

Bond Case Briefs

Municipal Finance Law Since 1971

Husch Blackwell Authors U.S. Supreme Court Amicus Brief in Public Finance Litigation.

Husch Blackwell prepared and filed an *amicus curiae* brief on behalf of 11 major state and local government organizations, including the International Municipal Lawyers Association, Government Finance Officers Association, and the National League of Cities, urging the U.S. Supreme Court to grant certiorari in *Indiana Municipal Power Agency v. United States*. The case addresses whether the federal government can renege on its binding commitments to state and local governmental entities under the Build America Bonds program—the first-ever direct federal subsidy program for general-purpose state and local borrowing.

In 2009, the Build America Bonds program was created by the American Recovery and Reinvestment Act (ARRA), a stimulus package in response to the Global Financial Crisis that began in 2007. The program was an unprecedented federal intervention in the municipal bond market that induced thousands of state and local entities to issue taxable bonds, giving up the considerable advantages of tax-exempt bonds. State and local issuers made this election in reliance on Congress's promise to refund 35% of the interest payments on the bonds.

The petitioners—Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Northern Illinois Municipal Power Agency, American Municipal Power, Illinois Municipal Electric Agency, and Kentucky Municipal Power Agency—were among the 2,275 state and local governmental entities that issued over \$181 billion in Build America Bonds in 2009 and 2010. These entities used the proceeds to invest in capital infrastructure projects that created thousands of new jobs, just as Congress intended.

In 2013, Congress had not repealed the ARRA, but federal agencies—specifically, the Office of Management of Budget, the Department of the Treasury, and the Internal Revenue Service—decided to stop making direct cash payments to issuers to cover the full 35% of interest payments, maintaining that these payments qualified as direct spending subject to sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985, Budget Control Act, and American Taxpayer Relief Act of 2012.

The Petitioners appealed to the Federal Circuit, which affirmed the trial court's ruling that the IRS did not improperly decrease the payments for sequestration.

Husch Blackwell's brief was written by attorneys Danny Solomon, Kate David, Sebastian Waisman, Ben Stephens, and Spencer Tolson. The petition for writ of certiorari was filed on August 16, and the justices are scheduled to consider the petition shortly after returning from their summer recess next month.

August 18, 2023