SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

CATO INSTITUTE,

v. Tax Docket No. 7792-98

DISTRICT OF COLUMBIA

MEMORANDUM OPINION AND ORDER

The key issue in this litigation is whether the petitioner is entitled to an exemption from real property taxes, based upon the use of its realty for charitable activities that are "principally within the District of Columbia," within the meaning of D.C. Code §47-1002(8) and §47-1002(18) (2001 Repl.). The parties herein have filed cross-motions for summary judgment, relating to the District's denial of the Petitioner's application for such exemption. The subject property is an office building that serves as Cato's headquarters, located at 1000 Massachusetts Avenue, N.W. in the District of Columbia. It is denominated as Lot 58, Square 342. Based upon the following analysis, this Court finds that summary judgment must be granted in favor of Cato Institute.

The District contends that denial of the exemption was justifiable for two reasons: (1) that the Institute's so-called "charitable" activity has no impact on the citizens of the District and (2) that the Institute engages in impermissible Congressional lobbying that is not merely incidental to the Institute's charitable function.

In order to conclude that the petitioner is entitled to prevail, the Court relies upon an analysis of the law that applies to the real property tax exemption, as well as material facts that are not in dispute. The Court compares the facts of this case to the legal framework that the Court is required to impose.

APPLICABLE TAX EXEMPTION STATUTE

Section 1002(8) states that real property is exempt from taxation if such property consists of "[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."

Section 1002(18)(A) states that real property is exempt from taxation if such property consists of "[g]rounds belong to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of §§ 47-1002, 47-1005, and 47-1007 to 47-1010."[1]

[1] Part "B" of this subsection is not relevant to the petitioner herein.

PROCEDURAL HISTORY

The Cato Institute sought exemption from real property taxes by filing an application for such exemption, in a letter of September 30, 1996. The District denied the application, by letter dated May 27, 1998 from James R. Vinson (the Chief Assessor). The Cato Institute sought relief from real property taxes that had been assessed for Tax Years 1997 and 1998.[2] The petitioner relied upon two different Code provisions as justification for exemption. Those Code provisions are D.C. Code §47-1002(8) and D.C. Code §47-1002(18).

The Chief Assessor's denial of the application cited one conclusory and generic basis for the denial. The Chief Assessor wrote, "After an inspection of the property and a review of the application and supporting documents, we have determined that the property does not qualify for exemption from real property tax. This decision is based on the fact that the use of the property does not conform to the tax exempt uses in D.C. Code §47-1002. Therefore, your application for exemption must be denied." There was no elaboration as to the nature of the "non-conformity" problem.

Cato Institute filed the instant appeal on November 20, 1998. Attached to its Petition are copies of its application, the denial letter, and other related documents such as the attachments to its application for exemption.

On November 5, 1999, the petitioner filed a First Amended Petition. The differences between the original Petition and the First Amended Petition are two-fold. One, Cato added a claim for relief from another form of property taxation known as

[2] In order to pursue the instant appeal, Cato paid all required taxes and has done so continuously. Thus, the instant appeal in the Superior Court will affect all subsequent Tax Years for which assessments have been paid under protest, pending the outcome of this litigation.

"BID" taxes. These are special property taxes levied against certain downtown properties. Cato asserts the same Code provisions as to its entitlement to exemption from all forms of real property taxation, however such taxes might be labeled or characterized. Two, Cato added an assertion that it is entitled to an exemption because the denial of the exemption violates the Equal Protection Clause of the United States Constitution.

The parties have completed discovery, including sending and receiving answers to interrogatories. The issues are now joined, through cross-motions for summary judgment. The Court also has had the benefit of extensive oral argument.

MATERIAL FACTS NOT IN DISPUTE

The record is quite full as to historical and descriptive information concerning the operations of the Cato Institute. While it is useful to recapitulate certain undisputed facts, it is likewise not pertinent to dwell on minutiae where the parties actually do not quibble with each other. The record in this appeal is quite voluminous.

The District of Columbia does not dispute the basics of what the Cato Institute is and what it does on the subject property, although the District does emphasize the significance of certain activities that impinge upon entitlement to an exemption. Certain fundamental descriptions are important to summarize, nonetheless, so that the exemption issue can be illuminated in a practical context.

The overriding source of factual information concerning the operations of the Institute are the affidavits and other materials of record provided by the taxpayer. The District ultimately does not rely on any factual information that does not come from either

the Institute or from what is in the public domain (such as the Institute's publications). The Cato Institute relies upon its own submissions of documentary evidence, as well as the District's Answers to Interrogatories.

As a matter of background, it is relevant to note that the Cato Institute is already tax-exempt for a variety of purposes. For example, it is exempt from federal income taxes. Cato Institute is also exempt from the obligation to pay District of Columbia sales and use taxes. In a broad sense, these facts are relevant, but not dispositive of the issues herein because "each type of tax has its own 'independent and distinct criteria for exemption.'" *District of Columbia v. Helen Dwight Reid Educational Foundation*, 766 A.2d 28, 32 (D.C. 2001), quoting *National Medical Association v. District of Columbia,* 611 A.2d 53, 56 (D.C. 1992).

The details of why and how the Cato Institute performs its activities are set forth in great depth in two affidavits filed by the petitioner. They are two affidavits of Craig M. Barth, the Controller of the Cato Institute. The original affidavit was filed on June 16, 1999 (hereinafter "Aff. "). The First Supplemental Affidavit was filed on August 13, 1999 (hereinafter "Amended Aff."). The second affidavit is directed to verifying the details of the Institute's federal tax returns, rather than adding more factual data concerning substantive operations. For this reason, the Court generously cites or quotes from the original affidavit and its instructive attachments.

Cato is a public policy research organization that is a non-profit corporation, not accepting any government funding. Aff. at ¶5. It is undisputed that the subject property contains staff offices, meeting rooms, the F.A. Hayek auditorium, conference facilities,

and a library. Aff. at ¶2. .It is also undisputed that the subject property is the only realty that is owned by the Cato Institute in any jurisdiction. Aff. at ¶3.

The Institute was named for the "Cato Letters," described as "libertarian pamphlets that helped lay the philosophical foundation for the American Revolution." Aff. at ¶4.[3]

Notably, the articles of incorporation forbid Cato's participation in political campaigns for public office, and the Institute "does not lobby Congress for specific legislation." Aff. at ¶6. Barth summarized the Institute's activities as follows:

> Cato Institute undertakes an extensive publication program dealing with the complete spectrum of public policy issues. Books, monographs, briefing papers and shorter studies are commissioned to examine the federal budget, Social Security, monetary policy, natural resource policy, the environment, military spending, regulation, education, health care, NATO, international trade, and many other domestic and international public policy issues. Major policy conferences are held throughout the year, from which papers are published thrice yearly in the Cato Journal. Cato Institute also publishes the quarterly magazine Regulation Magazine: The Cato Review of Business and Government and the bimonthly newsletter Cato Policy Report.

Aff. at ¶7 [underlining in original].

Barth has described the manner in which the Cato Institute carries on its activities geographically and how it relates to the District of Columbia as a specific locality. He stated,

> The great majority of Cato Institute's public policy educational activities occur within the District of Columbia. Cato Institute holds frequent conferences and forums in the

[3] The "Letters" were published anonymously by two Englishmen and reportedly were widely read in the American colonies. Aff. at ¶4.

> District of Columbia. From time to time, Cato Institute holds conferences around the country, and it occasionally holds conferences in foreign cities. For example, during each of the last several years Cato Institute held between 100 and 200 conferences, seminars, policy forums, roundtable discussions and other events. Over 90 percent of these conferences and other events were held at Cato Institute's building or other locations in the District of Columbia. All policy forums and conferences are open to the public. Policy forums are free of charged and all-day conferences may involve a nominal charge for attendance . . . . Cato Institute generates significant employment and economic activity in the District of Columbia. Almost all Cato Institute research and publishing activities are conducted in the District of Columbia and almost all administrative work required to support Cato Institute occurs in the District of Columbia. Cato Institute has about 72 employees, 15 fellows and 55 adjunct scholars. Not only are all employees of Cato Institute employed in the District of Columbia, but a substantial number of its employees (i.e., 22 out of 72) are residents of the District of Columbia.

Aff. at ¶¶8, 9.

In support of its application for exemption, the petitioner provided to the District the copies of the following publications: The Cato Handbook for Congress: Regulation-The Cato Review of Business and Government, 1996 Issue No. 3; The Cato Journal (An Interdisciplinary Journal of Public Policy Analysis) Vol. 14, No. 3; Policy Analysis, No. 259; and Cato Policy Report, January/February 1996. Aff. at ¶10. Copies of these items are also appended to Barth's original affidavit.

ISSUES RAISED BY THE DISTRICT OF COLUMBIA

While the taxpayer herein affirmatively asserts that it is entitled to an exemption as a "charitable" organization, the District raises issues that focus on certain refined aspects of what constitutes being a "charitable" organization entitled to the exemption.

First, the District contends that the petitioner is not a "charitable" organization only because one particular publication allegedly reflects a form of lobbying of the United States Congress and that such activity takes Cato Institute out of the realm of being "nonpartisan." The publication in question is the "Handbook," as described in the Barth affidavit. It is found in the record as Exhibit 4, attached to the first Barth Affidavit.

Secondly, the District argues that even if Cato is a charitable organization, it is not entitled to the property tax exemption because Cato's activities do not have their principal "impact" in the District of Columbia.

Third, the District strongly contends that the Equal Protection argument should be rejected out of hand. The District emphasizes that each taxpayer's entitlement to an exemption must stand or fall on its own merits, regardless of how the same exemption has been granted to other taxpayers that might appear to be similar to the petitioner.

ANALYSIS OF THE ISSUES

The Alleged Lobbying Factor. The District of Columbia bluntly describes the Cato Institute as "a legislation-promoting machine." Respondent's Cross-Motion for Summary Judgment at 5-6.

This Court has read the edition of the Handbook that is filed in the record. It is a thick compilation of historical information and policy analysis on a broad list of topics, including environmental issues, the internal structure of the Congress, agriculture, nuclear proliferation, and many others. In each topic category, Cato Institute lists a number of actions or policy considerations that suggest themselves from the historical and statistic

data. In some instances, the Handbook suggests that a particular improvement can be made by the enactment of a particular piece of legislation (where a policy debate has at least come to fruition in the form of something concrete that is ripe for a decision).[4] In other instances, particular legislation is never mentioned. Instead, the Handbook recommends considerations of policy approaches or philosophies of how the subject should be examined further.[5] Indeed, in some instances, what is recommended in the Handbook does not even require legislation as such. A good example is the recommendation that Congress could simply be more efficient as a public institution if it would reduce the number of committees in its branch of government.[6]

On the whole, the vast bulk of what is published in the Handbook is the work product of a quintessential "think tank." It provides detailed exposition of the facts on each subject and often contains references to the agreement between persons of different political stripes. If anything, it is a reference guide, albeit one that is more specific as to how to solve problems rather than merely being a warehouse for statistics. The material in each issue category is typically a "big picture" analysis, rather than any type of roadmap for rallying support of an agenda.

The Court has looked carefully at the legal authorities cited by both parties on the question of whether Cato has eliminated its entitlement to a tax exemption because of any policy materials that are generically directed to the Legislative Branch (or which are produced for use by the Legislative Branch). Based upon the following analysis, this Court is convinced that Cato's dissemination of the Handbook is not legally sufficient to

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[4] Exhibit 4, at 229 (adoption of H.R. 1341, a pending bill on the subject of exclusive labor representation).
[5] Exhibit 4, at 9 (on the subject of "reviewing existing legislation for consistency" so as to promote the "moral state of the union."

preclude entitlement to the property tax exemption. The Court compares the merits of the case law cited by the parties.

The petitioner principally relies upon the appellate ruling in *International Reform Federation v. District Unemployment Compensation Board*, 76 U.S.App.D.C. 282, 131 F.2d 337 (D.C. Cir.), *cert. denied*, 317 U.S. 693 (1942) (*hereinafter "Reform Federation"*). This federal decision merits close examination.

The issue was whether a particular employer was exempt from having to contribute to the workman's compensation fund. The employer had claimed exempt status pursuant to a law that exempted organizations that operated "exclusively for religious, charitable, scientific, literary, or educational purposes . . . ." *Id.* at 283, 131 F.2d at 338. The very purpose of the Federation was "the promotion of those reforms on which the churches sociologically agree while theologically differing, such as the enactment and enforcement of laws prohibiting the alcohol liquor traffic, the white slave traffic, harmful drugs and kindred evils . . ." *Id.* In fact, this organization had actually engaged in outright attempts to influence the passage of legislation and "boast[ed] of having, at one time or another, written 36 bills on moral subjects for submission to various State legislatures, and 18 that have been passed by the Congress." *Id.* The official magazine of the Federation was mailed to libraries, churches, etc. Not unlike Cato's Handbook, its magazine was also targeted to members of the United States Congress and State legislatures "when moral issues are pending." *Id.*

The United States Court of Appeals for the District of Columbia Circuit reversed the District Court's affirmance of the Board's denial of the exemption.

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[6] Exhibit 4, at 45.

The Circuit determined that the employer was entitled to the exemption from fund contribution liability. This was because "the Federation's primary purpose is the establishment of higher codes of morality and manners throughout the world, and its contribution to or even its advocacy of legislation to these ends are merely 'mediate' or 'ancillary' to the primary purpose." *Id.* at 287, 131 F.2d at 342. The panel emphasized that "what are denominated its political activities do not make its purposes less charitable or educational." *Id.* (emphasis added).

The Circuit paused to set forth very specifically the proper scope of what is "charitable." The panel wrote that with respect to non-profit organizations, the common law concept of what is "charitable" is quite broad. It is not limited to the explicit provisions of social services to the needy, and the like. Rather, the tax exemption for "charitable" organizations covers "every nonprofit organization designed and operating for the benefit and enlightenment of the community, the States or the Nation." *Id.* at 339.

The disposition in *Reform Federation* is highly important to the petitioner. This is because the Circuit recognized that educating legislators to policy issues is well within the proper realm of educational activities. The Circuit observed,

> Hence we see no actual difference between the education of the individual – admittedly proper – and the education of the legislator, where both are directed to a common end, and that end, not the advancement, by political intrigue or otherwise, of the fortunes of a political party, but merely the accomplishment of national social improvement.

Id. at 340.

The disposition in *Reform Federation* would easily require this Court to grant relief to the Cato Institute. Nonetheless, the Court has carefully scrutinized the legal

authorities cites by the District. The District is understandably concerned that it not grant tax exemptions to organizations whose purpose is to lobby for particular legislation. The exertion of that type of influence is not permitted if the organization desires to obtain or retain tax-exempt status. *See, e.g., Regan v. Taxation With Representation of Wash.*, 461 U.S. 540 (1983)(deduction for contribution was improper because the beneficiary organization existed admittedly and substantially for the purpose of lobbying Congress). The situation in the instant case certainly is not the same as the clear-cut facts in *Regan*. Rather, it deserves a more sophisticated analysis. The ruling in *Reform Federation* should be viewed in the context of the historical sweep of the cases cited by the District.

The District relies upon three key appellate decisions: *Cammarano v. United States,* 358 U.S. 498 (1959); *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir.), *cert. denied*, 414 U.S. 864 (1973); and *Slee v. Commissioner of Internal Revenue,* 42 F.2d 184 (2d Cir. 1930). The facts and holdings of each are distinguishable from the instant case.

In *Slee*, a charitable deduction was disallowed for an individual taxpayer, based upon that person's donation to the American Birth Control League. Judge Learned Hand wrote, in referring to the Internal Revenue Code, "Political agitation as such is outside the statute." *Slee, supra*, at 185. The particular Code provision that was in dispute in *Slee* granted tax deductions for gifts made to "any corporation . . . organized and operated exclusively for religious, charitable . . . or educational purposes. . ." *Id.* at 184. The District basically argues that *Slee* presents a bright line above which any type of political lobbying, even by a religious organization, will eliminate deductibility of contributions to that entity.

It is a fact of history that *Slee* was issued prior to a pivotal amendment to the Internal Revenue Code. This 1934 amendment diluted the previous total ban on lobbying by tax exempt organizations. The test became whether any lobbying was a "substantial part of its activities." *Girard Trust Co. v. Comm. of Internal Revenue*, 122 F.2d 108, 109 (3rd Cir. 1941). Clearly, the opinion in *Slee* is very outdated and is not controlling precedent for the instant litigation. The law has moved on.

In *Cammarano*, the Supreme Court ruled unanimously that persons may not deduct from their federal income taxes any money spent on publicity programs to defeat local voter initiatives. The taxpayers in question had attempted to deduct such sums as if they were "business expenses" because the voter initiatives allegedly damaged their businesses. The bald abuse of tax deductions in that case is certainly not present where the Cato Institute is concerned. Thus, *Cammarano* is not helpful. Furthermore, *Cammarano* did not actually involve a public policy educational organization whose overall status as such was unquestioned.

In *Christian Echoes*, the facts that spoiled the taxpayer's exemption were extreme and most colorful. They are nothing like the facts in the instant case. In *Christian Echoes*, the organization carrying this name was a nonprofit religious organization that had been formed by Dr. Billy James Hargis (a radio and television preacher). He also established a national religious magazine and other publications. *Christian Echoes*, *supra*, at 851.

On behalf of his organization, Hargis filed suit for a refund of FICA taxes that had been paid for several years. The organization attained tax exempt status pursuant to 26

U.S.C. § 501(c)(3). However, the Internal Revenue Service revoked the exemption for three reasons:

> (1) it was not operated exclusively for charitable, educational or religious purposes; (2) it had engaged in substantial activity aimed at influencing legislation; and (3) it had directly and indirectly intervened in political campaigns on behalf of candidates for public office.

Id. at 853.

The Tenth Circuit held that the revocation of the exemption was well justified. It is not difficult to understand the wisdom of this decision in light of the underlying facts of what Hargis was actually doing.

First, the magazine in question (known as "Christian Crusade") contained numerous articles that exhorted members of the public to take targeted steps to react to certain issues. The specifics are worth repeating.

> For example, Christian Echoes appealed to its readers to: (1) write their Congressmen in order to influence the political decisions in Washington; (2) work in politics at the precinct level; (3) support the Becker Amendment by writing their Congressmen; (4) maintain the McCarran-Walter Immigration law; (5) contact their Congressmen in opposition to the increasing interference with freedom of speech in the United States; (6) purge the American press of its responsibility for grossly misleading its readers on vital issues; (7) inform their Congressmen that the House Committee on UnAmerican Activities must be retained; (8) oppose an Air Force Contract to disarm the United States; (9) dispel the mutual mistrust between North and South America; (10) demand a congressional investigation of the biased reporting of major television networks; (1) support the Dirksen Amendment; (12) demand that Congress limit foreign aid spending; (13) discourage support for the World Court; (14) support the Connally Reservation; (15) cut off diplomatic relations with communist countries; (16) reduce the federal payroll by discharging needless jobholders; stop waste of public funds

> and balance the budget; (17) stop federal aid to education, socialized medicine and public housing; (18) abolish the federal income tax; (19) end American diplomatic recognition of Russia; (20) withdraw from the United Nations; (21) outlaw the Communist Party in the United States; and (22) to restore our immigration laws.

Id. at 855.

In other words, Christian Echoes unabashedly used the magazine to facilitate a campaign to remake virtually the entire federal government, customized to the personal political tastes of Hargis.

In no fashion did Christian Echoes claim that its furtherance of the public issues and legislation enumerated herein above was fueled by discrete religious doctrine. It is evident that this organization demanded its tax-exempt status based upon its general religious nature without regard to the substance of what it was actually doing. It is self-evident that most of these topics have no discernable connection to religious issues at all, such as demanding investigation of media networks and demanding changes in immigration laws. Many of the topics were facially partisan in nature, such as urging withdrawal from the United Nations.

To boot, the use of the magazine for nakedly political purposes was exacerbated by the taxpayer's undisguised attempts "to mold public opinion" on such disparate issues as Medicare, the Nuclear Test Ban Treaty, and the Outer Space Treaty. *Id.* The Tenth Circuit easily concluded,

> An essential part of the program of Christian Echoes was to promote desirable governmental policies consistent with its objectives through legislation. The activities of Christian Echoes in influencing or attempting to influence legislation were <u>not incidental, but were substantial and continuous.</u> The hundreds of exhibits

> demonstrate this. These are the activities which Congress intended should not be carried on by exempt organizations.

Id. at 855-56 (citations omitted) (emphasis added).

In *Reform Federation*, the United States Court of Appeals recognized the inherent role of public policy advocacy in charitable and religious organizations that are tax-exempt. Courts in the post-*Slee* era have drawn a distinction between impermissible political lobbying as a core function of an organization and issue advocacy that is a natural component of the entity's tax-exempt purpose.

Ironically, the majority in *Reform Federation* relied on and quoted from Judge Learned Hand's decision in *Slee*, as the rationale for the distinction that it drew in favor of the Federation. The Court stated that Judge Hand

> reached the conclusion that the [Birth Control] League was conducted in part for charitable purposes, in that it operated a free clinic, but that its avowed purpose to 'enlist the support of legislators to effect the lawful repeal' of existing laws against birth control made that, rather than charity, its real objective. He distinguished the case from one in which a corporation, otherwise charitable, educational, or scientific, seeks legislation merely ancillary to the achievement of its main objective.

Id. at 286, 131 F.2d at 341 (emphasis added).

More precisely, Judge Hand wrote in *Slee* that "there are many charitable, literary and scientific ventures that as an incident to their success require changes in the law. A charity may need a special charter allowing it to receive larger gifts than the general laws allow. It would be strained to say that for this reason it became less exclusively charitable, though much might have to be done to convince legislators." *Slee, supra*, at 185.

One of the most valuable and pertinent concepts to emerge from *Reform Federation* was the clear need to distinguish "incidental" or "ancillary" attempts to influence legislation from those that are "substantial and continuous." This is where, in the instant case, the District's argument falls flat.

Other than the single edition of the Handbook, the District cites no other examples of offending "lobbying" by the Cato Institute. If anything is obvious from *Reform Federation* and other cases, it is that any attempt to educate or impress the Legislative Branch must be examined in comparison to all activities of the exempt organization. In other words, one isolated document is insufficient to establish the legally significant story. Indeed, it would be superficial, if not reckless, for the Court to adjudicate this case based merely on one publication.

The District makes no attempt to explain why the full breadth of Cato's seminars, symposia, and innumerable publications (over many decades) does not demonstrate Cato's history of providing genuine debate of public issues. The District ignores the broad range of Cato's educational activities and its efforts to spread policy debate in many forms. The District ignores the great length of time during which Cato's publications and activities have gone unchallenged as to local tax exemption issues. It would appear that but for the one publication of the Handbook, Cato's status as "non-partisan" would be pristine even in the eyes of the District.

It is telling that if the Handbook should render Cato not to be entitled to the property tax exemption, it is impossible for the District to explain or finesse why it never revoked the other non-property tax exemptions. This is because the bar against substantial lobbying is common to all tax exemptions, if such a problem exists at all.

In order to be fair, the Court is obliged to consider all of what Cato does, not merely to look at one piece of material. The District's approach is far too myopic.

Cato's evidentiary presentation is unmistakable. Cato has provided ample proof that the substance of what it publishes and pursues in the public domain is not "partisan" in the sense that is recognized by *Christian Echoes*. Even the District does not accuse Cato Institute of pressing the views of a particular political party, as such.[7] The lone publication of the Handbook represents no more than the production of one piece of material directed to the attention of the Congress. Even if published on a regular basis, rather than sporadically, this activity is quite clearly within the ambit of "incidental" legislation-related activity that does not compromise the entitlement to a tax exemption.

The Geographical Impact of Cato's Activities. Entirely apart from its allegation of impermissible "lobbying," the District contends that Cato Institute is not entitled to a real property tax exemption because the nature of its activities does not result in a statutorily required "principal impact" within the District of Columbia. This particular argument requires the Court to examine the facts of record, to determine whether Cato's activities fall within the parameters of a specific case relied upon by the District. That case is *National Medical Assoc. v. District of Columbia*, *supra* (hereinafter "*NMA*").

In *NMA*, the Petitioner was a non-profit organization whose objectives were to "raise the standard of the medical profession and of medication education" and to engage

[7] The District does not allege that "lobbyists," as such, are either hired by Cato to press for passage or defeat of legislation – or that employees with other labels are surreptitiously used for such purposes.

in related activities "within the United States and its territories." *NMA*, at 54. Its headquarters were in the District of Columbia and it was denied an exemption from real property taxes. The trial court applied the District's position and the denial of the exemption was affirmed on appeal.

Like the Cato Institute, the National Medical Association claimed its right to the tax exemption on D.C. Code §47-1002(8), relating to a non-profit's buildings that are "used for purposes of public charity principally in the District of Columbia." The Court of Appeals noted that there was no dispute about the charitable nature of the Association's activities. Rather, the issue that divided the parties "is the interpretation of the phrase 'principally in the District of Columbia.' " *NMA*, at 55.

Agreeing with the District's interpretation of the statute, the Court of Appeals reasoned that the word "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 . . . ." *NMA*, at 56.

The factual record in NMA did not support the granting of the tax exemption, because the targets of its activities were obviously spread on a nation-wide basis, with no particular intention of targeting the District of Columbia. The appellate court observed,

> The organization's income is derived primarily from dues of its members and from conventions and scientific **assembly revenues**. NMA **sponsors educational and scientific programs throughout the United States**. It publishes a monthly journal entitled, 'The Journal of the National Medical Association,' which includes articles, reports, studies and scientific data, submitted primarily by its members. NMA represents the interests of about 16,000 Black physicians practicing nationwide. The organization

> issues new[s] releases to newspapers throughout the country and in the District of Columbia. **NMA sponsors a major convention once each year in various cities** at which various disciples of medicine are represented. The organization . . . **sponsors conferences in various cities**. It sponsors major events and meetings which a physician can attend **to meet continuing medical education requirements of either State law or hospital policy**. The organization has **sponsored various health screening projects in the United States**. It has **conducted seminars in many cities** to educate physicians about the AIDS problem. The local chapter of NMA shares space in the subject realty. The local chapter has about 300 members, and it distributes publications to physicians in this area.

NMA, at 54. The subject realty is the "headquarters" from where "administrative functions" are conducted. *Id.*

The highlighted language in the above quotation from *NMA* amply demonstrates that the District of Columbia itself was not the "principal target" of the Association's activities, nor was the District the principal point of "distribution" of the charitable works of the Association. The importance of the District of the Columbia to the Association was no greater than the importance of New Jersey, Texas, or any other locality.

Consequently, in light of the holding in *NMA*, this Court is required to analyze the undisputed facts of record, to decide whether the District of Columbia is the "geographic target" and principal place of the "distribution" of Cato's charitable activities.

For many reasons, this Court concludes as a matter of law that the Cato Institute's activities do indeed meet the statutory requirements for the tax exemption under the definition of *NMA*. The facts in *NMA* are clearly distinguishable from the facts of how and why Cato functions so as to "target" its charitable activities to the District of Columbia. This is not a close question at all.

The factual explanation as to targeting the District of Columbia and having its principal "impact" in the District of Columbia is readily seen in the Affidavit of Craig M. Barth. In his Affidavit, he clearly explained that while Cato "from time to time" conducts conferences outside of the District of Columbia, the Institute actually conducts "over 90 percent of these conferences and other events" at the subject property in the District of Columbia.

As the Court of Appeals warned in *NMA*, it is important for this Court not to lapse into an analysis of the physical use of the building as opposed to the intended reach of the substance of what is done by the petitioner. The fact that the District of Columbia is the "target" of Cato's public policy activities is truly essential to the mission of Cato Institute. Quite simply, this is because the long-term objective of the Institute is to influence the development of the United States of America as a federal government and as a society. The public institutions that would accomplish this development are all located inside the District of Columbia. They embrace the full range of federal agencies within the Executive Branch, the United States Supreme Court, and Congress of the United States. The charitable interests of Cato are logically targeted to these public entities – and those who work in them and practice before them. All such persons and organizations do what they do inside of the District of Columbia.

Necessarily, the District of Columbia will always be the geographic target of Cato's effort to shape public policy because such policies are made within the District of Columbia. This is seen in policy development related to "the federal budget, Social Security, monetary policy, natural resource policy, the environment, military spending, regulation, education, health care, NATO, international trade" etc. Aff. at ¶7.

To be more precise, it is impossible to effectively try to foster public debate on policy regarding "the federal budget" by targeting any jurisdiction other than the District, because the Office of Management and Budget is only located inside the District of Columbia, reporting to the President of the United States. The same can be said of any attempts to educate relevant players who influence the development of American "monetary policy," because the Federal Reserve Board operates inside the District of Columbia.

Overall, the major public policies and the hubs of their concomitant public institutions are not spread among the 50 States nor are they spread elsewhere in the world. For this reason, there are no local constituencies, operations, or interests of the Cato Institute in New Jersey, Texas, France, or elsewhere.

In his Affidavit, Barth noted that almost all of Cato's research and publishing occurs within the District of Columbia and that almost all of its administrative work is accomplished at its headquarters property. However, ironically, even if all of its publishing was physically done elsewhere, this would not change the fact that the substance of what is published is still targeted to persons and institutions inside the geographical boundaries of the District of Columbia.

This Court has carefully considered the arguments of the District of Columbia. The District misses the whole point of the holding in *NMA* – and invents a different one altogether that is unsubstantiated. In its Cross-Motion for Summary Judgment, the District argues that Cato is not entitled to the tax exemption because "Cato's activities do not benefit either the Government of the District of Columbia or its citizens to any greater

extent than they affect the nation as a whole or any other city in the nation." Respondent's Cross-Motion for Summary Judgment at 12.

This notion of requiring that an exempt organization literally "benefit" the local government or local citizens is not contained in the Code and is certainly not the premise of the appellate holding in *NMA*. It has never been a requirement for a tax exemption. Instead, this discussion of "benefit" is purely a creation of the District of Columbia as a theory or a litigation gambit. It has no basis whatsoever in case law or statute. The holding in NMA bears no connection to the "benefit" theory.

To be sure, in *NMA* there was never any discussion about whether the National Medical Association brings any tangible "benefit" to the government of the District of Columbia or whether the organization had to prove that it somehow brought aid or solace to individual citizens of the District of Columbia. The statutory interpretation confirmed in NMA does not deal with the retail effect of what happens when the exempt organization attempts to make its "impact." For example, physicians who practice in the District are not subject to any residency requirement, and their patients are not necessarily District of Columbia residents. Measuring or proving any "benefit" of their activity is impossible. Indeed, the District does not even pause to suggest how "benefit" could even be established in an evidentiary sense, since neither the Code nor any municipal regulations address this alleged requirement.

In *NMA*, there was no mention or debate as to whether the Association had to prove that the quality of medical care rendered in the District was improved in any fashion by its "charitable" activities. The District's "benefit" theory goes far beyond the "geographical impact" requirement found in NMA. Thus, the holding in *NMA* is no

obstruction to Cato's entitlement to the tax exemption. Cato has consistently emphasized that its intended impact is to foster debate on policy issues, whether or not anyone who participates in the public debate ever causes or achieves any concrete results.

If nothing in particular ever changes in America culture because of the activities of the Cato Institute, this does not mean that its activities were never "charitable" in nature. Recalling the disposition in *Reform Federation*, the definition of a "charitable" organization clearly embraces the activities of any organization that operates for purposes of "enlightenment." *Reform Federation*, *supra*, at 339. Public enlightenment itself is enough to suffice as tax exempt activity. This observation in *Reform Federation* precludes the District's unusual "benefit" theory.

The Petitioner's Equal Protection Argument. Petitioner complains that it is the victim of unequal treatment, in violation of the equal protection clause of the Fifth Amendment. The Petitioner asserts that the District of Columbia has granted property tax exemptions to several other organizations that engage in activities to pursue a specific legislative agenda. According to the Petitioner those organizations are the Heritage Foundation, the Congressional Black Caucus Foundation (hereinafter "CBCF"), and the Congressional Hispanic Caucus Institute, Inc.

The District does not deny that exemptions have been granted to these organizations. However, the District has argued that the Superior Court should not adjudicate the instant tax appeal based on the exemption history or status of other organizations.

As a practical matter, this Court need not delve into the Due Process issue because this Court has already found that the petitioner is entitled to the property tax exemption on its own merits. Nonetheless, it is worthwhile to pause to analyze why the Due Process claim appears to be a weak alternative basis on which to great relief to the Petitioner.

In a nutshell, the District argues that to "avoid liability for a proper tax . . . each individual must rest, in every instance, on the validity of his [or her] own position, under the applicable taxing provision, independently of the others." *International Business Machines Corp. v. United States*, 343 F.2d 914, 919 (Ct.Cl. 1965), *cert. denied*, 382 U.S. 1028 (1966).

The District of Columbia Court of Appeals relied upon *International Business Machines, Inc.* in another case where a taxpayer made a complaint similar to the argument of the Petitioner herein. That case was *Washington Theatre Club, Inc. v. District of Columbia*, 311 A.2d 492 (D.C. 1973). There, the Court of Appeals observed, "While taxpayers cannot avoid liability for a proper tax by showing that others have been treated leniently or erroneously, yet equal treatment within a class is fundamental to an equitable administration of tax laws." *Id.* at 495. (emphasis added). Petitioner cites this opinion as grounds for seeking relief from the denial of the property tax exemption.

Upon close examination, the reasoning in *Washington Theatre Club* is ultimately not supportive of the Petitioner. In *Washington Theatre Club*, the other entity in question was Arena Stage. The alleged similarity between them was that both provided acting opportunities to students for educational purposes. The trial record was unclear as to the exact factual similarities between the two entities – other than being theaters. The Court of Appeals stated,

> We do not have before us now the issue of unequal tax treatment within a class. . . . But if there is no substantial difference between the operation of these two organizations, it would amount to an unfair denial of equal tax treatment to appellant. This, if true, should not be permitted. This is why we consider that the government should review its actions as they relate to the two organizations during the remand period to determine whether from its standpoint it is proceeding fairly in its administration of the tax statute.

Id. at 495-96 (emphasis added).

In the instant litigation, the petitioner does not appear to be in the same "class" with the Congressional Black Caucus Foundation, etc. The Petitioner is strictly an organization dedicated to public policy education. The other entities cited for comparison might not be such, and the record herein does not fully disclose the range of their respective activities. The Court infers from *Washington Theatre Club* that tax "class" denotes the fundamental nature of the entity such that its organic purpose is deemed analogous to others within a group. In the view of lay persons, it would appear superficially that two live performance theaters are in the same "class." A lay interpretation was not enough to convince the Court of Appeals. The Court of Appeals found this broad descriptive connection to be legally insufficient. Because being another theater was somehow not legally sufficient to achieve "same class" status in *Washington Theatre Club*, this Court cannot leap to the conclusion that the Cato Institute is in the same "class" as, for example, the Congressional Hispanic Caucus Institute, Inc., etc. The fact that the other enumerated organizations were previously granted some type of tax exemption does not alone transform them into being part of the same "class" as the Cato Institute.

To be sure, Cato's emphasis is that the other organizations identified herein were properly granted property tax exemptions despite their apparent Congressional "lobbying" activities. The real extent of their alleged "lobbying" as such is not established in the present record, even though descriptive references to Congressional "caucus" would superficially suggest an attempt to press a particular political agenda. The factual record herein is simply insufficient for this Court to determine as a matter of law that there is no "substantial difference" between the Cato Institute and the other organizations cited by Cato for comparison. It would be improper for the Court to resort to guesswork based upon innuendo or labels.

The Court of Appeals has drawn the distinction in *Washington Theatre Club* that similarity in "class" is the threshold factor for relief from a Fifth Amendment violation. Though Cato invites this Court to do otherwise, this Court cannot contravene the premise invoked by the Court of Appeals. This Court must apply it to the facts herein.

The Court must be especially carefully in this area, because the Fifth Amendment issue was never revisited in the Court of Appeals after remand in *Washington Theatre Club*. Whatever had been going on did not result in further litigation. The final resolution of the dispute in *Washington Threatre Club* does not appear to be a matter of public record, as nothing has been cited by the parties herein.

Other than the equal protection theory, the arguments of the petitioner are meritorious, and the District must grant the exemption from real property taxes. Since the Petitioner is entitled to exemption from all taxes related to real property, it is entitled to a refund of all taxes paid, including any such BID taxes that were collected and paid because of the Petitioner's ownership of realty property.

WHEREFORE it is by the Court this 6th day of February, 2002

ORDERED that the **Petitioner's Motion for Summary Judgment is granted**; and it is

FURTHER ORDERED that the Respondent's Cross-Motion for Summary Judgment is denied; and it is

FURTHER ORDERED that judgment shall be entered in favor of the Petitioner as to all real property taxes paid and as to all BID taxes paid, as described in the First Amended Petition, and the entry of judgment shall be deferred until the Court rules upon the appropriate Motion for Entry of Judgment; and it is

FURTHER ORDERED that the Petition shall file, no later than March 11, 2002 a Motion for Entry of Judgment and a proposed order, setting forth the amount of each type of refund, so that a specific, final judgment may be entered by the Court.

Cheryl M. Long
Judge

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Claudette Fluckus [FYI]
Tax Officer

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

CATO INSTITUTE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Tax Docket No. 7792-98
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Respondent.	)	

ORDER AND JUDGMENT

Pursuant to the Court's Memorandum Opinion and Order filed on February 6, 2002, it is hereby

ORDERED that Petitioner Cato Institute's building and grounds, identified as Lot 58 in Square 342 and located at 1000 Massachusetts Avenue, N.W., are exempt from the D.C. real property tax under D.C. Code section 47-1002(8) and (18) and are likewise exempt from the D.C. Business Improvement District real property tax under D.C. Code sections 1-2272(8) and (18) and 47-1002(8) and (18); and it is

FURTHER ORDERED that judgment is hereby entered in favor of Petitioner and against Respondent in the amount of $628,535.04, plus interest at the statutory rate of six percent (6%) per annum, 47 D.C. Code § 3310(c), calculated from the date of each overpayment until the date of issuance of the refund check, as more fully set out below.

Date paid	Tax overpaid
03/31/97	$70,014.75
09/15/97	70,014.75
10/18/97	3,022.34
03/02/98	2,462.40
03/19/98	59,297.00
09/03/98	59,297.00
09/14/98	2,462.40
03/23/99	2,462.40
03/30/99	59,297.00
09/28/99	59,297.00
09/28/99	2,462.40
03/27/00	56,539.00
03/27/00	2,462.40
09/10/00	56,539.00
09/10/00	2,462.40
03/15/01	57,759.00
03/13/01	2,462.40
09/12/01	57,759.00
09/12/01	2,462.40
TOTAL	**$628,535.04**

DATED: March 21, 2002

Honorable Cheryl M. Long
Judge

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Tax Officer