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**METROPOLITAN WASHINGTON CHAPTER, ASSOCIATED BUILDERS AND**

**CONTRACTORS, INC. APPEALS RECENT U.S. DISTRICT COURT**

**DECISION CONCERNING D.C.’S FIRST SOURCE LAW[[1]](#footnote-1)**

*U.S. District Court Decision Leaves D.C. Residents Vulnerable to Discrimination*

*By Other States*

In 2012, the Associated Builders and Contractors of Metro Washington (“ABC-Metro Washington”) filed suit in U.S. District Court challenging the District of Columbia’s First Source Employment Act (“Act”) on the basis that it discriminates against nonresidents of the District. Notwithstanding the District’s rationale for the Act, ABC-Metro Washington believed that the increasingly prejudicial and one-sided impact of the Act would eventually trigger a retaliatory response by neighboring jurisdictions, leading to greater regional protectionism. These fears remain.

The U.S. District Court’s recent decision in the case, if allowed to stand, may have the effect of further classifying District residents as second-class citizens. As such, ABC-Metro Washington has appealed the decision.

By way of background, in reaching his decision in the case, Judge Emmet Sullivan reaffirmed that the Privileges and Immunities Clause of the Constitution does not apply to the District of Columbia government, because the District is not a “state.”[[2]](#footnote-2) Justice Sullivan, however, went further holding that the Due Process Clause of the Constitution does not protect citizens from discriminatory actions that are protected by Privileges and Immunities Clause. As such, District residents – who are not citizens of a state and therefore not protected by the Privileges and Immunities Clause – are not protected against the type of discriminatory conduct that the Privileges and Immunity Clause was crafted to prevent. Such a legal precedent exposes District residents to *lawful* discrimination by other states, which is unacceptable.

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1. Metropolitan Washington Chapter, Associated Builders and Contractors, Inc., *et al.* v. District of Columbia, *et al. ,* No. 12cv-853 (EGS), (D.D.C. December 30, 2021). [↑](#footnote-ref-1)
2. The Privileges and Immunities Clause reads, “[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” [↑](#footnote-ref-2)