, the motion and the oral arguments made by the parties, the Court entered summary judgment in favor of the Foundation. In its order granting summary judgment, the Court held that THE HERITAGE FOUNDATION used the Massachusetts Avenue property for "purposes of public charity principally in the District" and was exempt from D.C. real property taxes under D.C. Code Section 47-1002(8) for the years at issue. On July 1, 1993, at the DISTRICT OF COLUMBIA's request, the Court issued a corrective order re-affirming its entry of summary judgment in the Foundation's favor and its determination that THE HERITAGE FOUNDATION uses the Massachusetts Avenue property for purposes of public charity "principally" in the District. (Lehrfeld Declaration, ¶ 8 and Exhibit "C" thereto.)

8. In its April 19, 1993 order and July 1, 1993 corrective order, the Court directed the DISTRICT OF COLUMBIA to refund any property tax overpayments made to it by THE HERITAGE FOUNDATION. (Lehrfeld Declaration, ¶ 9 and Exhibit "C" thereto.)

9. The parties involved in the instant litigation are the same as those involved in the Consolidated Action. (Lehrfeld Declaration, ¶ 10.)

10. The issue involved in the instant litigation, namely, whether the Massachusetts Avenue property is used for

"purposes of public charity principally in the District of Columbia" and is exempt from D.C. real property taxes under D.C. Code Section 47-1002(8), is the same issue as was involved in the Consolidated Action. (Lehrfeld Declaration, ¶ 11.)

11. The Court's April 19, 1993 order and July 1, 1993 corrective order were final judgments on the merits. (Lehrfeld Declaration, ¶ 12.)

12. On July 31, 1993, the DISTRICT OF COLUMBIA appealed the Court's July 1, 1993 corrective order to the District of Columbia Court of Appeals. No determination has been made on the District's appeal and it is still pending before the D.C. Court of Appeals. (Lehrfeld Declaration, ¶ 13.)

13. THE HERITAGE FOUNDATION's use of the Massachusetts Avenue property not under lease is the same now as it was during fiscal years 1980 through 1983 and 1990 through 1993. (Pover Declaration, ¶ 38.)

## II.

### Petitioner's Nonprofit Status

14. Petitioner was incorporated as a District of Columbia nonprofit corporation on February 16, 1973. (Declaration of Peter S. Pover (hereinafter "Pover Declaration"), ¶ 4 and Exhibit "A" thereto.)

15. At all relevant times herein, Petitioner was, and is, a District of Columbia corporation organized and operated for charitable and educational purposes under the District of Columbia Nonprofit Corporation Act. (Pover Declaration, ¶ 5.)

16. Since its incorporation, no part of the Foundation's net earnings has inured to the benefit of any private individual. Private inurement is specifically prohibited in the Foundation's Articles of Incorporation. (Pover Declaration, ¶ 6.)

17. In 1973, the Internal Revenue Service recognized THE HERITAGE FOUNDATION as an organization exempt from Federal income tax as a charitable and educational organization described in 26 U.S.C. § 501(c)(3). The Internal Revenue Service ruled that contributions to the Foundation are deductible as charitable contributions for purposes of Federal income, estate and gift taxes. The Internal Revenue Service also recognized the Foundation as a "public charity" under 26 U.S.C. § 509(a). The Internal Revenue Service continues to recognize the Foundation as a public charity. (Pover Declaration, ¶ 7.)

18. THE HERITAGE FOUNDATION heretofore and today is recognized by Respondent as exempt from District of Columbia personal property taxes, sales and use taxes, and income and franchise taxes. (Pover Declaration, ¶ 8 and Exhibit "B" thereto.)

### III.

#### C Street Exemption

19. On June 28, 1979, THE HERITAGE FOUNDATION filed an application for exemption from District of Columbia Real Property Taxes for its sole offices located at 513 C Street, N.E. (Lot 808 in Square 838). Respondent granted the Foundation an exemption from real property tax for this property for tax years beginning July 1, 1979 and continuing thereafter until the Foundation moved

from the C Street property in 1983. (Pover Declaration, ¶ 11 and Exhibit "C" thereto.)

IV.

The Massachusetts Avenue Property

20. In 1983, THE HERITAGE FOUNDATION moved its sole offices to the Massachusetts Avenue property. The real property and improvements were purchased and held by a limited partnership - - 214 Mane Limited Partnership -- of which the Foundation was the sole general partner. (Pover Declaration, ¶ 12.)

21. Effective December 15, 1988, THE HERITAGE FOUNDATION as sole general and limited partner of the Partnership, and the Foundation on its own behalf, executed a document entitled "Articles of Merger". These Articles provided that the Partnership ceased to exist as of December 15, 1988; that the Foundation constituted the surviving entity into which the Partnership merged as a matter of law; and that the Partnership's property and other assets devolved upon the Foundation as a matter of law. These Articles of Merger were filed with the District of Columbia Department of Consumer and Regulatory Affairs Partnership Division. (Pover Declaration, ¶ 13.)

22. On December 20, 1988, THE HERITAGE FOUNDATION, acting on behalf of the Partnership, caused to be filed with the Recorder of Deeds, a deed which confirmed that all ownership and title to the property located at 214 Massachusetts Ave., N.E. had devolved upon it by operation of law. (Pover Declaration, ¶ 14.)

Charitable Activities at the Massachusetts Avenue Property

23. The Massachusetts Avenue property not under lease is used for purposes of public charity. (Pover Declaration, ¶ 15.)

24. Virtually all of THE HERITAGE FOUNDATION'S charitable activities are initiated, funded, administered, conducted and carried out at the Massachusetts Avenue property. The Foundation uses the Massachusetts Avenue property to house its headquarters and staff, operate a library and newspaper morgue, host public policy working groups, lectures and seminars, conduct a summer internship program and write, publish and distribute educational publications. (Pover Declaration, ¶ 16.)

25. All of the Foundation's employees and volunteers work at the Massachusetts Avenue property. (Pover Declaration, ¶ 17.)

26. THE HERITAGE FOUNDATION'S operations are conducted principally within the District of Columbia and exclusively at the Massachusetts Avenue property. (Pover Declaration, ¶ 18.)

27. The buildings and grounds of the Massachusetts Avenue property are reasonably required and actually used by THE HERITAGE FOUNDATION to carry on its charitable activities. (Pover Declaration, ¶ 19.)

28. THE HERITAGE FOUNDATION operates a library and newspaper morgue at the Massachusetts Avenue property. The library occupies approximately 2000 square feet and contains approximately 4000 volumes on a variety of subjects including history, economics,

political science, and urban and foreign affairs. (Pover Declaration, ¶ 20.)

29. Virtually all of THE HERITAGE FOUNDATION's forums, lectures, conferences and other public programs are conducted at the Massachusetts Avenue property. THE HERITAGE FOUNDATION sponsors over 100 forums, lectures, seminars and similar public meetings at the Massachusetts Avenue property annually. Substantially all these meetings are open to the public. Historically, more than half of the forums' invitees or attendees work or reside in the District. Speakers and panelists at these meetings often include Members of Congress, staffs of Members of Congress and other governmental and civic leaders who work and/or live in the District. (Pover Declaration, ¶ 21.)

30. THE HERITAGE FOUNDATION provides expert witnesses who testify before Congressional Committees holding hearings in the District of Columbia on public policy issues ranging from the environment, prison reform, health care reform and defense issues to social security, family issues, education reform, problems of the urban areas and welfare reform. Foundation analysts, who work at the Massachusetts Avenue property, routinely meet with Federal government policy makers to discuss various public policy issues. (Pover Declaration, ¶ 22.)

31. THE HERITAGE FOUNDATION sponsors an annual summer internship program for college students. Foundation interns work at the Massachusetts Avenue property and are actively involved in preparing the Foundation's publications and seminars. Foundation

interns often attend briefings and seminars at the White House, on Capitol Hill and at other public policy institutes located in the District. The purpose of the Foundation's internship program is to give students insight into the workings of the Federal government, the relationship between the Executive and Legislative branches and issues of national public policy. During the academic year, THE HERITAGE FOUNDATION also sponsors student interns from colleges located in the District, including Georgetown, George Washington University, The American University and Catholic University. (Pover Declaration, ¶ 23.)

32. THE HERITAGE FOUNDATION researches, writes and edits a number of educational papers, books and monographs ("educational publications") at the Massachusetts Avenue property. These educational publications include "Critical Issues" monographs and the topical "Backgrounders," "Issue Bulletins," and "Talking Points" papers. Regular or periodic publications of THE HERITAGE FOUNDATION also include "Business/Education Insider", "Mexico Watch", and "Policy Review", a quarterly journal of analysis and opinion. Virtually all of these publications are written and published at the Massachusetts Avenue property. Most of the Foundation's educational publications are written by Foundation employees. These publications contain text regarding issues of Federal public policy concerns and are distributed, in large measure free, to persons who work and/or live in the District. (Pover Declaration, ¶ 24.)

33. THE HERITAGE FOUNDATION sponsors public policy

working groups which hold regular meetings at the Massachusetts Avenue property. Substantially all of the participants in these working groups work or reside within the District of Columbia. (Pover Declaration, ¶ 25.)

34. The Foundation's operations have been conducted principally within the District of Columbia and exclusively at 214 Massachusetts Ave., N.E., Washington, D.C. from 1983 to the present. All of the Foundation's employees and volunteers work at, and all of the Foundation's administrative services are conducted from, the Massachusetts Avenue property. (Pover Affidavit, ¶ 26.)

35. In calendar year 1993, the Foundation mailed or delivered more than one-third of all its educational publications to addresses within the District of Columbia. The Foundation's educational publications are intended to impact on and influence the opinions of Members of Congress, staff of Members of Congress, Executive Branch staff or officials, diplomatic missions, members of the media and other political, business and civic leaders who work in the District. (Pover Declaration, ¶ 27.)

36. The principal targets of the Foundation's publications are agents, officials and employees of the three branches of the Federal Government located in the District. (Pover Declaration, ¶ 28.)

37. Other targets of THE HERITAGE FOUNDATION'S charitable activities are persons working in the District of Columbia for the media and other public policy persons and organizations in the District, who may have an impact on, or

influence over, the Federal Government. (Pover Declaration, ¶ 29.)

38. The Foundation is located in the District of Columbia because it is the seat of the Federal Government. Location of Petitioner's sole office in the District of Columbia affords it ready access to the Congress and the Executive Branch and other policy makers in need of rigorous analyses of public policy issues. (Pover Declaration, ¶ 30.)

39. The principal impact of THE HERITAGE FOUNDATION's activities is designed to be within the District of Columbia and on people who work and/or reside in the District. (Pover Declaration, ¶ 31.)

#### VI.

##### Fiscal Year 1994 Exemption Application

40. On June 3, 1993, THE HERITAGE FOUNDATION filed a timely and complete application for recognition of real estate tax exemption for the Massachusetts Avenue property for fiscal year 1994 with the DISTRICT OF COLUMBIA (hereinafter referred to as the "application"). (Pover Declaration, ¶ 32.)

41. The application was filed pursuant to D.C. Code Section 47-1002(8) and was based on the ground that THE HERITAGE FOUNDATION uses the Massachusetts Avenue property, not under lease, for "purposes of public charity principally in the District of Columbia". (Pover Declaration, ¶ 33.)

42. Respondent timely received Petitioner's application. (Pover Declaration, ¶ 34.)

43. Sometime after August 1, 1993, Respondent issued a

real property tax bill for the Massachusetts Avenue property to Petitioner in the amount of \$206,765.50. The first half of said bill, \$103,382.75, was claimed to be due on September 15, 1993. The second half of said bill is claimed to be due on or before March 31, 1994. (Pover Declaration, ¶ 35 and Exhibit "D" thereto.)

44. No document other than respondent's tax bills has been issued by Respondent to Petitioner in response to the application. (Pover Declaration, ¶ 36.)

45. Petitioner's charitable activities and use of the Massachusetts Avenue property, not under lease, are substantially the same today as they were in the years 1980 through 1983 and 1990 through 1993. (Pover Declaration, ¶¶ 37, 38.)

#### VII.

#### Congressional Black Caucus Foundation, Inc.

46. On April 11, 1986, the District of Columbia issued a real property tax exemption under D.C. Code Section 47-1002(8) to the Congressional Black Caucus Foundation, Inc. for its real property (building and grounds) located at 1004 Pennsylvania Avenue, S.E. (Lehrfeld Declaration, ¶ 14 and Exhibit "C" thereto.)

47. In issuing said exemption to the Congressional Black Caucus Foundation, Inc., the District concluded that the Black Caucus Foundation used the Pennsylvania Avenue property for "purposes of public charity principally in the District of Columbia." (Lehrfeld Declaration, ¶ 14 and Exhibit "C" thereto.)

48. The District based its conclusion that the Black Caucus Foundation used the Pennsylvania Avenue property for

charitable purposes "principally" in the District on the fact that the Black Caucus Foundation's activities included hosting an annual fundraising dinner in the District, sponsoring an internship program for college students, conducting public policy research, hosting seminars open to the public and distributing a quarterly periodical. (Lehrfeld Declaration, ¶ 15 and Exhibit "D" thereto.)

VIII.

Congressional Hispanic Caucus, Inc.

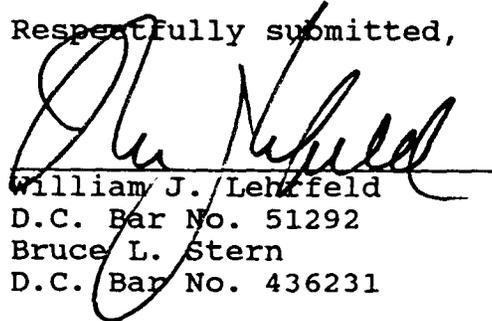
49. On June 10, 1986, the District of Columbia issued a real property tax exemption under D.C. Code Section 47-1002(8) to the Congressional Hispanic Caucus, Inc. for its real property (building and grounds) located at 504 C Street, N.W. (Lehrfeld Declaration, ¶ 16 and Exhibit "E" thereto.)

50. In issuing said exemption to the Congressional Hispanic Caucus, Inc., the District concluded that the Hispanic Caucus used the C Street property for "purposes of public charity principally in the District of Columbia." (Lehrfeld Declaration, ¶ 16 and Exhibit "E" thereto.)

51. The District based its conclusion that the Hispanic Caucus used the C Street property for charitable purposes "principally" in the District of Columbia on the fact that the Hispanic Caucus' activities included hosting an annual fundraising dinner in the District, sponsoring an internship program for graduate students, publishing a quarterly newsletter for national distribution and hosting lectures for its interns. (Lehrfeld Declaration, ¶ 17 and Exhibit "F" thereto.)

52. THE HERITAGE FOUNDATION's activities are identical to those of the Congressional Black Caucus Foundation, Inc. and Congressional Hispanic Caucus, Inc. (Lehrfeld Declaration, ¶ 19 and Exhibit "G" thereto.)

Respectfully submitted,



William J. Lehrfeld  
D.C. Bar No. 51292  
Bruce L. Stern  
D.C. Bar No. 436231

February 11, 1994

WILLIAM J. LEHRFELD, P.C.  
1250 H Street, N.W.  
Suite 740  
Washington, D.C. 20005  
(202) 659-4772

THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

THE HERITAGE FOUNDATION, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No.: 5941-93  
 )  
 DISTRICT OF COLUMBIA, )  
 )  
 Respondent. )

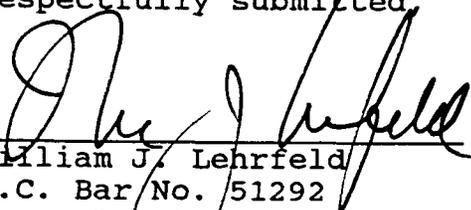
PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Pursuant to District of Columbia Superior Court Rule 56, petitioner, THE HERITAGE FOUNDATION, hereby moves this Court to enter summary judgment in its favor and against respondent DISTRICT OF COLUMBIA. As discussed in the points and authorities filed in support of this motion, entry of summary judgment is appropriate since relitigation of the issues involved in this matter is barred by the doctrine of collateral estoppel. Alternatively, summary judgment is appropriate since there are no material facts in dispute and THE HERITAGE FOUNDATION is entitled to judgment as a matter of law.

In entering summary judgment in its favor, THE HERITAGE FOUNDATION respectfully requests that the Court enter an order determining that it uses its real property (building and grounds), located at 214 Massachusetts Avenue, N.E., for "purposes of public charity principally in the District of Columbia" and, to the extent that it is used for such purposes, is exempt from District of Columbia real property taxes pursuant to D.C. Code Section 47-1002(8).

This motion will be based upon the Memorandum of Points and Authorities in Support of Motion for Summary Judgment; Petitioner's Statement of Undisputed Facts; the Declarations of Peter S. Pover and William J. Lehrfeld; Petitioner's Request for Judicial Notice; and, upon such other oral and documentary evidence as may be received at the hearing on this matter.

Respectfully submitted,



William J. Lehrfeld  
D.C. Bar No. 51292  
Bruce L. Stern  
D.C. Bar No. 436231

February 11, 1994

WILLIAM J. LEHRFELD, P.C.  
1250 H Street, N.W.  
Suite 740  
Washington, D.C. 20005  
(202) 659-4772

FILED

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

FEB 14 9 10 AM '94

THE HERITAGE FOUNDATION,	)	
	)	SUPERIOR
	)	DISTRICT
Petitioner,	)	TAX
	)	
v.	)	Docket No. 5491-93
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Respondent.	)	

DECLARATION OF WILLIAM J. LEHRFELD

I, WILLIAM J. LEHRFELD, declare and state as follows:

1. This declaration is filed in support of petitioner THE HERITAGE FOUNDATION's Motion for Summary Judgment. I am over the age of eighteen and have personal knowledge of the facts stated herein. If called upon as a witness, I would and could competently testify hereto. I am General Counsel for THE HERITAGE FOUNDATION and represent the Foundation in the instant action and the litigation described below.

2. THE HERITAGE FOUNDATION timely filed complete applications for exemption from D.C. real property taxes with the DISTRICT OF COLUMBIA for its real property (building and grounds) located at 214 Massachusetts Avenue, N.E. (hereinafter the "Massachusetts Avenue property") for fiscal years 1990, 1991, 1992 and 1993.

3. THE HERITAGE FOUNDATION filed the exemption applications described above pursuant to D.C. Code Section 47-1002(8) which provides an exemption from real property taxes for

buildings used "principally for purposes of public charity in the District of Columbia."

4. The DISTRICT OF COLUMBIA denied the Foundation's fiscal year 1990, 1991, 1992 and 1993 exemption applications.

5. On March 29, 1990, THE HERITAGE FOUNDATION filed a Petition in this Court for a determination that the Massachusetts Avenue property was used for "purposes of public charity principally in the District of Columbia" and was exempt from fiscal year 1990 D.C. real property taxes pursuant to D.C. Code Section 47-1002(8). (The Heritage Foundation v. District of Columbia, Docket No. 4432-90.) THE HERITAGE FOUNDATION filed substantially similar Petitions with the Court for fiscal years 1991, 1992 and 1993. (The Heritage Foundation v. District of Columbia, Docket No. 4691-91; The Heritage Foundation v. District of Columbia, Docket No. 5041-92; The Heritage Foundation v. District of Columbia, Docket No. 5501-92.)

6. On May 18, 1992, THE HERITAGE FOUNDATION's four separate actions against the DISTRICT OF COLUMBIA were consolidated by the Court (hereinafter referred to as the "Consolidated Action"). A true and correct copy of the Court's May 18, 1992 order is attached hereto as Exhibit "A".

7. On February 16, 1993, THE HERITAGE FOUNDATION filed a Motion for Summary Judgment in the Consolidated Action. By its motion, the Foundation sought a determination from the Court that it used the Massachusetts Avenue property for "purposes of public charity principally in the District" and, to the extent it was used

for such purposes, was exempt from D.C. real property taxes pursuant to D.C. Code Section 47-1002(8).

8. On April 19, 1993, THE HERITAGE FOUNDATION's Motion for Summary Judgment was heard by the Court. After considering the papers and evidence filed in support of, and in opposition to, the motion and the oral arguments made by the parties, the Court entered summary judgment in favor of the Foundation. In its order granting summary judgment, the Court held that THE HERITAGE FOUNDATION used the Massachusetts Avenue property for "purposes of public charity principally in the District" and was exempt from D.C. real property taxes under D.C. Code Section 47-1002(8) for the years at issue. On July 1, 1993, at the request of the DISTRICT OF COLUMBIA, the Court issued a corrective order re-affirming its April 19, 1993 entry of summary judgment and its finding that the Foundation uses the Massachusetts Avenue property for purposes of public charity "principally" in the District of Columbia. A true and correct copy of the Court's April 19, 1993 order and July 1, 1993 corrective order is attached hereto as Exhibit "B".

9. In its April 19, 1993 order and July 1, 1993 corrective order, the Court directed the DISTRICT OF COLUMBIA to refund any real property tax overpayments made by THE HERITAGE FOUNDATION on the Massachusetts Avenue property.

10. The parties involved in the instant litigation, THE HERITAGE FOUNDATION and the DISTRICT OF COLUMBIA, are the same as those involved in the Consolidated Action.

11. The issue involved in the instant litigation,

namely, whether the Massachusetts Avenue property is used for "purposes of public charity principally in the District of Columbia" and is exempt from D.C. real property taxes under D.C. Code Section 47-1002(8), is the same issue as was involved in the Consolidated Action and which was the subject of the Court's April 19, 1993 order and July 1, 1993 corrective order.

12. The Court's April 19, 1993 order and July 1, 1993 corrective order were final judgments on the merits.

13. On July 31, 1993, the DISTRICT OF COLUMBIA appealed the Court's July 1, 1993 corrective order to the District of Columbia Court of Appeals. No determination has been made on the District's appeal and it is still pending before the D.C. Court of Appeals.

Congressional Black Caucus Foundation

14. Attached as Exhibit "C" is a true and correct copy of a letter sent by the District of Columbia to Amy R. Goldson on or about April 11, 1986 regarding the Congressional Black Caucus Foundation's exemption from D.C. real property taxes for its property located at 1004 Pennsylvania Avenue, S.E. This document was produced by the DISTRICT OF COLUMBIA in the Consolidated Action in response to discovery requests propounded by THE HERITAGE FOUNDATION.

15. Attached as Exhibit "D" is a true and correct copy of a memorandum prepared by the DISTRICT OF COLUMBIA regarding the Congressional Black Caucus Foundation's application for exemption from D.C. real property taxes. This document was produced by the

DISTRICT OF COLUMBIA in the Consolidated Action in response to discovery requests propounded by THE HERITAGE FOUNDATION.

Congressional Hispanic Caucus, Inc.

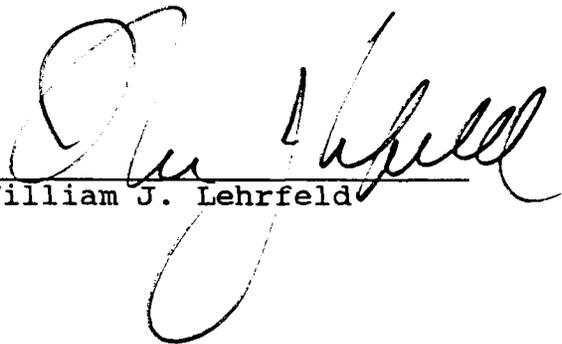
16. Attached as Exhibit "E" is a true and correct copy of a letter sent by the District of Columbia to Edward R. Roybal on or about June 10, 1986 regarding the Congressional Hispanic Caucus, Inc.'s exemption from D.C. real property taxes for its property located at 504 C Street, N.E. This document was produced by the DISTRICT OF COLUMBIA in the Consolidated Action in response to discovery requests propounded by THE HERITAGE FOUNDATION.

17. Attached as Exhibit "F" is a true and correct copy of a memorandum prepared by the DISTRICT OF COLUMBIA regarding the Congressional Hispanic Caucus, Inc.'s application for exemption from D.C. real property taxes. This document was produced by the DISTRICT OF COLUMBIA in the Consolidated Action in response to discovery requests propounded by THE HERITAGE FOUNDATION.

18. I am informed and believe, and thereon allege, that attached Exhibits "C", "D", "E" and "F" were made by the DISTRICT OF COLUMBIA in the regular course of its business at or about the time of the events described therein.

19. Attached as Exhibit "G" is a chart I prepared summarizing the activities of THE HERITAGE FOUNDATION, the Congressional Black Caucus Foundation, Inc., and the Congressional Hispanic Caucus, Inc. This chart indicates that the activities of these three organizations are identical.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of February, 1994 at Washington, D.C.

  
William J. Lehrfeld

Superior Court of the District of Columbia

CIVIL DIVISION

PRAECIPE

- CIVIL ACTION JM-220
- LANDLORD AND TENANT JM-255
- SMALL CLAIMS JM-260

The 18<sup>th</sup> Day of May, 1992

The Heritage Foundation  
Plaintiff

vs.

District of Columbia  
Defendant

5041-92

Case Number

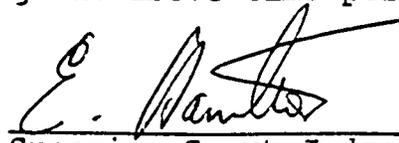
The Clerk of said Court will consolidate case with  
Docket Nos. 4422-90 and 4691-91  
for purposes of hearing and decision.

*[Handwritten signature and date: May 18, 1992]*

Attorney for Defendant <u>Richard Amato</u>		Attorney for Plaintiff <u>William J. Lehtfeld</u>	
Address <u>51 N. St. NE #310 Ste 403</u>		Address <u>1101 Conn. Ave NW</u>	
<u>WASH DC 20002</u>		<u>WASH DC 20036</u>	
Phone No.	Bar No.	Phone No.	Bar No.
	<u>21618</u>	<u>202-659-4772</u>	<u>51292</u>



Code Annot. § 47-1002(8),(18) during the above time period.

  
\_\_\_\_\_  
Superior Court Judge

Copies to:

Richard G. Amato  
Assistant Corporation Counsel, D.C.  
51 "N" Street, N.E.  
Room 310  
Washington, D.C. 20002

Leonard J. Henzke, Jr.  
William J. Lehrfeld  
Lehrfeld, Canter, Henzke & Diskin  
Suite 403  
1101 Connecticut Avenue, N.W.  
Washington, D.C. 20036

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION JUL 1 3 51 PM '93

THE HERITAGE FOUNDATION,

Petitioner,

v.

COLUMBIA,

Respondent.

Tax Docket No.

4432-90

4691-91

5041-92

5501-92

UT2  
PRAGER  
727-0431

ORDER

consideration of Petitioner's Motion for Order Establishing Refund Due from Respondent and for a Correction Order of April 19, 1993 and Computation of Tax Refund Due filed June 10, 1993, and it appearing to the Court that Petitioner is entitled to a corrective order recognizing the exempt status of the real property known as Lot 849 in Square 755, improved by premises known as 214 Massachusetts Avenue, N.E. in the District of Columbia, respecting its own use of said property and improvements, and taxation of the said property respecting its use by Petitioner's tenants it is this 30th day of June, 1993,

ORDERED: That Petitioner's building and grounds described as Lot 849 in Square 755, located at 214 Massachusetts Avenue, N.E., Washington, D.C., has been and is exempt from real property taxes pursuant to D.C. Code Annot. 547-1002(8), (18) for the period beginning July 1, 1989 through June 30, 1993, inclusive, to the extent that such building was used to conduct its charitable activities. The Court rules that Petitioner used such building and grounds for "purposes of public charity principally in the District

of Columbia" within the meaning of D.C. Code Annot. §47-1002(8), (18) during the above time period.

FURTHER ORDERED: Respondent shall refund Petitioner its overpayment, in accordance with Petitioner's Motion, as adjusted for refund and deficiency interest prescribed by law, based on the following findings:

<u>TAX PAID</u>	<u>TAX DUE</u>	<u>REFUND &amp; DEFICIENCY INTEREST</u>	<u>PENALTY</u>
\$466,711.79	\$296,154.05	To Be Determined	\$13,210.52

  
 \_\_\_\_\_  
 JUDGE

Copies to:  
 Richard G. Amato, Esq.  
 Assistant Corporation Counsel  
 441 Fourth Street, N.W., Sixth Floor  
 Washington, D.C. 20001  
 Phone: (202) 727-6240

William J. Lehrfeld, Esq.  
 William J. Lehrfeld, P.C.  
 1250 H Street, N.W., Suite 740  
 Washington, D.C. 20005-3908  
 Phone: (202) 659-4772  
 Fax: (202) 659-8876

COLUMBIA  
VENUE

ROOM 4136 MUNICIPAL CENTER  
300 INDIANA AVE., N.W.  
WASHINGTON, D.C. 20001

16

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n 47-1002(8).

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EXHIBIT "D"

# Memorandum

Government of the District of Columbia

TO: Melvin W. Jones  
Director

Department: Finance and Revenue  
Agency, Office: Real Property Taxes

FROM: Robert L. King   
Associate Director

Date: April 10, 1986

SUBJECT: Request for Exemption from Real Property Taxes by the  
Congressional Black Caucus Foundation, Inc.,  
Lot 807, Square 972, 1004 Pennsylvania Avenue, S.E.

Lot 807 in Square 972 was acquired by deed recorded July 29, 1983. In an application received June 14, 1984, Mr. Louis Stokes, President of the Congressional Black Caucus Foundation, Inc., requested this property be considered for exemption from real estate taxes as a public charity pursuant to section 47-1002(8) of the D.C. Code (1981 ed.).

Mr. Jim Coffey made an inspection of the property. On December 6, 1984, Mr. Coffey, in his worksheet evaluation, recommended a denial of the exemption because the Congressional Black Caucus Foundation, Inc. (Foundation) seemed "to be a political activist group to promote civil rights of the Black". The Associate Director of Real Property Tax supported the denial of the exemption. After a review of the file, additional information received from the Foundation, and applicable case law and federal treatment, the Legal Staff recommends granting the exemption.

The Foundation is incorporated under the District of Columbia Non-Profit Corporation Act, D.C. Code 1981, §29-501. As stated in its articles of incorporation, the Foundation has as its purpose scientific, educational and charitable causes. Specifically, the non-partisan research and training are the stated major purposes of the Foundation. The Foundation has also received a 501(c)(3) designation, I.R.C. 501(c)(3). It should be noted that the Federal Government, in granting a 501(c)(3) exemption, permits non-partisan analysis, study or research. An organization which has as its main objective the passage or defeat of legislation would not qualify for a 501(c)(3) designation.

The District's issuance to the Foundation of the certificate of incorporation as a non-profit corporation is conclusive evidence that the Foundation complied with the requirements of the District's Non-Profit Corporation Act, D.C. Code §29-533. That statute limits certification to a

corporation no part of the income of which is distributable to its members, directors, or officers other than as reasonable compensation. This issuance, coupled with the Foundation's qualification as an exempt organization under §501(c)(3), makes clear that it meets the first test of §1002(8): that the Foundation is not organized for private gain.

The second test of §1002(8) is that the organization's use of the property must be "for purposes of public charity principally in the District". Information submitted by the Foundation evidences several charitable activities in which it is involved and which are conducted in the District.

The Foundation has received a Personal Property Tax Exemption pursuant to §47-1508 of the D.C. Code (1981 ed.), and a Franchise Tax Exemption pursuant to Title 47, Section 1802(4). Section 47-1508 provides an exemption to "charitable and scientific institutions incorporated under the laws... of the District of Columbia". Section 47-1802(4) exempts foundations "organized and operated to a substantial extent within the District exclusively for ...charitable, ... or educational purposes..., no substantial part of the activities of which is carrying on propaganda attempts to influence legislation... and which does not participate in or intervene in... any political campaign on behalf of any candidate for public office". The term "substantial" is defined as "considerable quantity", "significantly large" and "being largely but not wholly that which is specified". Webster's Ninth New Collegiate Dictionary (1984 ed.). The term "principally" is defined as "for the most part; mainly". Random House College Dictionary (1980 ed.). These two terms are synonymous. Therefore, having met the requirement of "substantial" operation in the District, the Foundation has by analogy complied with the requirement under section §47-1002(8) that the activities are "principally in the District of Columbia".

The two major activities of the Foundation are the Congressional Black Caucus Foundation Dinner and the Congressional Fellows Program. The Fellows Program provides nine to twelve months of congressional working experience to qualified applicants. Fellows receive stipends ranging from \$12,000 to \$15,000 annually. A substantial portion of the Fellows are currently University of the District of Columbia students. Although Fellows are selected without regard to residence, the Program is conducted in the District.

The Foundation Dinner is the major fund raising activity of the year. Tickets are available to the public. Revenues from the Dinner represent approximately seventy percent (70%) of the total yearly revenues. The remaining revenue is derived from receptions, auctions, fashion shows, the Congressional Black Caucus week, and grants. The District receives substantial increased hotel and sales tax benefits as a result of the various yearly fund raising activities which are conducted by the Foundation, which attracts large groups of participants to the District.

The Foundation also provides an annual lecture series, which is open to the public without charge; a quarterly publication, the "Point of View" which is available to the public free of charge; and research information which is also available to the public without charge.

The enumerable activities the Foundation provides, are further evidence that it has complied with the "charitable purpose" requirement of section 47-1002(8).

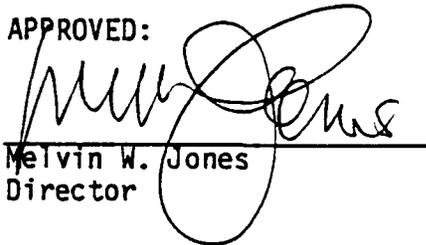
The Department's grant of the Personal Property Tax and Franchise Tax Exemption, together with the 501(c)(3) designation and the Foundation's non-profit incorporation, supports the Foundation's status as a tax exempt organization pursuant to section 47-1002(8).

We are of the opinion that this property qualifies for exemption from real estate taxes under the provisions of section 47-1002(8) of the D.C. Code (1981 ed.) to be effective July 1, 1984.

If you concur, please sign this memo below and the attached letter.

Attachment

APPROVED:

  
\_\_\_\_\_  
Melvin W. Jones  
Director

4/10/86  
\_\_\_\_\_  
Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF FINANCE AND REVENUE



REPLY TO:  
DIRECTOR OF FINANCE AND REVENUE

ROOM 4136 MUNICIPAL CENTER  
300 INDIANA AVE., N.W.  
WASHINGTON, D.C. 20001

June 10, 1986

Mr. Edward R. Roybal  
Secretary-Treasurer  
Congressional Hispanic Caucus, Inc.  
504 C Street, N.E.  
Washington, D.C. 20002

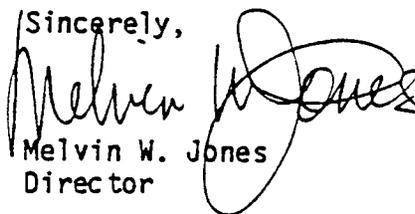
Dear Mr. Roybal:

This is in reference to your application for exemption from District of Columbia Real Property Taxes for the property known as Lot 21 in Square 837, located at 504 C Street, N.E., assessed to the Congressional Hispanic Caucus, Incorporated.

After inspection of this property and consideration of the facts involved, we are of the opinion that this property qualifies for an exemption from real estate taxes pursuant to section 47-1002(8) of the D.C. Code (1981 ed.). This section exempts "[b]uildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia".

The real estate records have been noted, placing this property in an exempt status effective July 1, 1984.

Best wishes and kind regards.

Sincerely,  
  
Melvin W. Jones  
Director

**Memorandum**● **Government of the District of Columbia**

TO: Melvin W. Jones  
Director

Department, Finance and Revenue  
Agency, Office: Real Property Taxes

FROM: Robert L. King *RLK*  
Associate Director

Date: June 1, 1986

SUBJECT: Request for Exemption from Real Property Taxes  
Congressional Hispanic Caucus, Incorporated  
Square 837, Lot 21 - 504 C Street, N.E.

Lot 21 is Square 837 was acquired by deed recorded April 1, 1983. In an application received June 29, 1984, Mr. Edward R. Roybal, Secretary-Treasurer, requested that this property be considered for exemption from real estate taxes pursuant to section 47-1002(8) of the D.C. Code (1981 ed.).

An investigation by this office disclosed that this property is improved by a three story plus basement brick row dwelling. There is no excess land.

The Caucus is incorporated under the District of Columbia Nonprofit Corporation Act, D.C. Code, sec. 29-501 (1981 ed.). As stated in its articles of incorporation, the Caucus has as its purpose scientific, educational and charitable causes. The Caucus has also received a 501(c)(3) designation, I.R.C. 501(c)(3). It should be noted that the Federal Government in granting a 501(c)(3) exemption, permits non-partisan analysis, study or research. An organization which has as its main objective the passage or defeat of legislation would not qualify for a 501(c)(3) designation.

The District's issuance to the Caucus of the certificate of incorporation as a nonprofit corporation is conclusive evidence that the organization complied with the requirements of the District's Nonprofit Corporation Act, D.C. Code, sec. 29-533. That statute limits certification to a corporation no part of the income of which is distributable to its members, directors, or officers other than as reasonable compensation. This issuance, coupled with the Caucus' qualification as an exempt organization under section 501(c)(3), makes clear that it meets the first test of section 47-1002(8), that the organization is not organized for private gain.

The second test of section 47-1002(8) is that the organization's use of the property must be "for purposes of public charity principally in the District". Information submitted by the Caucus evidences several charitable activities in which it is involved and which are conducted in the District.

The Congressional Hispanic Caucus, Incorporated (CHC) sponsors numerous educational and cultural activities. Among these are a CHC Fellowship Program for graduate students completing their degrees in public policy or in policy-related

fields. The purpose of the fellowship program is to help promote the nonpartisan Congressional employment of Hispanic professional legislative staff assistants, and to advance Hispanic involvement in the political process at the state and local levels. Fellowships are available to Hispanics, or students for whom that heritage has been an integral part of his/her studies. The program runs from September 1 through December 15, and fellows work with a Congressional committee for the term and attend regular seminars which introduce them to the relationships between the different branches of government and interest groups. All fellows receive a stipend of \$3,000. All activities relating to the fellowship program are carried on within the District of Columbia.

The annual fund raising dinner is the biggest event to be held during National Hispanic Heritage Week. Its purpose is to bring Hispanics from across the country together to join in a celebration of their heritage. CHC also sponsors a women's breakfast which is attended by women across the country. All expenditures for this activity are made in the District of Columbia. CHC prints a commemorative Hispanic Heritage Week poster which is distributed nationwide in honor of the proud history of the Hispanic people. Other activities include a "Salute to Hispanic Arts." CHC publishes "AVANCE", a quarterly newsletter which is distributed nationally. "AVANCE" addresses issues of concern to the Hispanic community nationwide and highlights activities of Hispanic organizations and individuals across the country. The printing and mailing of the newsletter is completed by Maryland corporations doing business within the District of Columbia. The writing, design and layout of the newsletter is done at CHC's residence.

During the year ending December 1983, approximately \$208,930 or seventy-four percent (74%) of the total CHC budget accrued directly to business and other entities in the District of Columbia.

In the future, the Caucus plans to continue the above activities as annual events and expand the educational aspect of the program. There will be more lectures for the fellows and for Hispanic organizations on subjects affecting Hispanics.

Currently, the building is used as headquarters for the organization. All activities and projects conducted by the Caucus are planned by staff therein. The building is used for a number of activities such as meetings with Hispanic organizations, and lectures which are part of the fellowship program.

The enumerable activities that the Caucus provides are further evidence that it has complied with the "charitable purpose" requirement of section 47-1002(8).

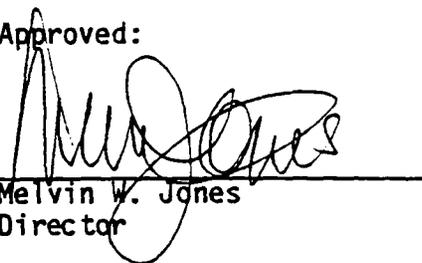
The Department's granting of Sales Tax, Franchise Tax, D.C. Income Tax, and Personal Property Tax exemptions together with the 501(c)(3) designation and the Caucus' nonprofit incorporation, support CHC's status as a tax exempt organization pursuant to section 47-1002(8).

Due to the recent decision to exempt the Congressional Black Caucus Foundation and the similarities of that case and the Congressional Hispanic Caucus case, it is our opinion that this property qualifies for an exemption from real estate taxes. The similarities between that case and the Congressional Hispanic Caucus are that both organizations have received a 501(c)(3) designation, I.R.C. 501(c)(3), from the Federal Government and both have received exemptions from Sales, Franchise, D.C. Income, and Personal Property taxes from the Department of Finance and Revenue. Both organizations conduct the same type of charitable activities principally in the District of Columbia, some of these activities include a Fellowship Program, an annual fund raising dinner and publication of a newsletter. Therefore, the property qualifies for an exemption from real estate taxes pursuant to section 47-1002(8) of the D.C. Code (1981 ed.), to be effective July 1, 1984.

If you concur, please sign this memorandum below and the attached letter.

Attachment

Approved:

  
\_\_\_\_\_  
Melvin W. Jones  
Director

6/10/86  
Date

EXHIBIT "G" - COMPARISON OF PRINCIPLE ACTIVITIES

<u>Activities in the District</u>	<u>Cong. Black Caucus Foundation</u>	<u>Cong. Hispanic Caucus, Inc.</u>	<u>The Heritage Foundation</u>
Principal Office in the District	YES	YES	YES
Conducts Public Policy Research	YES	YES	YES
Hosts Public Policy Seminars in District	YES	YES	YES
Sponsors an Intern- ship Program for Students	YES	YES	YES
Distributes Periodicals on Matters of Public Policy	YES	YES	YES
Sponsors Dinners/ Forums in District	YES	YES	YES
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Exempt from D.C. Real Property Tax Under 47-1002(8)	YES	YES	NO

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

THE HERITAGE FOUNDATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 5491-93
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Respondent.	)	

ORDER

Upon consideration of Petitioner THE HERITAGE FOUNDATION's motion for summary judgment and the papers and pleadings filed in support thereof, and it appearing to the Court that no genuine issue of material fact exists such that Petitioner is entitled to judgment as a matter of law; it is this \_\_\_\_ day of \_\_\_\_\_, 1994;

ORDERED, that Petitioner's Motion for Summary Judgment is granted, and it is

FURTHER DECLARED AND DECREED that Petitioner's building and grounds described as Lot 849 in Square 755, located at 214 Massachusetts Avenue, N.E., Washington, D.C., has been and is exempt from District of Columbia real property taxes pursuant to D.C. Code Section 47-1002(8), (18) for the period beginning July 1, 1993 through June 30, 1994, inclusive, to the extent that such building was used to conduct Petitioner's charitable activities. The Court rules that the "principal impact" of Petitioner's charitable activities is within the District of Columbia and that Petitioner used its buildings and grounds for "purposes of public

charity principally in the District of Columbia" within the meaning of D.C. Code Section 47-1002(8), (18) during the above time period.

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Superior Court Judge

Copies to:

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Assistant Corporation Counsel, D.C.  
441 Fourth Street, N.W.  
Washington, D.C. 20001

William J. Lehrfeld  
Bruce L. Stern  
WILLIAM J. LEHRFELD, P.C.  
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Suite 740  
Washington, D.C. 20005