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Recent Successes: RK&O Files Successful Amicus Brief with United States Supreme Court

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In September, RK&O submitted an *amicus* brief to the United States Supreme Court on behalf of a bipartisan group of economists and public policy experts in *Department of Revenue of Kentucky v. Davis* (No. 06-666). The case involved a constitutional challenge under the Commerce Clause to a Kentucky statute that granted preferential tax treatment for Kentucky municipal bonds.

In filing the *amicus* brief, RK&O's clients sought to add their expertise on the complex policy issues presented in the case, and to highlight certain issues that the parties to the case had chosen not to address. RK&O helped craft a brief that voiced their concerns; in particular, the brief argued that the preferential tax treatment for so-called "private activity bonds" – a subset of municipal bonds used by states to finance projects by private entities – is plainly unconstitutional under Court precedent, even if the favorable tax treatment for other sorts of bonds might be permissible.

The Court handed down its decision on May 19, 2008. Justice Souter's majority opinion upheld the preferential tax treatment for municipal bonds generally.

RK&O's *amicus* brief, however, achieved its intended objective. Citing to RK&O's brief, Justice Souter specifically carved out the issue of whether preferential tax treatment for private activity bonds is constitutional, saying that "it is best to set this argument aside and leave [it] for another day."

The explicit preservation of this issue for the future is a significant result for an *amicus* brief, particularly given that the private activity bond issue was neither raised below, nor mentioned by respondents on appeal.

RK&O's team on the brief consisted of Lucinda McConathy, David Daniels, and Jon Connolly.