

Amicus Brief Filed with U.S. Supreme Court Addressing Appellate Costs

By Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)

In [City of San Antonio, Texas v. Hotels.com, L.P.](#), the State and Local Legal Center (SLLC) filed a Supreme Court [amicus brief](#) arguing federal district courts should be able to waive the general rule that the loser on appeal pays the winner's appellate costs.

The City of San Antonio won in federal district court a class action lawsuit against online travel companies (OTCs) requiring them to collect occupancy taxes on the "retail rate" for a hotel room—the amount they collect for the room rate plus the service fee. On appeal, the Fifth Circuit ruled against San Antonio because a state court ruled OTCs only have to collect tax on the room rate.

Federal Rule of Appellate Procedure 39(e) lists the appellate costs that are "taxable in the district court for the benefit of the party entitled" to them. After Hotels.com won its appeal, the district court ordered San Antonio to pay them over \$2 million in appellate costs per this rule.

San Antonio argued that the district court was incorrect to conclude that it lacked the discretion to deny or reduce the award of costs pointing out that most other federal courts of appeals have held (or implied) they may do so.

The Fifth Circuit disagreed. In a previous Fifth Circuit case from 1991, *In re Sioux Ltd., Sec. Litig.*, the Fifth Circuit held under Rule 39(e) district courts have no discretion “whether, when, to what extent, or to which party to award costs of the appeal.”

The SLLC [*amicus* brief](#) points out that “[a]s frequent litigants, local governments, along with the taxpayers they represent, would sometimes benefit and sometimes suffer from a rule requiring district courts to tax appellate costs mechanically, with no ability to exercise their sound discretion.” Nevertheless, the SLLC *amicus* brief argues the Supreme Court should hold that federal district courts have the discretion to reduce or deny appellate costs. The brief posits “district courts are in the best position to assess appellate taxable costs in an equitable manner based on the circumstances of the particular case.”

Rick Simpson and Emily Hart of Wiley Rein and Andrew Hessick and Luke Everett of UNC School of Law wrote the SLLC [*amicus* brief](#) which the following organizations joined: National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association, and International Municipal Lawyers Association.

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