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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

COINBASE, INC.,

Respondent.

Case Number: 3:17-cv-01431-JSC

**BRIEF OF *AMICUS CURIAE* COIN
CENTER**

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I. INTEREST OF AMICUS

Coin Center is an independent, non-profit research center focused on the public policy issues facing digital currency technologies such as Bitcoin and others. Coin Center’s mission is to build a better public understanding of these technologies and to promote a regulatory climate that preserves the freedom to innovate using blockchain technologies. Coin Center frequently produces and publishes policy research from respected academics and experts, educates policymakers at all levels of government and the media about blockchain technology, and promotes sound public policy.

Intervenors have extensively briefed the relevant law, and Coin Center does not rehearse those arguments here. Instead this brief addresses only the following:

1. The legitimacy of the stated purposes of the Internal Revenue Service (IRS) in pursuing the enforcement of its summons;
2. The legal and policy landscape surrounding activities performed using Bitcoin and related technologies; and
3. The failure of the IRS to match other regulators and policymakers with respect to creating legal clarity for persons using Bitcoin and related technologies.

II. THE IRS’S PURPOSE IN THIS INVESTIGATION IS EITHER TO MOUNT A GENERAL RESEARCH PROJECT, OR ELSE IT EXPRESSES A MANIFESTLY INCORRECT ASSUMPTION THAT ALL OR MOST VIRTUAL CURRENCY TRANSACTIONS ARE MADE TO EVADE TAXES AND THE LAW

The burden falls to the IRS to make a *prima facie* showing that its John Doe summons was issued in good faith.¹ The Supreme Court has held that the IRS must begin by demonstrating that the summons “was issued pursuant to a ‘legitimate purpose.’”² The Court has

¹ See *Stewart v. United States*, 511 F.3d 1251, 1254 (9th Cir. 2008) (holding that “the IRS must make a prima facie showing that the summons was issued in good faith”).

² *Id.*

1 insisted that it is the duty of a district court to evaluate that demonstration of purpose and ensure
2 that its own processes for enforcing administrative summonses are not being abused.³

3 Improper purposes include “‘fishing expeditions’ into the private affairs of taxpayers”⁴
4 and “research projects or inquiries, absent an investigation of taxpayers or individuals and
5 corporations from whom information is sought.”⁵ The IRS has provided two declarations thus
6 far, in which it attempts to demonstrate that its purposes are legitimate in this investigation. In
7 the more recent declaration, the purpose of the investigation is said to be to “determine the
8 identity and correct federal income tax liability of United States persons who conducted
9 transactions in a convertible virtual currency . . . for the years ended December 31, 2013, 2014,
10 and 2015.”⁶

11 There is no obvious reason why the IRS could not freely substitute “convertible virtual
12 currency” with any valuable item (*e.g.*, cash, rare books, artwork, or baseball cards) in order to
13 mount investigations seeking the “identity and correct federal income tax liability” for all U.S.
14 persons trading or dealing in those items. If such a simple and sweeping statement of purpose is
15 sufficient to qualify as a legitimate purpose, there would be no meaningful judicial check in
16 place to stop the IRS from using the John Doe summons process to collect the personal records
17 of every person who had bought or sold stocks on the New York Stock Exchange, art within a
18 given time period from Sotheby’s, rare books from City Lights Booksellers, or cash deposits or
19 withdrawals at Bank of America.

22 ³ *King v. United States*, No. C 06-2602 SBA, 2006 WL 2032579, *1, (N.D. Cal. July 18, 2006)
23 (citing *United States v. Powell*, 379 U.S. 48, 58 (1964)) (“Such an abuse would take place if the summons
24 had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle
25 a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation.”).

25 ⁴ *United States v. Bisceglia*, 420 U.S. 141, 150-51 (1975).

26 ⁵ *United States v. Humble Oil & Refining Co.*, 488 F.2d 953, 962-63 (5th Cir. 1974), *vacated and*
remanded, 421 U.S. 943 (1975), *aff’d. per curiam*, 518 F.2d 747 (5th Cir. 1975).

27 ⁶ Declaration of David Utzke in Support of Petition to Enforce Internal Revenue Service Summons,
28 filed on March 16, 2017, Ex. A ¶ 2 (Dkt. No. 1-1).

1 The true purpose underlying any of these hypothetical investigations would clearly be to
2 embark on a “fishing expedition”⁷ (or, at best, a wide-ranging research project). In the majority
3 of cases, personal records would reveal no wrongdoing but occasionally a fish would be on the
4 line. Amongst all of the traders, rare book dealers, art connoisseurs, baseball card traders, or
5 cash carriers in the world, surely some would be found to be evading taxes, and the popular
6 intermediaries for those transactions would be easy-to-find and well-stocked ponds for fishing.
7 With the advent of well-formatted and searchable digital databases of customer information, the
8 IRS could periodically commandeer the mountains of private data collected by U.S. companies
9 and mine through millions of innocent names and records in search of the occasional bad actor.

10 The only way that such an investigation into tax evasion with Bitcoin can avoid being
11 similarly characterized as a naked “fishing expedition”⁸ would be if—unlike as with stocks, cash,
12 art, or books—one could reasonably conclude that all or most convertible virtual currency
13 transactions are made to evade taxes. The Court would need to conclude, effectively, that
14 Bitcoin and related innovations are nothing more than unregulated and illicit tools for criminals.

15 Coin Center wishes to provide the Court with helpful evidence that this is not the case. It
16 discusses below how Bitcoin is a legitimate innovation; how the users and developers of these
17 new and exciting technologies are, by and large, not seeking to evade taxes or other laws; and
18 how, with the notable exception of the IRS, other federal regulatory agencies have taken a
19 helpful and proactive approach to clarifying regulatory grey areas with respect to the technology.

20 **III. BITCOIN AND RELATED TECHNOLOGIES ARE PROMISING**
21 **INNOVATIONS; THEIR USE AND DEVELOPMENT ARE ALMOST**
22 **ENTIRELY LEGITIMATE AND OCCUR WITHIN A HIGHLY**
23 **REGULATED SPACE**

24 Bitcoin is a decentralized digital currency and computer network that allows persons to
25 send value over the Internet using nothing more than an Internet-connected device and freely

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27 ⁷ *United States v. Bisceglia*, 420 U.S. 141, 150-51 (1975).

28 ⁸ *Id.*

1 available software. Since its invention in 2008 in the aftermath of the financial crisis,⁹ Bitcoin
2 has grown into a technology that today secures over \$45 billion worth of value on behalf of its
3 users. No single person or corporation creates or guarantees the operation of this technology.
4 The Bitcoin network is powered by a new Internet protocol, the underlying software for which is
5 open source, freely auditable, and maintained by no fewer than 450 unique and unaffiliated
6 developers.¹⁰ Hundreds of businesses and institutions have emerged to build consumer- and
7 business-facing applications, tools, and resources that take advantage of the functionality of that
8 open network.

9 Bitcoin's invention has also directly spurred the creation of several follow-on innovations
10 ranging from alternative digital currency systems, to decentralized computing platforms, to
11 enterprise-grade software for banks and other large institutions. Collectively, these efforts are
12 often referred to as "blockchain technology," a name that references the cryptographically
13 verified and distributed list of all Bitcoin transactions that lies at the core of the Bitcoin network,
14 "the Bitcoin blockchain."¹¹ Since 2010, venture capital investment in blockchain-technology-
15 focused start-ups has surpassed \$1 billion with large and respected funds like Andreessen
16 Horowitz and Union Square Ventures leading the way.¹² Several longstanding technology and
17 finance firms have begun their own pilot projects in this space, among them Microsoft, Deloitte,
18 JP Morgan, and IBM.¹³ Even central banks, institutions generally tasked with preserving
19

21 ⁹ See Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, Bitcoin (Oct. 31, 2008),
22 <https://bitcoin.org/bitcoin.pdf>.

23 ¹⁰ See GitHub, *bitcoin/bitcoin: Bitcoin Core integration/staging tree*, GitHub (Aug. 1, 2017),
<https://github.com/bitcoin/bitcoin>.

24 ¹¹ Peter Van Valkenburgh, *Open Matters: Why Permissionless Blockchains are Essential to the*
Future of the Internet, Coin Center (Dec. 14, 2016), <https://coincenter.org/entry/open-matters>.

25 ¹² Jose Pagliery, *Record \$1 billion invested in Bitcoin firms so far*, CNN (Nov. 3, 2015),
26 <http://money.cnn.com/2015/11/02/technology/bitcoin-1-billion-invested/index.html>.

27 ¹³ Rob Marvin, *IBM, Microsoft Are Building Our Blockchain Future—and They're Not Afraid to*
Butt Heads, PC Magazine (Aug. 4, 2016), [https://www.pcmag.com/article/346729/ibm-microsoft-are-](https://www.pcmag.com/article/346729/ibm-microsoft-are-building-our-blockchain-future-and-theyr)
28 [building-our-blockchain-future-and-theyr](https://www.pcmag.com/article/346729/ibm-microsoft-are-building-our-blockchain-future-and-theyr).

1 economic stability above all else, have announced blockchain-based initiatives.¹⁴ Blockchain
2 technology promises not only to alter the landscape of financial services but has also begun to be
3 used to build trustworthy computer networks for verifying and exchanging all manner of data,
4 including digital identity credentials, supply chain records, voting data, property records, and
5 health records.¹⁵

6 With the rapid emergence of blockchain technologies comes the possibility of meaningful
7 shifts in jobs markets. New technologies can both create and destroy jobs, and some nations and
8 regions will always be net-employment winners and losers in those shifts. J. Christopher
9 Giancarlo, Acting Chairman of the Commodity Futures Trading Commission (“CFTC”), has
10 repeatedly stressed that “U.S. politicians and policymakers concerned about the rapid loss of jobs
11 in the financial services industry, especially in the New York City area, must become more
12 welcoming to blockchain and FinTech innovation and the well-paying jobs that will surely
13 follow.”¹⁶ He suggests that the regulatory approach to these emerging technologies should
14 mirror the approach taken with the early Internet:

15 Governments and regulators should avoid undue restrictions, support predictable,
16 consistent and simple legal frameworks and respect the “bottom-up” nature of the
17 technology and its development in a global marketplace. This “do no harm”
18 model served as the enlightened regulatory underpinning of the Internet that
brought about such profound changes to human society and created many new
businesses.¹⁷

19 It hardly needs to be said that indiscriminately sweeping up customer data from leading
20 blockchain technology companies is difficult to characterize as a “do no harm” approach. Had
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23 ¹⁴ See Steve Webb, *Why Central Banks Are Getting Serious About Blockchain*, Medium (June 23,
24 2016), <https://medium.com/@InnFin/why-central-banks-are-getting-serious-about-blockchain-19b695095e98>.

25 ¹⁵ See Van Valkenburgh, *supra* note 11.

26 ¹⁶ J. Christopher Giancarlo, *Do No Harm to the Blockchain—American Jobs Depend on It*, Observer
27 (May 16, 2016), <http://observer.com/2016/05/do-no-harm-to-the-blockchain-american-jobs-depend-on-it/>.

28 ¹⁷ *Id.*

1 similar tactics been taken with regard to companies building the early Internet, the dynamism of
2 the U.S. technology industry may never have taken root.

3 Despite a common misapprehension, Bitcoin is not anonymous.¹⁸ Indeed, the
4 transparency and fidelity of transaction records on the Bitcoin blockchain has been a boon to law
5 enforcement seeking to police criminal activity online.¹⁹ For example, analysis of that public
6 transaction record has just this past year allowed law enforcement to link stolen funds from the
7 infamous, now-defunct bitcoin exchange, Mt. Gox, to an account at one of the last remaining
8 unregulated and illicit bitcoin exchanges, BTC-e. That investigation has led ultimately to the
9 arrest and indictment of the probable thief who, apparently, also co-owned and managed the
10 illicit exchange.²⁰

11 Aside from BTC-e, digital currency companies have been manifestly cooperative with
12 law enforcement. Since October 2015, the non-profit Blockchain Alliance has served as a
13 public-private forum and clearinghouse for information and education essential to ensuring that
14 law enforcement has the tools and expertise necessary to efficiently enforce the law on these new
15 networks.²¹ Members of the Alliance include over 25 companies and industry groups as well as

17 ¹⁸ Adam Ludwin, *How Anonymous is Bitcoin?*, Coin Center (Jan. 20, 2015),
18 <https://coincenter.org/entry/how-anonymous-is-bitcoin>.

19 ¹⁹ Jerry Brito, *Silk Road corruption case shows how law enforcement uses Bitcoin*, Coin Center
20 (Apr. 1, 2015), <https://coincenter.org/entry/silk-road-corruption-case-shows-how-law-enforcement-uses-bitcoin>.

21 ²⁰ *US v. BTC-E A/K/A Canton Business Corporation and Alexander Vinnik, Superseding*
22 *Indictment*, (N.D. Cal., Jan. 17, 2017) CR-16-00227-SI, ¶¶ 52-56, <https://www.justice.gov/usao-ndca/press-release/file/984661/download> (“52. The Mt. Gox exchange was the subject of a series of
23 computer intrusions and resulting thefts between approximately September 2011 and May 2014 ...
24 Several hundred millions dollars’ worth of bitcoin was stolen, including from numerous customers in the
25 U.S. and within the Northern District of California. ... 53. Of this 530,000 bitcoin, 300,000 of it was sent
26 directly to three separate BTC-e accounts: “Vammedam,” “Grmbit,” and “Petr.” These accounts were all
27 linked to each other. 54. Meanwhile, blockchain analysis reveals that the stolen Mt. Gox funds that went
28 to Trade Hill [another exchange] and back into the other Mt. Gox account were controlled by a user who
also controlled a BTC-e account called ‘WME.’ At all times relevant to this Indictment, defendant Vinnik
exercised control over the BTC-e ‘WME’ account.”).

²¹ Jason Weinstein & Alan Cohn, *After eight months, an update on the Blockchain Alliance*, Coin
Center (July 26, 2016), <https://coincenter.org/entry/after-eight-months-an-update-on-the-blockchain-alliance>.

1 25 law enforcement and regulatory bodies around the world, including the IRS, as well as the
2 U.S. Department of Justice (“DOJ”), Federal Bureau of Investigation (“FBI”), Marshals Service,
3 Secret Service, Immigration and Customs Enforcement/Homeland Security Investigations,
4 Customs and Border Protection, the Attorneys General of California and Texas, the Manhattan
5 District Attorney’s Office, and—internationally—Europol, Interpol, the Australian Federal
6 Police and the Commonwealth Secretariat.²²

7 Nor are these technologies unregulated.²³ Most regulation is, of course, activity-based,
8 and therefore any previously regulated activities (*e.g.*, money transmission or derivatives trading)
9 when performed using a new technology like Bitcoin will remain regulated under existing laws
10 and regulations.²⁴ As Bitcoin has become increasingly popular and widely known, state and
11 federal agencies have progressively clarified the application of existing laws to persons using the
12 technology.

13 In 2013, for example, the Financial Crimes Enforcement Network (“FinCEN”), a division
14 of the Treasury Department, issued guidance explaining how administrators and exchangers of
15 virtual currencies, including Bitcoin, qualify as money services businesses (“MSBs”) under the
16 Bank Secrecy Act and must therefore register with FinCEN, develop an effective anti-money
17 laundering and customer identification program, and file suspicious activity reports.²⁵ Since that
18 2013 guidance, and in response to several requests for further clarification, FinCEN has issued
19 three administrative rulings that helpfully clarify precisely which businesses do or do not qualify
20 as MSBs. Thanks to this regulatory clarity, today all major exchanges (and many other industry
21 participants) with U.S. customers have taken steps to fully comply with the Bank Secrecy Act.

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23 ²² *Id.*

24 ²³ Jerry Brito, *Is Bitcoin Regulated?*, Coin Center (Jan. 13, 2015), <https://coincenter.org/entry/is-bitcoin-regulated>.

25 ²⁴ *Id.*

26 ²⁵ Department of the Treasury Financial Crimes Enforcement Network, *Application of FinCEN’s*
27 *Regulations to Persons Administering, Exchanging, or Using Virtual Currencies*, FIN-2013-G001 (Mar.
28 18, 2013), <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>.

1 Elsewhere within the Treasury Department, the Office of the Comptroller of the Currency
 2 (“OCC”) has begun looking seriously at chartering financial technology firms, digital currency
 3 companies among them, as national banks.²⁶ The OCC has suggested it already has sufficient
 4 statutory authority to do so, has engaged in a rulemaking to clarify receivership issues for non-
 5 FDIC-insured FinTech charter-holders,²⁷ and says it is open for business and ready to entertain
 6 applications.²⁸

7 Consumer protection regulators have also been engaged. The Consumer Financial
 8 Protection Bureau has issued a comprehensive alert educating consumers about safe use of these
 9 networks.²⁹ Several state regulators and legislatures have turned to the question of whether
 10 digital currency businesses need to be licensed and bonded as money transmitters when they
 11 engage with customers of their state.³⁰ This has proved a laborious process given that it unfolds
 12 separately and redundantly within each state. However, an initiative of the Conference of State
 13 Bank Supervisors to create a model framework for licensing digital currency businesses,³¹ and
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 17 ²⁶ Office of the Comptroller of the Currency, *Exploring Special Purpose National Bank Charters*
 18 *for Fintech Companies* (Dec. 2016), [https://www.occ.treas.gov/topics/responsible-](https://www.occ.treas.gov/topics/responsible-innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf)
[innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf](https://www.occ.treas.gov/topics/responsible-innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf).

19 ²⁷ Office of the Comptroller of the Currency, *Receiverships for Uninsured National Banks*, 81 FR
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21 ²⁸ See Lalita Clozel, *OCC’s Noreika endorses fintech charter, slams state regulators*, American
 22 Banker (July 19, 2017), [https://www.americanbanker.com/news/occs-noreika-endorses-fintech-charter-](https://www.americanbanker.com/news/occs-noreika-endorses-fintech-charter-slams-state-regulators)
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23 ²⁹ Consumer Financial Protection Bureau, *Consumer Advisory: Risks to Consumers Posed by*
 24 *Virtual Currencies* (Aug. 2014), [http://files.consumerfinance.gov/f/201408_cfpb_consumer-](http://files.consumerfinance.gov/f/201408_cfpb_consumer-advisory_virtual-currencies.pdf)
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25 ³⁰ See generally Peter Van Valkenburgh, *State Digital Currency Regulation Tracker*, Coin Center
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27 ³¹ Conference of State Bank Supervisors, *State Regulatory Requirements for Virtual Currency*
 28 *Activities CSBS Model Regulatory Framework* (Sep. 2015), [https://www.csbs.org/regulatory/ep/Documents/CSBS-Model-Regulatory-](https://www.csbs.org/regulatory/ep/Documents/CSBS-Model-Regulatory-Framework(September%2015%202015).pdf)
[Framework\(September%2015%202015\).pdf](https://www.csbs.org/regulatory/ep/Documents/CSBS-Model-Regulatory-Framework(September%2015%202015).pdf).

1 the promulgation of a uniform model state licensing law by the Uniform Law Commission,³²
2 have begun to bear fruit.

3 Commodities futures and securities regulators have also been engaged. CFTC Acting
4 Chairman Giancarlo has articulated the need for a “Do No Harm” approach to forming policy in
5 this arena,³³ and the Commission has just recently granted a firm providing Bitcoin swap trades,
6 LedgerX, formal registration as a derivatives clearing organization.³⁴ Other derivatives
7 exchanges have recently announced their intent to follow suit. The Securities and Exchange
8 Commission (“SEC”) has released a report explaining how certain tradable tokens issued by
9 common enterprises built and organized via smart contracts enforced by open blockchain
10 networks may qualify as securities and fall under the SEC’s regulatory purview.³⁵

11 Just about every agency of government with potential jurisdiction over digital currency
12 activities has engaged positively and proactively with the digital currency community. For
13 example, the Federal Trade Commission, SEC, CFTC, DOJ, Treasury Department, Federal
14 Reserve, the President’s Council of Advisors on Science and Technology have held workshops,
15 hearings, and other conferences on digital currency innovation. Congress has similarly taken a
16 keen and roundly positive interest in these technologies. Since 2013, the Senate and the House
17 of Representatives have each held a half-dozen hearings looking at Bitcoin and digital
18 currencies. These have focused on their innovative potential and inherent risks, their use by
19 small business, their contribution to American competitiveness around the world, the new

21 ³² See National Conference of Commissioners on Uniform State Laws, *Uniform Regulation of*
22 *Virtual Currency Business Act* (July 2017),
23 [http://www.uniformlaws.org/shared/docs/regulation%20of%20virtual%20currencies/2017AM_URVCBA](http://www.uniformlaws.org/shared/docs/regulation%20of%20virtual%20currencies/2017AM_URVCBA_AsApproved.pdf)
[_AsApproved.pdf](http://www.uniformlaws.org/shared/docs/regulation%20of%20virtual%20currencies/2017AM_URVCBA_AsApproved.pdf).

24 ³³ See *Keynote Address of CFTC Commissioner J. Christopher Giancarlo Before the Cato Institute,*
25 *Cryptocurrency: The Policy Challenges of a Decentralized Revolution* (Apr. 2016),
<http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-14>.

26 ³⁴ See *CFTC Grants DCO Registration to LedgerX LLC*, Rel. pr 7592-17 (July 2017),
<http://www.cftc.gov/PressRoom/PressReleases/pr7592-17>.

27 ³⁵ *SEC Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934:*
28 *The DAO*, Rel. No. 81207 (July. 2017), <https://www.sec.gov/litigation/investreport/34-81207.pdf>.

1 options they present to consumers, and their regulation by federal authorities. In the House,
 2 several members have formed the bipartisan Congressional Blockchain Caucus to serve as a
 3 clearinghouse for legislative briefings and initiatives related to the technology.³⁶

4 Across the federal government and at the state level, almost everyone is doing their part
 5 to create regulatory clarity and promote responsible innovation.

6 **IV. THE IRS HAS FAILED TO KEEP PACE WITH OTHER**
 7 **POLICYMAKERS WITH RESPECT TO BITCOIN AND RELATED**
 8 **TECHNOLOGIES; THIS OVERBROAD INVESTIGATION IS NOT AN**
 9 **APPROPRIATE MEANS TO CATCH UP**

10 As Intervenors' briefs already recount, the IRS has lagged behind with respect to crafting
 11 clear regulatory and legal guidance for users and companies in the Bitcoin space. In 2013, after
 12 two congressional hearings on Bitcoin and the release of FinCEN's virtual currency guidance,
 13 the U.S. Government Accountability Office ("GAO") criticized the IRS for its failure to make
 14 any attempt at developing regulatory guidance or clarity with respect to Bitcoin and other virtual
 15 currencies.³⁷ The GAO report suggested that "[b]y not issuing guidance, IRS may be missing an
 16 opportunity to address these compliance risks and minimize their impact and potential for
 17 noncompliance."³⁸

18 For a further year, the IRS continued to avoid the issue. Finally, in April 2014, the IRS
 19 issued informal guidance, IRS Notice 2014-21.³⁹ That guidance is very brief, stating simply that
 20 Bitcoin and similar convertible virtual currencies would be classified as property and subject to

21 ³⁶ See Congressional Blockchain Caucus, <https://www.congressionalblockchaincaucus.com/> (last
 22 visited Aug. 2017) ("The Congressional Blockchain Caucus was founded in the 114th Congress and is
 23 enjoying significant growth and an ever-expanding focus. We are a bi-partisan group of Members of
 24 Congress and Staff who believe in the future of blockchain technology, and understand that Congress has
 25 a role to play in its development. As a Caucus, we have decided on a hands-off regulatory approach,
 26 believing that this technology will best evolve the same way the internet did; on its own.").

27 ³⁷ See Government Accountability Office, *Report to the Committee on Finance, U.S. Senate. Virtual*
 28 *Economies and Currencies: Additional IRS Guidance Could Reduce Tax Compliance Risks*, Ref. No.
 GAO-13-516 (May 2013), <http://www.gao.gov/assets/660/654620.pdf>.

³⁸ *Id.*

³⁹ See Internal Revenue Service, *Virtual Currency Guidance: Virtual Currency is Treated as*
Property for U.S. Tax Purposes; General Rules for Property Transactions, IR 2014-21 (Mar. 2014).

1 capital gains treatment for the purposes of tax reporting. The IRS received 36 public comments
2 relating to its guidance but failed to respond or take any additional action to clarify ambiguities
3 raised by those commenters.⁴⁰ To this day, IRS Notice 2014-21 remains the only official
4 treatment of virtual currency tax issues released by the IRS; no formal rules or regulations have
5 followed.

6 Two years on, in 2016, the Treasury Inspector General for Tax Administration
7 (“TIGTA”) issued a frank report criticizing the IRS for its continued failure to develop any
8 “compliance initiatives or guidelines for conducting examinations” or formulate any
9 “methodology for gathering data on virtual currency use in taxable transactions—data that are
10 necessary to analyze the risk of noncompliance and to estimate its significance.”⁴¹ The TIGTA
11 report stressed that “[b]y virtue of the [2013] FinCEN rulings, the IRS has significant tools
12 available to help ensure that virtual currency exchanges are following the law” and chided the
13 IRS for its lack of action over the intervening three years.⁴² It stated, “[s]ince the GAO issued its
14 report on virtual currencies three years ago, the IRS’s position on virtual currency as a tax
15 compliance risk requiring additional oversight has remained relatively unchanged.”⁴³ Two
16 separate letters from Congress followed, citing the TIGTA report and imploring the IRS to take a
17 more strategic approach.⁴⁴

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19
20 ⁴⁰ Treasury Inspector General for Tax Administration, *As the Use of Virtual Currencies in Taxable*
21 *Transactions Becomes More Common, Additional Actions are Needed to Ensure Taxpayer Compliance*,
22 Ref. No. 2016-30-83 (Sept. 2016),
<https://www.treasury.gov/tigta/auditreports/2016reports/201630083fr.pdf>.

23 ⁴¹ *Id.*

24 ⁴² *Id.*

25 ⁴³ *Id.*

26 ⁴⁴ See Letter from Chairman Orrin G. Hatch, Chairman Kevin Brady, and Chairman Vern Buchanan
27 to John Koskinen, Commissioner Internal Revenue Service (May 17, 2017),
28 [https://waysandmeans.house.gov/wp-content/uploads/2017/05/2017.05.17-Coinbase-Letter-Hatch-Brady-](https://waysandmeans.house.gov/wp-content/uploads/2017/05/2017.05.17-Coinbase-Letter-Hatch-Brady-Buchanan.pdf)
[Buchanan.pdf](https://waysandmeans.house.gov/wp-content/uploads/2017/05/2017.05.17-Coinbase-Letter-Hatch-Brady-Buchanan.pdf); Letter from Congressman Jared Polis and Congressman David Schweikert to John
Koskinen, Commissioner, Internal Revenue Service (June 2, 2017),
https://polis.house.gov/uploadedfiles/060217_ltr_irs_digital_currency.pdf.

1 The IRS has been repeatedly told that it has catching up to do on Bitcoin. Unfortunately,
2 given the extraordinary nature of this John Doe summons, it would appear the IRS intends to do
3 that catching-up all at once by aggressively demanding swaths of private customer information
4 from one of the most compliant and cooperative companies in the digital currency space. The
5 summons runs counter to the several healthy public-private relationships that have blossomed
6 between Bitcoin companies and other regulators. The summons is also plainly a research project
7 aimed not at any particularized suspicion of tax evasion, but rather squarely at the technology as
8 a whole. While the IRS badly needs to engage in that expansive research, the courts long ago
9 made it clear that John Doe summonses are inappropriate vehicles for such expeditions. The
10 Court should refuse to enforce the summons and leave the IRS to pursue its research projects and
11 policy initiatives through more conventional means less likely to jeopardize the privacy of
12 innocent Americans or antagonize the developers and users of promising new technologies.

13 **V. CONCLUSION**

14 Coin Center, as *amicus curiae*, respectfully submits that the Court should not enforce the
15 IRS' summons, or in the alternative, should appropriately limit the scope of the IRS's John Doe
16 subpoenas in this action.

17 DATED: August 3, 2017

Respectfully submitted,

18 KOBRE & KIM LLP

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21 By: /s/ Hartley M. K. West
22 Hartley M. K. West
23 Counsel for Amicus Curiae Coin Center
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CERTIFICATE OF SERVICE

United States of America v. Coinbase, Inc.
N.D. Cal. Case No. 3: 17-cv-01431-JSC

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **August 3, 2017**. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **August 3, 2017**.

By: /s/ Hartley M. K. West
Hartley M. K. West