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OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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MEMORANDUM

TO: Hon. John D. Bates, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Allison Eid, Chair
Advisory Committee on Appellate Rules

RE: Report of the Advisory Committee on Appellate Rules

DATE: May 16, 2025

I. Introduction

The Advisory Committee on Appellate Rules met on Wednesday, April 2, 2025, in Atlanta, Georgia. The draft minutes from the meeting accompany this report.

The Advisory Committee has several action items for the June 2025 meeting.

It seeks final approval of amendments to Rule 29, dealing with amicus briefs, along with conforming amendments to Rule 32 and the Appendix of Length Limits.

It also seeks final approval of amendments to Form 4, the form used by applicants for in forma pauperis (IFP) status. (Part II of this report.)

In addition, the Advisory Committee asks the Standing Committee to publish for public comment proposed amendments to Rule 15, dealing with review of administrative agency decisions. (Part III of this report.)

Other matters under active consideration (Part IV of this report) are:

- creating a rule dealing with intervention on appeal;
- addressing issues concerning reopening of the time to appeal under Rule 4(a)(6);
- amending Rule 8 to provide limits on administrative stays;
- providing greater protection for Social Security numbers in court filings; and
- expanding electronic filing by self-represented litigants.

The Committee also considered a new suggestion to change the way time is calculated under Rule 26 for motions and removed it from the Committee's agenda (Part V of this report).

II. Items for Final Approval

A. Amicus Briefs—Rule 29 (21-AP-C; 21-AP-G; 21-AP-H; 22-AP-A; 23-AP-B; 23-AP-I; 23-AP-K)

The proposed amendments to Rule 29 published for public comment addressed two major areas. First, they addressed disclosures by amici, proposing additional disclosure requirements. Second, they addressed the requirements for filing an amicus brief, proposing the elimination of filing amicus briefs on consent and requiring all nongovernmental entities to make a motion for leave to file an amicus brief at a court's initial consideration of a case.

The Advisory Committee received hundreds of written comments and about two dozen witnesses testified at a hearing.

Over the many years of work on the disclosure requirements, the Standing Committee has provided considerable encouragement and guidance. By contrast, it has been skeptical from the (more recent) start of the proposed elimination of the

consent option. Accordingly, the public was specifically invited to comment on this aspect of the proposal.

The public spoke with one voice about the proposed elimination of the consent option: Don't do it. The existing system works well, with a culture of consent. Requiring a motion would increase work for lawyers and judges and threaten to change the culture by inviting parties to oppose motions. And adding a motion requirement to the initial hearing stage was not a particularly good solution to the recusal problem.

The Advisory Committee heard and heeded. It unanimously decided to leave well enough alone.[1] The proposal for which it seeks final approval leaves Rule 29, in this respect, as it is: At the initial hearing stage, a nongovernmental entity may file an amicus brief with either the consent of the parties or the permission of the court. Current and Proposed Rule 29(a)(2). At the rehearing stage, a motion is required for a nongovernmental entity. Current Rule 29(b)(2); Proposed Rule 29(f)(2).

Closely related to the concerns about the motion requirement were concerns about the proposed statement of the purpose of an amicus brief. As published for public comment, Rule 29(a)(2) included the following:

> An amicus curiae brief that brings to the court's attention relevant matter not already mentioned by the parties may help the court. An amicus brief that does not serve this purpose—or that is redundant with another amicus brief—is disfavored.

Commenters were concerned that this language was too restrictive and that avoiding redundancy among amicus briefs could pose serious practical problems. Most of these concerns were tied to the motion requirement, with commenters fearing that motions would be opposed and denied on the grounds that the proposed amicus brief addressed matters already mentioned by the parties or was redundant with another amicus brief. These concerns are considerably diminished with the retention of the consent option.

The Advisory Committee took these points. Accordingly, it revised the statement of purpose to closely track the one used by the Supreme Court and moved

[1] It also declined to act at this time on a comment suggesting that tribes be included in the government exception provision, thinking that the treatment of tribes cuts across a number of rules and would be better addressed in general rather than piecemeal.

the mention of redundancy to the Committee Note. As proposed for final approval, the relevant portion of Rule 29(a)(2) now states:

> An amicus brief that brings to the court's attention relevant matter not already brought to its attention by the parties may help the court. An amicus brief that does not serve this purpose burdens the court, and its filing is disfavored.[2]

The Committee Note adds, "Where feasible, avoiding redundancy among amicus briefs can also be helpful."

The public did not speak with one voice about the disclosure requirements. There was considerable opposition, but also notable support. To the extent that the comments focused on any particular provision, that provision was proposed Rule 29 (b)(4), which, as published, would require an amicus to disclose whether:

> a party, its counsel, or any combination of parties, their counsel, or both has, during the 12 months before the brief was filed, contributed or pledged to contribute an amount equal to 25% or more of the total revenue of the amicus curiae for its prior fiscal year.

Notably, this proposal would not require the disclosure of all contributors to an amicus. It would not require the disclosure of all major contributors to an amicus. It would not require the disclosure of all contributions by parties to an amicus. It would require the disclosure only of major contributions by parties to an amicus.

Critics charged that this would interfere with associational rights and discourage amicus participation. Proponents viewed it as an important step in determining party influence on an amicus, with some arguing that the 25% level was too high and should be 10% instead.

The Advisory Committee typically acts by consensus. But on this issue, it was closely divided. The subcommittee divided 2-1, with the majority thinking that there is reason to believe that an amicus with that level of funding from a party would be biased toward that party. The minority of the subcommittee concluded that there is

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[2] Supreme Court Rule 37.1 provides:

> An amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored.

not a sufficient problem to warrant moving forward over such broad opposition and that it would be evaded anyway.

The full Advisory Committee was similarly divided, but in the other direction, voting 5-4 to delete proposed (b)(4).[3] The majority pointed to the burden of compliance (including determining whether a contributor falls just on one side or the other of the 25% line), the lack of a significant problem, the considerable opposition, and that other parts of the proposed rule deal with the concern that an entity was created for the purpose of an amicus filing. The minority on the full Advisory Committee was not terribly impressed by arguments against disclosure by people who would have to make disclosures. It is not surprising that they would oppose disclosure. The point of getting this information is to benefit the public and the judges. It is about public trust, trust that is hurt when such ties are later revealed.

Reflecting the majority decision, the Advisory Committee seeks final approval of Rule 29 without proposed 29(b)(4).

The other proposed disclosure requirement that received considerable attention was proposed Rule 29(e), dealing with earmarked contributions by nonparties. As published, it provided:

> **Disclosing a Relationship Between an Amicus and a Nonparty**. An amicus brief must name any person—other than the amicus or its counsel—who contributed or pledged to contribute more than $100 intended to pay for preparing, drafting, or submitting the brief, unless the person has been a member of the amicus for the prior 12 months. If an amicus has existed for less than 12 months, an amicus brief need not disclose contributing members, but must disclose the date the amicus was created.

Much of the critical public comment did not reflect awareness that the existing rule currently requires the disclosure of earmarked contributions by nonparties. Perhaps that is because current Rule 29(a)(4)(E)(iii) is (as the citation suggests) buried deep in an item under a subparagraph. Or perhaps it is because it treats both earmarked contributions by a party and earmarked contributions by a nonparty in a single item even though the rest of the subparagraph deals only with parties and their counsel. That current rule requires a statement that indicates whether:

[3] While there was discussion of a 50% threshold rather than a 25% threshold, that idea never came to a vote.

> a *person*—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person.

(emphasis added).

One virtue of the proposed amendment to Rule 29 is that it separates—and therefore clarifies—the disclosure obligations regarding parties and the disclosure obligations regarding nonparties. But this virtue may have led some commenters to notice something that they had not noticed before and miss that it is in the existing rule.

The proposed rule as published, then, is not a major expansion of the disclosure requirements. In one respect, it *reduces* the current disclosure requirements: by setting a $100 de minimis threshold, it eliminates the need to disclose modest earmarked contributions that currently must be disclosed.

It does, however, expand the disclosure requirements in one respect. The current rule does not require the disclosure of earmarked contributions by members of the amicus, even if they joined the same day they made the contribution to avoid disclosure. The proposed amendment blocks this easy evasion.

One commenter noted that requiring that a person be a member "for the prior 12 months" ran the risk that a longtime member who had recently allowed his membership to lapse would lose the protection of the membership exception. To deal with this possibility, the Advisory Committee rephrased this provision to extend the member protection to a member of the amicus who "first became a member at least 12 months earlier." The Advisory Committee also rephrased Rule 29(e) to require the brief to "disclose whether"—as Rule 29(b) does—so that a statement one way or another is required. It also rearranged Rule 29(e) for clarity:

> **Disclosing a Relationship Between an Amicus and a Nonparty.**
>
> (1) An amicus brief must disclose whether any person contributed or pledged to contribute more than $100 intended to pay for preparing, drafting, or submitting the brief and, if so, must identify each such person. But disclosure is not required if the person is:
>
> - the amicus;
> - its counsel; or
> - a member of the amicus who first became a member at least 12 months earlier.

(2) If an amicus has existed for less than 12 months, an amicus brief need not disclose contributing members but must disclose the date the amicus was created.

The Advisory Committee unanimously approved of Rule 29(e) as amended, with one opponent of Rule 29(b)(4) noting that this is a modest tweak to an existing rule: It is a good change that reduces the burden on crowd funding an amicus brief and does not allow evasion of an existing requirement.

The Advisory Committee also wanted to avoid having the expanded disclosure requirements count against a party's word limit. To achieve this, by consensus, it changed Rule 29(a)(4) to refer to the "disclosure statement," thereby triggering Rule 32(f)'s exclusion of "disclosure statement" from the word count.

By a vote of 7-1, it moved the new disclosure statement to 29(a)(4)(B), immediately after the corporate disclosure statement in 29(a)(4)(A).

Although the Advisory Committee had been closely divided regarding proposed Rule 29(b)(4), it voted unanimously to give its final approval to the proposed amendments to Rule 29, as amended at the spring meeting, along with conforming amendments to Rule 32(g) and the Appendix of Length Limits. Accordingly, the Advisory Committee recommends that the Standing Committee give final approval to the proposed amendments to Rule 29, Rule 32(g), and the Appendix of Length Limits that accompany this report.

B. Form 4 (19-AP-C; 20-AP-D; 21-AP-B)

The proposed amendment to Form 4 would make that form—which applies when seeking in forma pauperis status—simpler and less intrusive.

The Advisory Committee received several written comments, and several witnesses testified at the public hearing. Overall, the comments and testimony were positive, although one witness pushed for more fundamental changes to the IFP process. Others suggested modest changes to improve ease of use, some of which the Advisory Committee adopted. It declined, however, to adopt changes that were suggested to deal with cases with CJA counsel, concluding that it is better to keep the form simpler for those without counsel and that those with appointed counsel can rely on counsel.

The Advisory Committee unanimously recommends that the Standing Committee give final approval to revised Form 4 that accompanies this report.

III. Item for Publication

A. "Incurably Premature"—Rule 15 (24-AP-G)

The Advisory Committee seeks publication of a proposed amendment to remove a potential trap for the unwary in Rule 15. The "incurably premature" doctrine holds that if a motion to reconsider an agency decision makes that decision unreviewable in the court of appeals, then a petition to review that agency decision is not just held in the court of appeals awaiting the agency's decision on the motion to reconsider. Instead, the petition for review is dismissed, and a new petition for review must be filed after the agency decides the motion to reconsider.

Rule 4, dealing with appeals from district court judgments, used to work in a similar way regarding various post-judgment motions. But in 1993, Rule 4 was amended to provide that such a premature notice of appeal becomes effective when the post-judgment motion is decided. The proposal is to do for Rule 15 what was done for Rule 4.

A similar suggestion was considered about twenty-five years ago. But it was dropped due to the strong opposition of the D.C. circuit judges who were active at the time. The Advisory Committee has been informed that there is no large opposition from D.C. Circuit judges at this point and that technological innovations have alleviated the concerns that were raised in the past. Judges may, however, have concerns with particular aspects of the proposal.

The proposed amendment to Rule 15 is like the existing Rule 4, but it reflects the party-specific nature of appellate review of administrative decisions, in contrast to the usually case-specific nature of civil appeals. As with civil appeals, the proposed amendment to Rule 15 would require a party that wants to challenge the result of agency reconsideration to file a new or amended petition.

The proposed amendment does not, however, attempt to align its language with the Multicircuit Petition Statute, 28 U.S.C. § 2112. First, the phrase used in § 2112(a)(1) is "issuance of the order." Courts of appeals have different views as to what counts as "issuance" of an order, so including the term "issuance" invites importing that dispute into the rule. Second, the point of this proposal is to save a premature petition for review that would otherwise be dismissed due to the failure of the petitioner to file a second petition. A petitioner whose premature petition is saved by this proposal is not in much of a position to complain that the petition might be heard in a circuit other than their preferred circuit. Third, a petitioner seeking to participate in the multicircuit lottery will already be paying close attention to such procedural details as when a petition must be time-stamped by the court and delivered to the agency.

One member sought to limit the benefit of the rule to "timely" petitions. But others were troubled by the idea of describing a petition as both premature (too early) and untimely (too late), particularly since the proposed rule operates in a party-specific way. The motion failed for want of a second.

The Advisory Committee unanimously asks the Standing Committee to publish the accompanying proposed amendment to Rule 15 for public comment.

IV. Items Under Consideration

A. Intervention on Appeal (22-AP-G; 23-AP-C)

The Advisory Committee is continuing its work on the possibility of a new Federal Rule of Appellate Procedure governing intervention on appeal. There is currently no Appellate Rule governing intervention, other than Rule 15 which sets a deadline but no criteria for intervention in agency cases. In the past, the Advisory Committee decided not to pursue creating a new rule governing intervention on appeal, fearing that creating such a new rule would invite more motions to intervene on appeal.

The Advisory Committee is exploring both whether there is a sufficient problem to warrant rulemaking and whether it is possible to create a useful rule. The Federal Judicial Center is conducting extensive research into motions to intervene in the courts of appeals. The Advisory Committee expects to have more to report at the January 2026 meeting of the Standing Committee.

B. Reopening Time to Appeal—Rule 4 (24-AP-M)

The Advisory Committee had geared up to consider a suggestion by Chief Judge Sutton, echoed by Judge Gregory, that the Advisory Committee look into reopening the time to appeal under Rule 4(a)(6). *See Winters v. Taskila*, 88 F.4th 665 (2023); *Parrish v. United States*, 2024 WL 1736340 at *1 (April 23, 2024).

The Supreme Court granted certiorari in *Parrish*. 145 S. Ct. 1122 (2025). It did so after being informed by the Solicitor General that the Advisory Committee was considering the issue. The Advisory Committee is awaiting the decision in *Parrish* before proceeding further.

C. Administrative Stays—Rule 8 (24-AP-L)

The Advisory Committee has begun to consider a suggestion by Will Havemann to amend Rule 8 to provide limits on administrative stays. It considered a draft amendment that expressly authorized administrative orders providing

temporary relief while the court receives briefing and deliberates on a party's motion. The draft also provided that an administrative stay could last no longer than necessary to enable the court to make an informed decision on the motion and expire at a time—not to exceed 14 days—that the court sets.

Some think that 14 days is not realistic in all cases, particularly cases where there is considerable delay in getting the record. On the other hand, not having a time limit defeats the purpose of the amendment. Some cases are urgent, but not all of them are. Criminal cases and immigration cases may present different issues. And attention is owed to the interaction of any proposed rule with Criminal Rule 38, dealing with stays of sentence.

The Advisory Committee will continue to explore these questions.

D. Social Security Numbers in Court Filings—Rule 25 (22-AP-E)

The Advisory Committee defers to the Reporter for the Standing Committee for the update regarding the joint project dealing with full redaction of social security numbers and other privacy matters, but adds the following:

The Advisory Committee considered a possible amendment to Rule 25 that would bar any part of a social security number in an appellate filing by a party not under seal. It considered seeking publication now, on the theory that, whatever the need for social security numbers in other circumstances, there is no need for them in a public appellate filing by the parties, and getting out ahead of other committees could generate useful public response that those committees could use. Although there was some initial support for this approach, the Advisory Committee decided to wait in order to provide the Standing Committee with proposals from all of the advisory committees at the same time.

E. Unrepresented Parties; Filing and Service

The Advisory Committee defers to the Reporter for the Standing Committee for the update regarding the joint project dealing with electronic filing and service by unrepresented parties.

V. Item Removed from the Advisory Committee Agenda

A. Calculation of Time for Motions—Rule 26 (24-AP-N)

The Advisory Committee considered a new suggestion from Jack Metzler to amend Rule 26(a)(1)(B) to not count weekends. He is concerned about gamesmanship:

counsel can deliberately file a motion on Friday so that the ten-day period for responses covers two weekends, reducing the number of workdays available.

A central feature of the massive time computation project was to count days as days and the Advisory Committee does not want to undo that. The time project usually chose multiples of 7, but for motions it went from 8 days to 10 days. The Advisory Committee considered shortening the time to 7 days or lengthening the time to 14 days. But it decided to leave well enough alone.

The Advisory Committee unanimously agreed to remove this item from its agenda.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE[1]

Rule 29. Brief of an Amicus Curiae

(a) During Initial Consideration of a Case on the Merits.

(1) **Applicability**. This Rule 29(a) governs amicus curiae filings during a court's initial consideration of a case on the merits.

(2) **Purpose; When Permitted.** An amicus brief that brings to the court's attention relevant matter not already brought to its attention by the parties may help the court. An amicus brief that does not serve this purpose burdens the court, and its filing is disfavored. The United States ~~or~~, its officer or agency, or a state may file an amicus brief without the

[1] New material is underlined in red; matter to be omitted is lined through.

consent of the parties or leave of court. Any other amicus curiae may file a brief only with ~~by~~ leave of court or if the brief states that all parties have consented to its filing~~, but a court of appeals~~. The court may prohibit ~~the filing of~~ or ~~may~~ strike an amicus brief that would result in a judge's disqualification.

(3) **Motion for Leave to File.** A ~~The~~ motion for leave to file must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason ~~why an amicus~~ the brief ~~is desirable and why~~ serves the purpose set forth in Rule 29(a)(2) ~~the matters asserted are relevant to the disposition of the case~~.

(4) **Contents and Form**. An amicus brief must comply with Rule 32. ~~In addition to the~~

~~requirements of Rule 32,~~ T~~t~~he cover must ~~identify~~ name the party or parties supported and indicate whether the brief supports affirmance or reversal. ~~An amicus~~ The brief need not comply with Rule 28, but it must include the following:

(A) if the amicus ~~curiae~~ is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) unless the amicus is the United States, its officer or agency, or a state, the disclosure statement required by Rules 29(b), (c), and (e);

~~(B)~~(C) a table of contents, with page references;

~~(C)~~(D) a table of authorities—cases (alphabetically arranged), statutes, and other authorities, ~~with~~

~~references to~~ together with the pages ~~of the brief~~ where they are cited;

~~(D)~~(E) a concise ~~statement~~ description of the identity, history, experience, and interests of the amicus ~~curiae~~, ~~its interest in the case, and the source of its authority to file~~ together with an explanation of how the brief and the perspective of the amicus will help the court;

(F) if an amicus has existed for less than 12 months, the date the amicus was created;

~~(E) unless the amicus is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:~~

~~(i) a party's counsel authored the brief in whole or in part;~~

~~(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and~~

~~(iii) a person other than the amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;~~

~~(F)~~(G) an argument, which may be preceded by a summary ~~and which~~ but need not include a statement of the applicable standard of review; and

~~(G)~~(H) a certificate of compliance under Rule 32(g)(1)~~, if length is computed using a word or line limit~~.

(5) **Length**. Except ~~by~~ with the court's permission, an amicus brief must not exceed 6,500 words ~~may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief~~.

(6) **Time for Filing**. An amicus ~~curiae~~ must file its brief~~, accompanied by a motion for filing when necessary,~~ no later than 7 days after the principal brief of the party being supported is filed. An amicus ~~curiae~~ that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. The ~~A~~ court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) **Reply Brief**. An amicus may file a reply brief only with the court's permission. ~~Except by the court's permission, an amicus curiae may not file a reply brief.~~

(8) **Oral Argument**. An amicus ~~curiae~~ may participate in oral argument only with the court's permission.

(b) Disclosing a Relationship Between an Amicus and a Party. An amicus brief must disclose whether:

(1) a party or its counsel authored the brief in whole or in part;

(2) a party or its counsel contributed or pledged to contribute money intended to pay for preparing, drafting, or submitting the brief; and

(3) a party, its counsel, or any combination of parties, their counsel, or both has a majority

ownership interest in or majority control of a legal entity submitting the brief.

(c) Naming the Party or Counsel. Any such disclosure must name the party or counsel.

(d) Disclosure by the Party or Counsel. If the party or counsel knows that an amicus has failed to make the required disclosure, the party or counsel must do so.

(e) Disclosing a Relationship Between an Amicus and a Nonparty.

(1) An amicus brief must disclose whether any person contributed or pledged to contribute more than $100 intended to pay for preparing, drafting, or submitting the brief and, if so, must identify each such person. But disclosure is not required if the person is:

- the amicus;
- its counsel; or

- a member of the amicus who first became a member at least 12 months earlier.

(2) If an amicus has existed for less than 12 months, an amicus brief need not disclose contributing members but must disclose the date the amicus was created.

~~(b)~~(f) **During Consideration of Whether to Grant Rehearing.**

(1) **Applicability**. ~~This Rule 29(b)~~ Rules 29(a)-(e) governs amicus ~~filings~~ briefs filed during a court's consideration of whether to grant panel rehearing or rehearing en banc, except as provided in this Rule 29(f), and unless a local rule or order in a case provides otherwise.

(2) **When Permitted.** The United States, ~~or~~ its officer or agency, or a state may file an

amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court. The motion for leave must comply with Rule 29(a)(3).

(3) ~~**Motion for Leave to File.** Rule 29(a)(3) applies to a motion for leave.~~

~~(4)~~ ~~**Contents, Form, and** **Length**. Rule 29(a)(4) applies to the amicus brief.~~ An amicus ~~The~~ brief must not exceed 2,600 words.

~~(5)~~(4) **Time for Filing**. An amicus ~~curiae~~ supporting ~~the~~ a petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus ~~curiae~~ opposing the petition must file its brief, accompanied by a motion for filing when necessary, no

later than the date set by the court for ~~the~~ a response.

Committee Note

The amendments to Rule 29 make changes to the procedure for filing amicus briefs, including to the disclosure requirements.

The amendments seek primarily to provide the courts and the public with more information about an amicus curiae. Throughout its consideration of possible amendments, the Advisory Committee has carefully considered the relevant First Amendment interests.

Some have suggested that information about an amicus is unnecessary because the only thing that matters about an amicus brief is the merits of the legal arguments in that brief. At times, however, courts do consider the identity and perspective of an amicus to be relevant. For that reason, the Committee thinks that some disclosures about an amicus are important to promote the integrity of court processes and rules.

Careful attention to the various interests and the need to avoid unjustified burdens is reflected throughout these amendments. For example, the amendment treats disclosures about the relationship between a party and an amicus differently than disclosures about the relationship between a nonparty and an amicus. While the public interest in knowing about an amicus—in order to evaluate its arguments and a court's consideration of those arguments—is relevant in both situations, there is an additional interest in disclosing the relationship between a party and an amicus: the court's interest in evaluating whether an amicus is

serving as a mouthpiece for a party, thereby evading limits imposed on parties in our adversary system and misleading the court about the independence of an amicus. Moreover, the burden on an amicus of disclosing a relationship with a party is much lower than having to disclose a relationship with nonparties. Disclosing a relationship with a party requires an amicus to check its records (and perhaps make a disclosure) regarding only the limited number of persons who are parties to the case. Disclosing a relationship with a nonparty would, by contrast, require an amicus to check its records (and perhaps make a disclosure) regarding the much larger universe of all persons who are not parties to the case.

To take another example, the amendment treats contributions by a nonparty that are earmarked for a particular brief differently than general contributions by a nonparty to an amicus. People may make contributions to organizations for a host of reasons, including reasons that have nothing to do with filing amicus briefs. Requiring the disclosure of non-earmarked contributions provides less useful information for those who seek to evaluate a brief and imposes far greater burdens on contributors.

Subdivision (a). The amendment to Rule 29(a)(2) adds a statement of the purpose of an amicus brief: to bring to the court's attention relevant matter not already brought to its attention by the parties that may help the court. By contrast, if an amicus curiae brief adds nothing to the parties' briefs, it is a burden rather than a help. Where feasible, avoiding redundancy among amicus briefs can also be helpful.

The amendment to Rule 29(a)(4)(D) expands the required statement regarding the identity of an amicus and its interest in the case and requires "a concise description of the identity, history, experience, and interests of the amicus

curiae, together with an explanation of how the brief and the perspective of the amicus will help the court." The amendment calls for this broader disclosure to help the court and the public evaluate the likely reliability and helpfulness of an amicus, particularly those with anodyne or potentially misleading names. It also requires that the amicus explain how the brief and the perspective of the amicus will further the goal of helping the court. Rule 29(a)(4)(E) is new. It requires an amicus that has existed for less than 12 months to state the date of its creation, helping identify amici that may have been created for the purpose of this litigation. Subsequent provisions are re-lettered.

Existing disclosure requirements about the relationship between the amicus and both parties and nonparties are removed from subdivision (a) and placed in separate subdivisions, one dealing with parties (subdivision (b)) and one dealing with nonparties (subdivision (e)).

Rule 29(a)(5) is amended to directly impose a word limit on amicus briefs, replacing the provision that establishes length limits for amicus briefs as a fraction of the length limits for parties. This results in removing the option to rely on a page count rather than a word count. This change enables Rule 29(a)(4)(H) (formerly 29(a)(4)(G)) to be simplified and require a certification of compliance under Rule 32(g)(1) in all amicus briefs.

Subdivision (b). Subdivision (b) dealing with disclosure of the relationship between the amicus and a party is new, but it draws on existing Rule 29(a)(4)(E). Because of the important interest in knowing whether a party has significant influence or control of an amicus, these disclosures are more far reaching than those involving nonparties, which are addressed in (e).

Rule 29(b)(1) carries forward the existing requirement that authorship of an amicus brief by a party or its counsel must be disclosed.

Rule 29(b)(2) carries forward the existing requirement that money contributed by a party or party's counsel that was intended to fund the preparation or submission of the brief must be disclosed. But in an effort to counteract the possibility of an amicus interpreting the existing rule narrowly, the amendment explicitly refers to "preparing, drafting, or submitting the brief," thereby making clear that it applies to every stage of the process.

Subdivision (b)(3) is new. It requires disclosure of whether a party, its counsel, or any combination of parties or counsel either has a majority ownership interest in or majority control of an amicus. If a party has such control over an amicus, it is in a position to control the content of an amicus brief. If undisclosed, the court and the public may be misled about the independence of an amicus from a party, and a party may be able to effectively exceed the limitations otherwise imposed on parties.

Subdivision (c). Subdivision (c) requires that any disclosure required by paragraph (b) name the party or counsel. This builds upon the requirement in current Rule 29(a)(4)(D)(iii) that certain persons who make earmarked contributions be identified.

Subdivision (d). Subdivision (d) is new. It operates as a backstop to the disclosure requirements of (b) and (c): If the amicus fails to make a required disclosure, and the party or counsel knows it, the party or counsel must make the disclosure.

Subdivision (e). Subdivision (e) focuses on the relationship between the amicus and a nonparty. It makes

several changes to the existing Rule 29(a)(4)(E)(iii), which currently requires the disclosure of any contribution earmarked for a brief, no matter how small, by anyone other than the amicus itself, its members, or its counsel. Earmarked contributions run the risk that the amicus is being used as a paid mouthpiece by the contributor. Knowing about earmarked contributions helps courts and the public evaluate the arguments and information in the amicus brief by providing information about possible reasons for the filing other than those explained by the amicus itself.

The Committee considered requiring the disclosure of nonparties who make any significant contributions to an amicus, whether earmarked or not. But it decided against doing so because of the burdens it could impose on amici and their contributors, even when the reason for the contribution had nothing to do with the brief. Instead, it retained the focus of the existing rule on earmarked contributions.

The Committee considered eliminating the member exception because that exception allows for easy evasion: simply become a member at the time of making an earmarked contribution. But it decided against doing so because members speak through an amicus and an amicus generally speaks for its members. In addition, eliminating the member exception threatened to place an unfair burden on amici who do not budget in advance for amicus briefs (and therefore have to "pass the hat" when the need to file an amicus brief arises) compared to other amici who may file amicus briefs more frequently (and therefore can budget in advance and fund them from general revenue). Without a member exception, the latter (generally larger) amici would not have to disclose, but the former (generally smaller) amici would have to disclose.

Instead, the amendment retains the member exception, but limits it to those who first became members of the amicus at least 12 months earlier. In effect, the amendment is an anti-evasion rule that treats new members of an amicus as non-members. As a result, earmarked contributions made by new members must be disclosed, but earmarked contributions by other members do not have to be disclosed.

This then raises the question of what to do with a newly-formed amicus organization. Rather than eliminate the member exception for such organizations, the amendment protects members from disclosure. But Rule 29(a)(4)(E) requires an amicus that has existed for less than 12 months to disclose the date of its creation. This requirement works in conjunction with the expanded disclosure requirement of Rule 29(a)(4)(D) to reveal an amicus that may have been created for purposes of particular litigation or is less established and broadly-based than its name might suggest. Unless adequately explained, a court and the public might choose to discount the views of such an amicus.

The amendment also provides a $100 threshold for the disclosure requirement. Under the existing rule, a non-member of an amicus who contributes any amount, no matter how small, that is earmarked for a particular brief must be disclosed. This can hamper crowdfunding of amicus briefs while providing little useful information to the courts or the public. Contributions of $100 or less are unlikely to run the risk that an amicus is being used as a mouthpiece for others.

Subdivision (f). Subdivision (f) retains most of the content of existing subdivision (b) and governs amicus briefs at the rehearing stage. It is revised to largely incorporate by reference the provision applicable to amicus briefs at the

initial consideration of the case. Rule 29(f)(1) makes Rule 29(a) through (e) applicable, except as provided in the rest of Rule 29(f) or if a local rule or order in a particular case provides otherwise. As a result, duplicative provisions are eliminated.

Changes Made After Publication and Comment

Subdivision (a). The purpose provision in paragraph (2) is revised to reflect the standard in Supreme Court Rule 37.1. The term "mentioned" is deleted to avoid an implication that an amicus should discuss only matters that have not been mentioned by the parties. The sentence regarding redundancy among amicus briefs is deleted from the rule, with a more muted version placed in the Committee Note. The proposal to require all nongovernmental entities to file a motion is rejected and the existing provision allowing for filing on consent is retained.

The required statement of reasons in paragraph (3) is simplified. Because the consent option is retained, the proposed requirement that the new disclosure requirements be repeated in the motion is deleted.

The new disclosure requirements are referred to in paragraph (4) as a disclosure statement so that they are excluded from the word count under Rule 32(g). They are also moved to item (B), immediately after the corporate disclosure statement, with subsequent items re-lettered.

Subdivision (b). Proposed paragraph (4), requiring the disclosure of substantial financial contributions of a party to an amicus, is deleted.

Subdivision (e). The requirement is rephrased as an obligation to "disclose whether" to make clear that a

statement one way or the other is required, as in Rule 29(b). The member exclusion is revised to apply to someone who first became a member at least 12 months earlier so that a longtime member whose membership has lapsed is within the exception. The provision is reorganized for clarity.

Subdivision (f). In accordance with the retention of the consent option at the initial hearing stage, the content of existing (b)((2) and (b)(3) are maintained but rephrased and consolidated in new (f)(2). Subsequent paragraphs are renumbered.

Corresponding changes are made to the Committee Note. Stylistic changes are made throughout.

Summary of Public Comment

The following comment summaries are arranged into groups – based on the position taken on the two major issues – the proposed motion requirement and the proposed additional disclosures.

I. Opposed to Motion Requirement; No Position For or Against Disclosure

USC-RULES-AP-2024-0001-0003
Andrew Straw
Amicus briefs are an expression of the First Amendment right to petition courts on matters of public interest. It costs virtually nothing to allow amicus briefs to be filed and they should always be allowed regardless of the consent of any party. The Court is under no obligation to do what an amicus wants, but it should always allow such statements in the public record.

USC-RULES-AP-2024-0001-0009
Alan Morrison
Morrison argues that the proposed elimination of the right to file an amicus brief based on the consent of all parties is problematic. He suggests that the Appellate Rules Committee should seek guidance from the Committee on Codes of Judicial Conduct to establish standards for recusal when an amicus brief might trigger disqualification.

USC-RULES-AP-2024-0001-0012
Atlantic Legal Foundation
The Atlantic Legal Foundation opposes the proposed amendments to Rule 29, particularly the elimination of the option to file amicus briefs on consent. It argues that the current system, which allows filing on consent, works well and that the proposed changes would deter the preparation and submission of valuable amicus briefs. It contends that requiring a motion for leave to file would create uncertainty and additional burdens for amici and the courts. It also highlights that the Supreme Court has recently adopted a more permissive approach to amicus briefs, allowing them to be filed without a motion or consent. It suggests that the federal appellate courts should follow the Supreme Court's lead and maintain or even relax the current rules to facilitate the filing of amicus briefs.

USC-RULES-AP-2024-0001-0013
Maria Diamond
Amicus briefs play an important role in educating judges on issues of wide-ranging importance. They provide an opportunity for experts, such as academics, non-profits, and think tanks, to educate the court on those issues. They assist judges by presenting ideas, arguments, theories, insights, factual background, and data not found in the parties' briefs. My primary concern regarding the proposed rule change is elimination of the party consent option, requiring leave of

court for the filing of all amicus briefs. I believe this is a move in the wrong direction. In contrast to the proposal, the United States Supreme Court has changed its rules in the opposite direction, freely allowing the filing of amicus briefs without leave of court or consent of the parties. The proposed change will place additional burdens on the court that outweigh the purported concern over recusal issues.

Furthermore, I am concerned about the proposed content restrictions. While I understand the desire to reduce redundancy, I seriously question how the proposed amendment will prevent redundancy without coordination between amici and the parties. The proposal may also significantly increase the rate of amicus denials, thereby chilling amicus curiae filings. This unintended consequence will deprive the courts of valuable assistance to aid their decision-making on issues of public importance.

USC-RULES-AP-2024-0001-0015
Securities Industry and Financial Markets Association (SIFMA)
SIFMA opposes the proposed amendments to Rule 29, specifically the elimination of the option to file amicus briefs on consent and the new purpose requirement. SIFMA argues that the premise of the proposal, which seeks to filter out unhelpful amicus briefs, is flawed and unsupported by evidence. They believe that the benefit of filtering out unhelpful briefs is outweighed by the burdens imposed by requiring motions for leave. SIFMA also contends that the standard for accepting amicus briefs should not be more stringent in the courts of appeal than in the Supreme Court. They argue that the proposed amendments would create unnecessary barriers and reduce the number of valuable amicus briefs, which provide important perspectives and information to the courts.

USC-RULES-AP-2024-0001-0116
Richard Kramer
We need more, not less, access to the courts! The proposed amendments would severely undermine the efficiency of our judicial process and place unnecessary burdens on public-interest groups and individuals who participate in legal advocacy. Requiring amici to file motions only increases the workload on the judiciary, delaying important cases and wasting resources. The Supreme Court, recognizing this inefficiency, has eliminated the need for amici to seek permission to file briefs, and there is no logical reason for appellate courts to go in the opposite direction. The proposed rule would disproportionately affect smaller organizations that rely on filing amicus briefs to make their voices heard in important legal decisions. If this rule goes into effect, the uncertainty surrounding the filing of amicus briefs will discourage participation and reduce the diversity of viewpoints presented to the courts.

This proposal is unnecessary and counterproductive. I urge you to withdraw it immediately and protect the integrity of the judicial process.

USC-RULES-AP-2024-0001-0019
National Federation of Independent Business (NFIB)
The NFIB opposes the proposed amendments to Rule 29, arguing that the changes would impose significant burdens on amicus curiae filings and hinder the representation of small businesses in federal courts. They contend that the proposed motion requirement and the subjective standards for assessing the relevance and helpfulness of amicus briefs would create financial and logistical barriers for small organizations. NFIB believes that the current system, which allows filing on consent, works well and that the proposed changes would reduce the number of valuable amicus briefs. They suggest that the federal appellate courts should adopt

the same standards as the Supreme Court, which recently eliminated the motion and consent requirements for amicus briefs.

USC-RULES-AP-2024-0001-0024
DRI Center for Law and Public Policy's Amicus Committee
The DRI Center for Law and Public Policy's Amicus Committee opposes the proposed amendments to Federal Rule of Appellate Procedure 29. They argue against the elimination of the ability for nongovernmental amici curiae to file briefs with the consent of the parties. DRI believes that the current system works well and that the proposed changes would create unnecessary burdens, discourage the preparation of valuable amicus briefs, and waste judicial resources. They also express concerns about the new disclosure requirements, arguing that they are overly complex and impractical. DRI suggests that the disclosure requirements should be straightforward and centrally located within Rule 29 to ensure compliance without dissipating limited resources.

USC-RULES-AP-2024-0001-0027
California Academy of Appellate Lawyers
The California Academy of Appellate Lawyers argues that the revisions would impose unnecessary burdens and costs on amici curiae and their counsel without providing significant benefits. The Academy contends that the current system, which allows filing on consent, works well and that the proposed changes would create additional burdens for both amici and the courts. It also argues that the proposed motion requirement is unnecessary to avoid recusal issues, as courts already have the power to strike amicus briefs that would result in a judge's disqualification. It proposes a way to enable judges to consider whether to recuse or strike an amicus brief. The Academy believes that the proposed changes would not provide a useful filter on the filing of

unhelpful amicus briefs and would instead multiply the burdens on the court.

USC-RULES-AP-2024-0001-0032
Federation of Defense and Corporate Counsel (FDCC)
The FDCC opposes the proposed amendments to Rule 29, particularly the elimination of the option to file amicus briefs with the consent of the parties. The FDCC believes that the proposed changes would discourage the preparation and filing of amicus briefs by organizations that rely on volunteer attorneys to prepare and submit amicus briefs in carefully selected cases. It suggests that the Committee should instead follow the Supreme Court's lead and allow for the timely filing of amicus briefs without the court's permission or the parties' consent, as well as providing that an amicus brief does not require recusal.

USC-RULES-AP-2024-0001-0140
National Association of Home Builders (NAHB)
The NAHB opposes the proposed changes to Rule 29, particularly the elimination of the option to file amicus briefs with the consent of the parties. The NAHB believes that the proposed changes would create additional burdens for amici, the parties, and the judiciary. It also does not support the proposed language regarding redundancy.

USC-RULES-AP-2024-0001-0151
Alan Morrison
Alan Morrison notes that the Supreme Court Justices apparently do not make recusal
judgments based on who owns or controls an amicus and asks, “If the Justices do not care, why should judges of the courts of appeals?”

USC-RULES-AP-2024-0001-0215
Roderick & Solange MacArthur Justice Center
The Roderick & Solange MacArthur Justice Center argue that requiring motions to submit amicus briefs in all cases and curtailing the substance of these briefs would burden courts, parties, and amici curiae. The Center emphasizes that amicus briefs are valuable even if they address issues already mentioned by the parties, as they can offer different analytical approaches, highlight nuances, explain broader contexts, provide practical perspectives, and supply empirical data. They argue that the proposed changes would increase litigation regarding the purpose of amicus briefs and create uncertainty, deterring amici from filing briefs. The Center also points out that the Supreme Court has recently adopted a more permissive approach to amicus briefs and suggests that the federal appellate courts should follow suit.

USC-RULES-AP-2024-0001-0216
Federal Public Defender for the District of Nevada
The proposed amendments would create substantial hardships for their clients and adversely affect the development of constitutional and criminal law. The Committee should consider exceptions for amicus briefs supporting a defendant in a criminal case or a habeas petitioner, or at least amend Rule 29(a)(2) to include Federal Public or Community Defender organizations as entities that may file amicus briefs as a matter of course.

USC-RULES-AP-2024-0001-0217
George Tolley
Elimination of the party consent option likely will add to the burdens on the appellate courts, without providing a substantial benefit. As amended, FRAP 29 would require an appellate court to read and consider the merits of a motion for leave to file

as to every proposed amicus brief. Amici cannot know in advance of filing their amicus brief whether an appellate court might deem the brief redundant of one or more briefs filed by other amici. An appellate court that rejects proposed briefs from amici supporting one side or the other — justly or unjustly, fairly or unfairly — could be ill-equipped to defend itself against charges of impermissible bias for or against one side or the other.

USC-RULES-AP-2024-0001-0219
Lawyers' Committee for Civil Rights Under Law
The Lawyers' Committee for Civil Rights Under Law argues that the amendments would unnecessarily burden the freedom of expression of amici and create an unworkable system. The Committee emphasizes that amicus briefs provide valuable perspectives and information to the courts, even if some portion of the arguments is repetitive or redundant. They point out that the current system, which allows filing on consent, has not overwhelmed the courts with unhelpful briefs, and that the proposed changes would increase the burden on judges by requiring them to rule on motions for leave to file. The Committee also argues that the proposed redundancy filter is unworkable, as it is unclear how amici can ensure they are not replicating the arguments of others without significant coordination.

USC-RULES-AP-2024-0001-0221
Leukemia & Lymphoma Society (LLS)
The Leukemia & Lymphoma Society (LLS) opposes the proposed amendments to Rule 29. The proposed changes would create additional burdens for judges and clerks. The proposed standard for determining whether a brief is helpful is unclear and would deter nonprofit organizations with limited resources from filing briefs. LLS suggests that the Supreme Court's approach, which allows the filing of timely

amicus briefs without the need to obtain consent or leave, would be preferable.

USC-RULES-AP-2024-0001-0222
NAACP Legal Defense and Educational Fund (LDF)
LDF raises concerns about the proposed language regarding the purpose of amicus briefs, arguing that it could discourage helpful amicus participation and lead to arbitrary application. It also raises concerns about the language disfavoring redundant amicus briefs, highlighting the practical challenges of predicting and coordinating with other potential amici.

USC-RULES-AP-2024-0001-0225
Americans United for Separation of Church and State
Americans United for Separation of Church and State argue that the proposed changes would make it difficult for broad coalitions to submit briefs due to the word count limitations and additional disclosure requirements. This could lead to multiple parties filing individual, duplicative briefs, increasing the burden on courts. Additionally, the requirement for non-governmental amici to seek the court's leave to file would elevate the amicus process to something akin to a motion for intervention, increasing the burden on courts and potentially driving concerned parties to pursue the more onerous process of intervention.

USC-RULES-AP-2024-0001-0264
New York Intellectual Property Law Association (NYIPLA)
The New York Intellectual Property Law Association (NYIPLA) argues that the changes would impose unnecessary burdens on amici and the judiciary, particularly by eliminating the option to file amicus briefs with the consent of the parties. It is concerned that the proposed changes would create uncertainty and discourage the preparation of amicus briefs, particularly for organizations

that rely on volunteer efforts. NYIPLA also opposes the proposed standard for determining whether a brief is helpful, arguing that it fails to capture the ways amicus briefs can be beneficial. It recommends aligning the rule with the Supreme Court's approach, which allows the filing of amicus briefs without the need to obtain consent or leave. It is concerned that the limit of 6500 words would not be expanded if the parties are given permission for longer briefs.

USC-RULES-AP-2024-0001-0307
National Association of Criminal Defense Lawyers (NACDL)
The National Association of Criminal Defense Lawyers (NACDL) argues that the changes would impose unwarranted burdens on amici and the judiciary, particularly in federal criminal and related appeals. NACDL emphasizes that their amicus briefs are highly regarded by the judiciary and can provide a more thoroughly researched, broader and deeper, or more nuanced presentation of the issues in the case. Eliminating filing on consent would deter volunteer-reliant organizations from preparing briefs. At least make any mandatory-motion rule inapplicable to criminal, civil rights, and habeas appeals, where there is not even arguably any problem of abuse of amicus participation to be solved. In addition, the proposed substantive standard fails to capture the many ways amicus briefs can be helpful. NACDL has no objection to the expanded disclosure requirements but suggests clarification whether the required disclosures include the value of in-kind contributions.

USC-RULES-AP-2024-0001-0310
American Academy of Appellate Lawyers
The American Academy of Appellate Lawyers argues that the changes would create uncertainty and discourage the preparation of amicus briefs. It suggests that the rule should

be revised to align with Supreme Court Rule 37, which allows the filing of amicus briefs without the need to obtain consent or leave. It is one thing to provide guidance about the proper scope of an amicus brief. But it is quite another thing to convert guidance into a requirement. The redundancy provision is impractical , given the short time after a party's brief for filing an amicus brief.

USC-RULES-AP-2024-0001-0405
Retail Litigation Center (RLC)
The Retail Litigation Center (RLC) argues that the changes would impose unnecessary burdens on amici and the judiciary, particularly by eliminating the option to file amicus briefs with the consent of the parties. The recusal problem is a problem with systems, not the federal rules. Conflicts systems that disqualify potential panelists, despite the express inclusion in the existing Rule 29 of the right to strike an amicus brief that would result in that judge's disqualification, is an issue that needs resolved through updating systems and/or processes. An example of a way to solve this problem is to conduct conflict checks for amici upon selection of a panel, and if a selected panelist would be disqualified due to an amicus brief filed upon consent, the judge can then decide whether to strike the brief, as contemplated in Rule 29's current text. RLC also opposes the proposed standard for determining whether a brief is helpful, arguing that it fails to capture the many ways amicus briefs can be beneficial. Particularly if paired with a motion requirement with no exception for consent of the parties, this standard will certainly be litigated in disputed motion practice.

USC-RULES-AP-2024-0001-0406
Rachel Jennings
Rachel Jennings argues that the changes would disadvantage individual plaintiffs and favor industry players, who are

more likely to have organized amicus groups ready to file briefs on their behalf. Jennings emphasizes that the current system, which allows filing on consent, works well and provides access to the appellate process without imposing impractical hurdles. Jennings also argues that the proposed changes would create more work for courts by increasing contested motions practice. Any revision should align the rule with the Supreme Court's approach, which allows the filing of amicus briefs without the need to obtain consent or leave.

USC-RULES-AP-2024-0001-0407
Law school clinics
Members of law school clinics argue that the proposed amendments would significantly restrict their ability to engage in amicus advocacy and limit valuable experiential learning opportunities for law students. They emphasize the importance of amicus briefs for developing professional legal skills and judgment, as well as for providing unique perspectives and expertise to the courts. They point to the potential negative impact of the proposed requirement for advance approval of amicus filings and the language disfavoring redundant arguments. They argue that these changes would present line-drawing challenges, cause difficulties because of timing constraints, and chill novel contributions.

II. Opposed to Motion Requirement; Opposed to Disclosure

USC-RULES-AP-2024-0001-0004
Washington Legal Foundation
The Washington Legal Foundation (WLF) argue that requiring nongovernmental amici to obtain leave of court to file amicus briefs is unnecessary and inefficient, as judges already have effective methods for filtering unhelpful briefs.

WLF contends that the proposal would increase the burden on the judiciary and create uncertainty for amici, potentially discouraging amicus participation. It also raises First Amendment concerns regarding the proposed disclosure requirements, arguing that they are unnecessary and may violate associational rights.

USC-RULES-AP-2024-0001-0018
Chamber of Commerce of the United States
The Chamber of Commerce of the United States argues that the current Rule 29 already protects the integrity of amicus briefs while respecting First Amendment rights. The proposed disclosure amendments, which require amici to disclose significant contributors and the identities of certain non-party members, are unnecessary and potentially harmful to associational rights. The Chamber contends that these amendments would deter amicus participation, reduce the quality of amicus briefs, and burden the courts with additional motions. They also argue that the proposals to eliminate the consent option and reduce the number of amicus briefs are misguided, as the current framework promotes judicial economy and allows courts to manage unhelpful or duplicative briefs effectively.

USC-RULES-AP-2024-0001-0021
American Property Casualty Insurance Association (APCIA)
APCIA, strongly opposes the proposed amendments to Rule 29. APCIA argues that the elimination of the option to file amicus briefs on consent would limit the valuable role of amici in providing critical context, insight, and analysis to the courts. They contend that the proposed amendments would infringe on First Amendment rights, discount the speech of nonparties, and have a chilling effect on amicus activity. APCIA also criticizes the new disclosure requirements and the subjective standard for assessing the

helpfulness of amicus briefs. They believe that the current rule works well and that the proposed changes would create unnecessary barriers, reduce the number of amicus briefs, and deprive the courts of valuable information.

USC-RULES-AP-2024-0001-0023
American Council of Life Insurers
The American Council of Life Insurers argues that the proposed changes, including the elimination of the option to file amicus briefs by consent and additional disclosure requirements, would hinder amicus participation and add unnecessary costs. It believes the current Rule 29 already provides adequate safeguards and that the proposed changes would not benefit judicial efficiency or the public interest.

USC-RULES-AP-2024-0001-0026
Young America's Foundation
Young America's Foundation argues that the proposed amendments would hinder free speech and impose unfair restrictions on amicus briefs. It believes the proposed requirement for amici to obtain leave of court to file briefs is unfair and that government amici should not have more rights than citizen amici. The Foundation also opposes the proposed disclosure requirements, arguing that they violate Supreme Court precedent and would deter donors from supporting amicus efforts. They contend that the proposed changes would restrict speech and do not further a compelling governmental interest.

USC-RULES-AP-2024-0001-0035
Various National and State Organizations
A coalition of national and state organizations argues that the proposed disclosure requirements infringe on First Amendment rights by mandating broad disclosures that are not sufficiently justified. The organizations also oppose the requirement for amici to file a motion for leave in every case,

arguing that it would burden the courts with unnecessary motions and discourage amicus participation. They believe the current Rule 29 already provides adequate safeguards and that the proposed changes would undermine judicial efficiency and the public interest.

USC-RULES-AP-2024-0001-0110
William Kahl
This proposal will limit the role that amici play in our judicial process, would slow down the process and discourage the submission of briefs, and would threaten First Amendment rights by requiring amici to disclose financial details about their donors.

USC-RULES-AP-2024-0001-0207
Southeastern Legal Foundation
The Southeastern Legal Foundation argues that the changes would hinder the judicial process and restrict the role of amicus briefs. It contends that the proposed changes to Rule 29(a)(2) are vague, overbroad, and unnecessary, potentially leading to discrimination and chilling effects on amici participation. The Foundation also criticizes the additional disclosure requirements under Rule 29(b)(4), asserting that they would drain judicial resources and increase the risk of bias. It believes the current rules already provide adequate safeguards and that the proposed changes would not benefit judicial efficiency or the public interest.

USC-RULES-AP-2024-0001-0213
Alliance Defending Freedom (ADF)
The ADF is critical of the proposed amendments dealing with redundancy, consent, and disclosures. The organization argues that the proposed changes could discourage amicus participation, complicate the filing process, and impose unnecessary burdens on amicus parties. The proposed solution is not only in search of a problem—it is a problem.

The option that best "promotes public confidence in the integrity and impartiality of the judiciary" is not for a conflicted-out judge to decide whether to recuse or exclude an amicus brief that could be of substantial help to the court, especially when amicus briefs are most often filed in high-profile matters of significant legal importance.

USC-RULES-AP-2024-0001-0214
American Civil Liberties Union (ACLU)
The ACLU argues that the proposed disclosure requirements would burden First Amendment associational rights and that limiting amicus briefs to matters "not already mentioned" by the parties would be unduly restrictive. The ACLU also opposes the motion requirement for filing amicus briefs, citing the considerable cost and little benefit. It emphasizes the critical role of amicus briefs in assisting courts and ensuring that decisions do not have unintended consequences.

USC-RULES-AP-2024-0001-0218
Americans for Prosperity Foundation (AFPF)
AFPF argues that the current Rule 29 already provides adequate disclosures and that the proposed changes would unnecessarily burden courts and infringe on First Amendment rights. AFPF believes that amicus briefs serve a valuable purpose and should be freely allowed, and it contends that the proposed motion requirement would needlessly burden courts. It adds that the Advisory Committee correctly decided against requiring disclosure of non-earmarked contributions by nonparties.

USC-RULES-AP-2024-0001-0255
Pacific Legal Foundation
The Pacific Legal Foundation argues that the current rule is effective and that the proposed changes might be perceived as politically motivated. The Foundation believes that the

new disclosure obligations could discourage participation in amicus advocacy and raise concerns related to freedom of association. It also contends that addressing redundant briefs through the proposed approach might reduce the quality of amicus participation.

USC-RULES-AP-2024-0001-0306 (identical at 0410)
National Association of Manufacturers (NAM)
The National Association of Manufacturers argues that the proposed changes could hinder the filing of amicus briefs and infringe on First Amendment rights. It contends that the motion and redundancy requirements could chill useful amicus filings without much added benefit and that the relationship disclosure requirements likely violate First Amendment associational rights.

USC-RULES-AP-2024-0001-0318
Thomas Berry
Thomas Berry agrees with the First Amendment and donor privacy concerns that others have raised. He argues that the proposed changes would discourage organizations from filing briefs in federal appellate courts and could lead to an even greater focus on writing briefs for the Supreme Court instead. Berry urges the Committee to look to the Supreme Court's approach to amicus briefs as a better model.

USC-RULES-AP-2024-0001-0339
Complex Insurance Claims Litigation Association (CICLA)
The Complex Insurance Claims Litigation Association argues that the changes would impose unwarranted barriers to amicus participation and deprive courts of important information critical to judicial decision-making. CICLA is concerned that the proposed standard, combined with the motion requirement, would unduly restrict the scope of amicus participation by "disfavoring" an amicus brief that addresses an issue "mentioned" by one of the parties. It also

thinks that the proposed new disclosure requirements are arbitrary and not narrowly tailored to their stated purpose.

USC-RULES-AP-2024-0001-0353
Free Speech Coalition
The Free Speech Coalition argues that the changes would violate the First Amendment and indicate hostility to amicus briefs, It identifies three illegitimate reasons for the proposed rule: amicus briefs reveal judicial usurpation, make more work for judges, and are often more aggressive than party briefs.

USC-RULES-AP-2024-0001-0366
Various Banking Associations
The Independent Community Bankers of America and various state banking associations argue that the changes would threaten First Amendment rights and create practical challenges for amici participation in appellate litigation.

USC-RULES-AP-2024-0001-0368
Institute for Justice
The Institute for Justice does not support any of the proposed amendments, but focuses on the elimination of the option to file amicus briefs by consent. It argues that this change would create administrability problems and unpredictability in the judicial process. The Institute highlights that motions to file amicus briefs are often decided by judges or clerks who are not familiar with the merits of the case. It points to D.C. Circuit Local Rule 29(a)(2) as an adequate way to deal with recusal issues. [That Rule provides, "Leave to participate as amicus will not be granted and an amicus brief will not be accepted if the participation of amicus would result in the recusal of a member of the panel that has been assigned to the case."]

USC-RULES-AP-2024-0001-0370
Investment Company Institute (ICI)
The Investment Company Institute argues that the changes would create obstacles for filing amicus briefs, potentially limiting informed judicial decision-making. ICI is concerned about the possibility of an overly broad reading of the redundancy and the burdens of a motion requirement. It is at least conceivable that a provision like proposed Rule 29(b)(4) could require financial disclosure in an ICI amicus brief if the percentage threshold were set low enough and a large enough number of members were parties to the same litigation. If this compelled speech requirement were triggered, ICI would be forced to choose between (a) protecting the legitimate privacy and associational interests of ICI and its members and (b) advocating on behalf of investors, the markets, and ICI members. And were ICI to file a brief with the required financial disclosure, some courts may discount unfairly the brief's value, under the erroneous belief that it represents only the narrow interests of the litigants.

III. Opposed to Motion Requirement; Support Disclosure

USC-RULES-AP-2024-0001-0011
Michael Ravnitzky
Michael Ravnitzky supports the proposed disclosure amendments to the Federal Rules of Appellate Procedure, emphasizing the need for enhanced transparency and disclosure in amicus curiae briefs. He argues that transparency is essential for maintaining trust in the judicial process and preventing undue influence. Ravnitzky also calls for the disclosure of connections among amici and major donors, asserting that this will prevent hidden influences from shaping legal outcomes. He also supports retaining the consent requirement for filing amicus briefs.

USC-RULES-AP-2024-0001-0020
Stephen J. Herman
Stephen J. Herman states that the currently proposed amendments do not appear problematic. He highlights the distinction between the resources available to plaintiff and defense interests in preparing amicus briefs and notes that while the current proposal is not specifically addressed to this asymmetry, it effectively accounts for it. He also opposes the motion requirement, suggesting that, if anything, the courts of appeals should follow the Supreme Court and allow amicus briefs without requiring a motion or consent of the parties. He is concerned that if the proposed standard is applied overbroadly, it may discourage the filing of briefs that might be helpful.

USC-RULES-AP-2024-0001-0033
Gerson Smoger
Gerson Smoger argues that eliminating the ability to file an amicus brief by consent would create unnecessary burdens and discourage the filing of valuable amicus briefs. He also expresses concerns about the proposed content restrictions, suggesting that they may not effectively reduce redundancy and could discourage the filing of helpful briefs. Smoger emphasizes the importance of amicus briefs in enhancing transparency and providing the court with insights on the broader implications of decisions. Smoger supports the proposed financial disclosure requirements but suggests that the 25-percent funding threshold is too high, but is an important first step.

USC-RULES-AP-2024-0001-0034
American Association for Justice (AAJ)
The American Association for Justice (AAJ) argues that the proposed amendments could negatively impact the filing and consideration of amicus briefs in federal courts. It contends

that the proposed requirement for amici to seek leave of court to file briefs would be burdensome and inefficient, potentially discouraging the submission of valuable briefs. AAJ also opposes the proposed language disfavoring briefs that are redundant with other amicus briefs. It argues that the proposed amendments will lead to increased motion practice and hinder the courts' ability to consider diverse perspectives. It supports the idea of the proposed disclosure requirements but contends that they are, but should not be, more stringent for nonparties than for parties.

USC-RULES-AP-2024-0001-0220
California Lawyers Association, Litigation Section
The California Lawyers Association's Litigation Section argues that elimination of the consent option for filing amicus briefs could lead to fewer amicus briefs and deny the court valuable input. It is also concerned that if a brief is rejected because of recusal issues, the conflict may remain. The Association supports the new disclosure requirements between a party and amicus curiae, as well as between a nonparty and amicus curiae, as they promote transparency and fairness. It emphasizes the importance of disclosing financial contributions to ensure that the court and the public can determine how much weight to give the amicus brief.

USC-RULES-AP-2024-0001-0311
American Economic Liberties Project (AELP)
The American Economic Liberties Project (AELP) supports the Committee's efforts to enhance transparency and public confidence in amicus curiae practices but recommends several revisions to the proposed amendments to Federal Rule of Appellate Procedure 29. AELP advocates for preserving the party-consent mechanism for filing amicus briefs, developing a simple form for motions for leave, and striking the proposed anti-redundancy provision. AELP also suggests lowering the disclosure threshold for general

contributions to 10% with an alternative minimum of $100,000, requiring disclosure of the date of amici creation since the underlying case was filed, lengthening the contribution disclosure time frame to four years, and requiring amici to disclose whether their law firms frequently represent a party to the litigation. AELP emphasizes the importance of these revisions to balance administrative burdens, potential judicial recusal, and public confidence in the judicial system.

USC-RULES-AP-2024-0001-0340
Committee to Support Antitrust Laws (COSAL)
The Committee to Support Antitrust Laws (COSAL) generally supports the proposed amendments to Federal Rule of Appellate Procedure 29 but raises three main concerns. First, it argues that eliminating the option to file an amicus brief with the consent of all parties will result in unfairness and inefficiency, increasing the burden on courts and creating delays. Second, COSAL believes the standard for permissible amicus briefs—those that address issues not mentioned in the parties' briefs and are not redundant—is too stringent and unworkable, potentially eliminating useful briefs. Third, it contends that the threshold for disclosure of party contributions to amici is too high and suggests it should be lowered to 10%. COSAL emphasizes the importance of transparency and fairness in the judicial process and supports increased disclosure requirements to ensure the integrity of the judicial system.

USC-RULES-AP-2024-0001-0322
Brady Center to Prevent Gun Violence
Eliminating the consent option will burden the courts and may lead to the public perception that courts favor certain viewpoints in allowing amicus briefs. In addition, parties need to know whether a brief has been accepted so they know whether to respond to it in their briefs. The proposed

standard would create problems because of the short time between when a party filed a brief and when amicus briefs are due. Brady generally supports the increased disclosure requirements proposed but suggests clarifying the meaning of member.

USC-RULES-AP-2024-0001-0350
Electronic Frontier Foundation (EFF)
The Electronic Frontier Foundation (EFF) opposes the elimination of the consent provision, stating that it will lead to increased motion practice and hinder the participation of less-resourced amici. It is cautiously comfortable with the 25% threshold but would not want this threshold to be any lower. It supports the disclosure exemption when the donor has been a member for the prior 12 months—EFF suggests exempting the new disclosure requirements from the word count to allow for substantive arguments in amicus briefs.

USC-RULES-AP-2024-0001-0409
Steven Finell
Steven Finell supports expanding the disclosures required of those who proffer amicus briefs to help courts understand who is behind the briefs and ensure that amici are not merely supporting a party. However, he opposes the proposed amendments that would eliminate the submission of amicus briefs upon party consent and require leave of court. Finell proposes that courts of appeals should accept all proffered amicus briefs for whatever they may be worth, rather than requiring motions for leave, which he believes would waste more time and effort than it saves. He also argues that refusing or striking an amicus brief cannot ethically cure a judge's conflict of interest and that the courts of appeals' existing conflict avoidance system is sufficient to address potential conflicts.

IV. No Position For or Against Motion Requirement; Opposed to Disclosure

USC-RULES-AP-2024-0001-0008
Senators Mitch McConnell, John Thune, and John Cornyn
Senators Mitch McConnell, John Thune, and John Cornyn express strong opposition to the proposed amendments regarding amicus brief disclosure. The senators argue that the amendments threaten First Amendment rights and are driven by partisan motives. They believe the amendments would chill free speech and association, undermine the judiciary's integrity, and are unnecessary. If enacted, they encourage affected parties to immediately challenge these provisions in court. They contend that humoring bad-faith political actors is like rewarding a whining child with treats.

USC-RULES-AP-2024-0001-0016
National Taxpayers Union Foundation (NTUF) & People United for Privacy Foundation (PUFPF)
The NTUF and PUFPF express concerns about the proposed amendments to Federal Rule of Appellate Procedure 29, particularly regarding donor privacy and First Amendment rights. The organizations argue that the amendments fail the "exacting scrutiny" standard required by the Supreme Court and do not demonstrate a substantial government interest. They believe the proposed disclosure requirements are not narrowly tailored and could deter participation in the judicial process. They contend that there are no alternative channels for amicus arguments. They emphasize the importance of protecting donor privacy to ensure robust public debate and prevent harassment of individuals supporting nonprofit organizations.

USC-RULES-AP-2024-0001-0028
Philanthropy Roundtable
The Philanthropy Roundtable argues that the expanded amicus disclosure requirements threaten First Amendment rights and could undermine civil society by chilling participation in civic and charitable activities. It emphasizes the importance of protecting the privacy of donors and supporters to ensure diverse perspectives and robust public debate.

USC-RULES-AP-2024-0001-0030
Heritage Foundation
The Heritage Foundation argues that the amendments are politically motivated, constitutionally questionable, and could undermine judicial integrity. The letter emphasizes that judges should decide cases based on the merits, not the identity of the individuals or organizations involved. The Heritage Foundation believes the proposed amendments are unnecessary and would drag the federal judiciary into partisan politics.

USC-RULES-AP-2024-0001-0212
The Buckeye Institute
The Buckeye Institute argues that the proposed changes could stifle participation and infringe on First Amendment rights. It emphasizes the importance of amicus participation in the democratic process and the judicial system. The Buckeye Institute believes the proposed disclosure requirements are not narrowly tailored and could deter individuals and organizations from filing amicus briefs. It also suggests that the Committee should propose rules governing amicus participation at the district court level to facilitate broader participation.

USC-RULES-AP-2024-0001-0408
American Legislative Exchange Council (ALEC)
ALEC argues that the disclosure requirements violate free association and speech rights protected by the First Amendment and could chill public participation in legal matters. It believes the Committee has not demonstrated a compelling interest to justify the proposed amendments. It emphasizes the importance of allowing courts to benefit from additional insights provided by amicus briefs without discouraging public participation.

V. No Position For or Against Motion Requirement; Support Disclosure

USC-RULES-AP-2024-0001-0005
Anonymous
Amicus briefs have become a conduit for hyper-fixated interest groups, lobbying organizations, and partisan political entities to unduly influence the legal and factual proceedings of federal courts. All judges know that receiving amicus briefs is like getting junk mail in that you might be fooled into reading a brief in the same way you might be fooled to reading junk mail that uses a font that resembles someone's natural handwriting. However, at the end of the day, judges know that what's in amicus briefs is much like what's in junk mail: something written by an entity that wants to influence you to do something you'd otherwise not do, most often by emotional trickery and undergraduate-psychology-class marketing tactics.

USC-RULES-AP-2024-0001-0006
Senator Sheldon Whitehouse and Representative Hank Johnson
Senator Sheldon Whitehouse and Representative Hank Johnson argue that the current lack of transparency allows for covert influence by well-funded interests, which can

distort judicial decision-making. If adopted, the new rule would yield a long-overdue, if incomplete, improvement over existing amicus disclosure requirements. They also suggest additional measures, such as requiring amici to disclose links with other amici and ensuring lawyers conduct due diligence in their disclosures.

USC-RULES-AP-2024-0001-0014
Anonymous
In addition to supporting the proposed amendments, this college student would encourage the Committee to go further to strengthen the disclosure requirements. It is in the American public interest for all of us to know who exactly is trying to influence our judicial system through amicus curiae briefs. We – college students, young people, and average American citizens – have every right to have this disclosure, donor or otherwise, from these organizations. I am quite shocked by, yet resigned to, the partisan politicization surrounding these disclosure enhancements.

USC-RULES-AP-2024-0001-0017
Mia Andrade
Mia Andrade thinks that the proposed changes are essential for improving the clarity, efficiency, and fairness of the appellate process. By updating the rules, we can ensure that the legal system remains responsive to contemporary issues, reducing unnecessary delays and ambiguities. This helps maintain the integrity of the judicial process and reinforces public confidence in the legal system, which is crucial for ensuring justice and fairness for all parties involved.

USC-RULES-AP-2024-0001-0025
Anonymous
I strongly urge the passing of this rule to support fairness and justice in the judicial process.

USC-RULES-AP-2024-0001-0031
Court Accountability
Court Accountability emphasizes the need for enhanced transparency and accountability in amicus curiae brief disclosures. It argues that current disclosure requirements are insufficient, allowing parties to use amici to circumvent page limits and mislead courts about their independence. The proposed amendments would require amici to disclose significant financial contributions from parties or their counsel, close loopholes related to member payments and provide detailed information about the amicus's identity and purpose. It also suggests lowering the 25-percent funding threshold for disclosure and supports additional transparency regarding financial links between amici.

USC-RULES-AP-2024-0001-0374
Professor Allison Orr Larsen
Professor Allison Orr Larsen emphasizes the need for improved funding disclosure for amicus briefs to enhance judicial transparency and reliability. She highlights the increasing influence of the "amicus machine," where coordinated amicus briefs shape judicial reasoning and outcomes. Larsen argues that the proposed amendments will help courts assess the credibility of amicus submissions and enable courts to scrutinize amicus facts more carefully. As any new researcher is taught and any cross-examiner knows well, a source's motivation is intrinsically tied to its credibility.

USC-RULES-AP-2024-0001-0401
Senator Sheldon Whitehouse and Representative Hank Johnson
Senator Sheldon Whitehouse and Representative Hank Johnson respond to arguments against greater amicus disclosure. They argue that knowing the true interests behind amicus briefs is crucial for assessing potential conflicts of

interest and the weight of multiple amici in a case. They emphasize that these changes are necessary to prevent well-funded interests from covertly influencing judicial decisions and to maintain public confidence in the integrity of the judicial process. They hope that the Advisory Committee will not be intimidated by overheated rhetoric and name-calling.

USC-RULES-AP-2024-0001-0402
Various organizations and individuals
A group of organizations and individuals argue that enhanced amicus brief disclosure requirements will improve transparency and integrity in judicial proceedings. They highlight the importance of understanding the interests and relationships behind amicus briefs to evaluate their credibility and biases. They believe the proposed amendments will discourage the creation of front organizations and provide courts with valuable context to assess the reliability of amicus submissions.

VI. Other

USC-RULES-AP-2024-0001-0369
International Attestations LLC
International Attestations LLC emphasizes the need for inclusivity and consideration of global events in the context of U.S. rule formation. It argues that the proposed changes to amicus brief standards and in forma pauperis (IFP) considerations should account for upcoming global events, such as the World Cup 2026 and the Los Angeles Olympics 2028. The comment highlights the importance of preparing for these events by ensuring access to the courts for American-born individuals and entities. Kotulski also raises concerns about the proposed amendments' potential impact on the filing of amicus briefs, arguing that the changes could

discourage valuable contributions and hinder access to justice.

USC-RULES-AP-2024-0001-0222
Native American Rights Fund, National Congress of American Indians, and Northern Plains Indian Law Center
The Native American Rights Fund, the National Congress of American Indians, and the Northern Plains Indian Law Center request that federally recognized Indian tribes be added to the list of entities exempt from the leave of court requirement for filing amicus curiae briefs. They argue that Indian tribes, as sovereign entities, should be afforded the same treatment as the United States and individual states, which are already exempt from this requirement. The commenters emphasize that cases defining tribal governmental authority and rights often do not include tribes as parties, making amicus briefs the only avenue for their participation. They highlight the importance of tribal perspectives in cases involving foundational constitutional law principles and advocate for the inclusion of tribes in Rule 29 to ensure their voices are heard. The organizations also point out that the U.S. Supreme Court has already recognized Indian tribes as governmental entities in its rules governing amicus participation, and the Federal Rules of Appellate Procedure should align with this recognition.

There were **58 identical comments** filed by different individuals, but the comment is identical and copied below. The comment numbers end in 0054, 0065, 0069, 0087, 0089, 0092, 0098, 0099, 0109, 0127, 0136, 0139, 0146, 0153, 0156, 0160, 0166, 0170, 0177, 0182, 0183, 0188, 0189, 0190, 0193, 0194, 0195, 0196, 0198, 0206, 0234, 0236, 0237, 0245, 0248, 0253, 0258, 0260, 0266, 0286, 0291, 0293, 0298, 0304, 0317, 0319, 0333, 0348, 0358, 0361, 0364, 0371, 0376, 0379, 0380, 0390, 0391, and 0395.

> I am writing to express my deep opposition to the proposed amendments to Federal Rule of Appellate Procedure 29. This proposal would severely undermine the efficiency of our judicial process and place unnecessary burdens on public-interest groups and individuals who participate in legal advocacy.
>
> Currently, the courts have an efficient process for handling amicus briefs. Judges and clerks are fully capable of filtering out unhelpful briefs without the need for additional steps. Requiring amici to file motions only increases the workload on the judiciary, delaying important cases and wasting resources. The Supreme Court, recognizing this inefficiency, has eliminated the need for amici to seek permission to file briefs, and there is no logical reason for appellate courts to go in the opposite direction.
>
> The proposed rule would disproportionately affect smaller organizations that rely on filing amicus briefs to make their voices heard in important legal decisions. Many of these groups provide valuable perspectives that help the courts make well-informed rulings. If this rule goes into effect, the uncertainty surrounding the filing of amicus briefs will discourage participation and reduce the diversity of viewpoints presented to the courts.
>
> This proposal is unnecessary and counterproductive. I urge you to withdraw it immediately and protect the integrity of the judicial process.

There were **57 identical comments** filed by different individuals, but the comment is identical and copied below. The comment numbers end in 0040, 0046, 0049, 0055, 0057,

0076, 0088, 0095, 0104, 0105, 0106, 0112, 0114, 0115, 0122, 0125, 0126, 0129, 0131, 0157, 0163, 0164, 0173, 0187, 0191, 0204, 0205, 0210, 0238, 0241, 0243, 0244, 0246, 0256, 0262, 0263, 0268, 0270, 0271, 0277, 0282, 0284, 0300, 0309, 0316, 0320, 0324, 0329, 0343, 0345, 0355, 0367, 0377, 0381, 0382, 0389, and 0400.

> I am writing to express my concern about the proposed amendments to Federal Rule of Appellate Procedure 29. These changes would require amici curiae to obtain court approval before filing briefs and disclose financial information, including donor identities. This is not only an unnecessary burden on the courts but also an attack on First Amendment rights.
>
> The requirement to disclose donor information threatens the right to free association. The U.S. Supreme Court has consistently held that individuals and organizations have the right to associate privately without fear of public disclosure. Forcing amici to disclose their donors would discourage many from contributing, stifling the voices of smaller organizations that play a crucial role in advocating for justice and fairness in our legal system.
>
> This proposal is a step in the wrong direction, and I urge the Committee to withdraw it.

There were **47 identical comments** filed by different individuals, but the comment is identical and copied below. The comment numbers end in 0037, 0050, 0053, 0056, 0058, 0059, 0064, 0070, 0079, 0085, 0094, 0102, 0107, 0113, 0121, 0123, 0133, 0142, 0144, 0150, 0165, 0168, 0186, 0202, 0223, 0229, 0230, 0231, 0239, 0257, 0273, 0274, 0275, 0278, 0285, 0288, 0289, 0297, 0302, 0312, 0321, 0331, 0337, 0365, 0383, 0388, and 0399.

> I am writing to strongly oppose the proposed amendments to Rule 29 of the Federal Rules of Appellate Procedure. This rule represents an unnecessary intrusion into a well-functioning system and threatens to limit access to the courts for many public-interest organizations.
>
> Judges are already capable of screening out unhelpful amicus briefs without additional motions. The proposal's claim that this will improve efficiency is misguided by forcing amici to seek leave to file, the rule would actually increase the burden on the courts. More motions, more delays, and more bureaucracy will be the result. Moreover, the proposal would require amici to disclose intrusive financial details, including donor information, which raises serious First Amendment concerns.
>
> Forcing organizations to reveal their financial supporters undercuts the fundamental right to free association. This chilling effect could deter many groups from participating in important legal matters, especially smaller organizations that rely on private donations to fund their advocacy.
>
> This proposal does more harm than good. It places additional burdens on the judiciary, limits the ability of organizations to advocate for justice, and threatens constitutional rights. I urge the Committee to reject it.

There were **59 identical comments** filed by different individuals, but the comment is identical and copied below. The comment numbers end in 0045, 0060, 0062, 0063, 0066, 0073, 0077, 0080, 0084, 0090, 0091, 0093, 0097, 0103, 0111, 0117, 0119, 0124, 0130, 0135, 0143, 0147, 0152, 0161, 0167, 0171,

0172, 0175, 0176, 0181, 0199, 0209, 0211, 0226, 0232, 0240, 0249, 0261, 0276, 0279, 0280, 0290, 0301, 0313, 0314, 0326, 0330, 0342, 0344, 0351, 0354, 0357, 0360, 0362, 0375, 0386, 0392, 0393, and 0396.

> I am writing to oppose the proposed amendments to Federal Rule of Appellate Procedure 29, which would create unnecessary barriers for filing amicus curiae briefs.
>
> Forcing all amici to seek court permission before filing briefs would slow down the judicial process and discourage smaller organizations from participating.
>
> Worse, the proposal to require amici to disclose donor information raises serious constitutional concerns. The U.S. Supreme Court has affirmed that organizations have a right to protect the privacy of their supporters. This rule would have a chilling effect on individuals and groups that want to contribute to important legal advocacy but fear exposure of their private affiliations.
>
> This proposal is both unnecessary and harmful. I strongly urge you to withdraw it and protect the integrity of the judicial process.

There were **56 identical comments** filed by different individuals, but the comment is identical and copied below. The comment numbers end in 0041, 0042, 0043, 0047, 0048, 0052, 0068, 0071, 0078, 0081, 0100, 0108, 0118, 0132, 0138, 0154, 0155, 0158, 0159, 0162, 0169, 0179, 0200, 0208, 0224, 0227, 0228, 0235, 0242, 0252, 0259, 0267, 0272, 0281, 0283, 0292, 0294, 0295, 0296, 0303, 0308, 0315, 0323, 0325, 0327, 0328, 0332, 0335, 0336, 0347, 0349, 0359, 0363, 0378, 0384, and 0394.

I am writing to voice my strong opposition to the proposed changes to Federal Rule of Appellate Procedure 29. This proposal will not only create unnecessary bureaucratic hurdles but will also severely limit the role that amici play in our judicial process, a role that has been crucial to ensuring fair and balanced rulings.

Amici often provide the courts with critical insights that the parties to a case may not present. In many cases, amici play an important role in clarifying broader implications that go beyond the immediate interests of the parties involved. This kind of input helps the courts to issue rulings that consider the wider impact of their decisions.

Requiring amici to seek court approval would slow down the process and discourage the submission of briefs, especially from smaller organizations and individuals who do not have the resources to engage in lengthy legal battles. Judges and their clerks are already proficient at filtering out unhelpful briefs, and this proposal would only add unnecessary steps to an already complex process.

This rule change also threatens First Amendment rights by requiring amici to disclose financial details about their donors. Such a requirement would have a chilling effect on organizations and individuals who want to support causes they care about but are unwilling to have their personal information disclosed publicly.

I strongly urge you to reconsider this proposal and withdraw it to protect both the efficiency of the courts and the constitutional rights of those who support legal advocacy.

There were **54 identical comments** filed by different individuals, but the comment is identical and copied below. The comment numbers end in 0036, 0038, 0039, 0044, 0051, 0061, 0067, 0072, 0075, 0082, 0083, 0086, 0096, 0101, 0120, 0128, 0134, 0137, 0141, 0145, 0148, 0149, 0174, 0178, 0180, 0184, 0185, 0192, 0197, 0201, 0203, 0233, 0247, 0250, 0251, 0254, 0265, 0269, 0287, 0299, 0305, 0334, 0338, 0341, 0346, 0352, 0356, 0372, 0373, 0385, 0387, 0397, 0398, and 0404.

> I strongly oppose the proposed changes to Rule 29 of the Federal Rules of Appellate Procedure.
>
> This rule would create unnecessary delays in the appellate process, as courts would be forced to review motions from amici before even considering the briefs themselves. Judges and clerks already have effective methods for filtering out unhelpful amicus briefs, so there is no need for this additional bureaucratic step.
>
> I urge the Committee to reconsider this harmful proposal and withdraw it.

Summary of Testimony

Carter Phillips (Chamber of Commerce of the United States)
The Chamber of Commerce opposes the proposed amendments to Rule 29, citing concerns about First Amendment rights. Current Rule 29 already protects the judicial process and the proposed disclosure amendments are unnecessary and overly burdensome. The Chamber also opposes the elimination of the consent option and the proposal to bar redundant amicus briefs, arguing that these changes would reduce the quality of amicus participation and burden the courts with unnecessary motions.

Carter Phillips questions why the courts of appeals want to deviate from the U.S. Supreme Court's approach to amicus practice, including liberal filing of amicus briefs without requiring consent or motions and less disclosure than proposed here. Phillips argues that the proposed disclosure requirements could have significant risks, particularly from the Executive and Legislative branches, and could chill free expression. He provides a hypothetical example involving the Foreign Corrupt Practices Act to illustrate the potential negative consequences of disclosure. Phillips also criticizes the requirement for leave of court for non-governmental amicus briefs, arguing that it would create a cumbersome process and discourage valuable amicus participation. He emphasizes that the current system, which allows filing by consent, works well and that the proposed changes would create unnecessary burdens for the courts and parties involved. In response to a question whether the objection to disclosing financial relationships between a party and an amicus is categorical or whether the concern is with the percentage; that is, why shouldn't a court know if 100% of the resources of an amicus comes from a party? Phillips responded, "But, to get at the problem you've identified . . . it seems to me that you would target that specifically in a particular way about the relationship between the party and the amicus, not by requiring more disclosure of organizations that provide amicus support."

Alex Aronson (Court Accountability)

Alex Aronson, Executive Director of Court Accountability, testifies in support of the proposed disclosure amendments to Rule 29. Court Accountability supports the proposed amendments to Rule 29, arguing that they will enhance transparency and accountability in amicus curiae brief disclosures. The amendments will deter gamesmanship and

provide courts with additional information to evaluate the credibility of amicus submissions.

He argues that the amendments are necessary to improve transparency and accountability within the judicial system. Aronson highlights the negative consequences of amici acting as alter egos of parties or third-party interest campaigns, citing the example of the pending Ninth Circuit appeal in Google vs. Epic Games, where many amici had financial ties to Google that were not disclosed. He emphasizes that the identity of an amicus matters and that transparency is crucial for public confidence in the courts. Aronson also addresses First Amendment objections raised by other commenters, arguing that the proposed amendments are consistent with legal precedent and do not infringe on free speech rights. He suggests that the 25 percent funding threshold for disclosure is too high and recommends additional disclosure of financial links among amici.

Lisa Baird (DRI—Defense Research Institute)
Lisa Baird, Chair of the Amicus Committee for DRI's Center for Law and Public Policy, testifies against the proposed amendments to Rule 29. She argues that the amendments are misguided and based on misunderstandings about the role of amicus briefs. She finds it notable that so many groups with varying interests and political perspectives are united in raising concerns. Baird emphasizes that the current system, which allows filing by consent, works well and should be retained. She highlights the practical problems with the proposed requirement for leave of court for non-governmental amicus briefs, arguing that it would create unnecessary burdens for the courts and discourage valuable amicus participation. While DRI takes no position on the substance of the disclosure requirements, Baird criticizes the proposed disclosure requirements as convoluted and

confusing. She recommends that any disclosure requirements be straightforward and located in one place. Baird urges the Committee to adopt the Supreme Court's approach to amicus filings. In response to a question about motion practice, she predicted that if you give lawyers an avenue and suggest that a motion should be opposed, they will oppose for no other reason than to impose costs and burdens, so this proposal threatens to flip the switch from the current norm of consent.

Thomas Berry

Thomas Berry, speaking in his personal capacity, argues that the requirement for leave of court for non-governmental amicus briefs would add significantly to the federal appellate workload and discourage valuable amicus participation. Berry highlights that drafting an amicus brief is a time-consuming process and that the proposed amendments would make it difficult to justify dedicating resources to producing briefs that might not be accepted. He emphasizes that the current system, which allows filing by consent, works well and that the proposed changes would create unnecessary burdens for the courts and parties involved. Berry also argues that the proposed amendments would incentivize amicus filers to focus more on the Supreme Court, which already receives a high volume of amicus briefs, rather than the federal appellate courts. He urges the Committee to adopt the Supreme Court's approach to amicus filings.

Molly Cain (LDF—NAACP Legal Defense and Educational Fund)

Molly Cain, representing the NAACP Legal Defense and Educational Fund (LDF), argues that the requirement for amicus briefs to be limited to relevant matter not already mentioned by the parties is too restrictive and could discourage helpful amicus participation. Cain emphasizes

that LDF's amicus briefs often expand upon matters mentioned by the parties and that the proposed language could lead courts to refuse consideration of valuable briefs. She also criticizes the language disfavoring redundant amicus briefs, arguing that it would be difficult for litigants to navigate and for courts to enforce. Cain highlights that amicus briefs supporting the same party share the same deadline, making it impossible to predict what other amicus briefs may be filed or what they will argue. This could result in courts lacking a principled basis for deciding which briefs are redundant and which are not.

Lawrence Ebner (Atlantic Legal Foundation)
Lawrence Ebner, Executive Vice President and General Counsel of the Atlantic Legal Foundation, emphasizes the importance of amicus briefs in the courts of appeals, noting that fewer amicus briefs are filed in these courts compared to the Supreme Court, making them more likely to be read and impactful. Ebner outlines the substantial effort, time, and expense involved in researching and drafting an amicus brief, including reviewing relevant materials, formulating arguments, and avoiding duplication. The proposed changes would deter the preparation and submission of worthwhile amicus briefs and unnecessarily burden appellate judges. Requiring a motion would undermine the current culture of consent, where experienced appellate attorneys routinely consent to the filing of amicus briefs. This requirement would create a risk that already-drafted briefs may not be accepted, deterring the preparation and filing of helpful briefs. Ebner urges the Committee to follow the Supreme Court’s lead by not requiring consent or leave.

Doug Kantor (National Association of Convenience Stores)
Doug Kantor, General Counsel of the National Association of Convenience Stores, expresses major concerns about the

proposed changes to Rule 29, particularly regarding First Amendment associational rights. He explains the practical challenges faced by associations in deploying limited resources to advocate on behalf of their members. Kantor highlights the difficulties in coordinating with other associations and the added costs of justifying the uniqueness of each amicus brief through a motion. He also raises concerns about the requirement to disclose non-party funders, noting that associations may need to seek specific funding for unbudgeted cases. Deciding which members to ask often has more to do with who we have tried to ask for funding more recently and who we have not than that member having some special interest in a case. While it is very doubtful that we would ever have someone come anywhere close to the 25 percent number, we have multiple sources of funding (dues, booth space at big trade shows, educational programs) and do not currently conglomerate what individual companies pay in each of these areas. In response to a question about earmarked funding, he explained that some longtime members let their dues lapse.

Seth Lucas

Seth Lucas, a senior research associate at The Heritage Foundation and a law student, argues that the proposed rules are unnecessary, politically motivated, and constitutionally suspect. Lucas criticizes the Committee's justification for the proposed rules, which analogizes them to campaign finance disclosures, arguing that judging is not like voting and that judges should decide cases based on facts and law, not public opinion. He highlights the lack of a clear rationale for the proposed changes and the absence of evidence of a problem that needs to be addressed. Lucas urges the Committee not to adopt the proposed association disclosure rules, arguing that they would drag the judiciary into identity politics and are a partisan solution in search of a problem. In response to the question whether the opposition to disclosing the

financial relationship between a party and an amicus is categorical, he responded, "the problem isn't money. It's whether the parties are getting a second bite at the apple."

Tyler Martinez National Taxpayers Union Foundation and People United for Privacy Foundation)

Tyler Martinez, representing the National Taxpayers Union Foundation and People United for Privacy, emphasizes the importance of amicus briefs in areas of arcane law, such as tax and campaign finance, and argues that donor privacy has been protected by exacting scrutiny. Martinez explains that exacting scrutiny requires a sufficiently important governmental interest and narrow tailoring, and he cautions the Committee against assuming that campaign finance disclosure standards can be applied to amicus briefs. He highlights the challenges of meeting exacting scrutiny for new areas of regulation and argues that the proposed amendments would fail to meet this standard. The proposed disclosure requirements fail to meet this standard and do not provide a substantial government interest. The proposed amendments are not properly tailored and there are no alternative channels for amicus arguments. . In response to the question whether the opposition to disclosing the financial relationship between a party and an amicus is categorical, he responded, "As it's drafted now, yes, it's a categorical problem. . . . if the real worry there is that you're just an arm of a party, and I think the current rules already would allow for enforcement of that. If it's some sort of major amount of funding . . . it has to be much more than 50 percent."

Sharon McGowan (Public Justice)

Sharon McGowan, Chief Executive Officer of Public Justice, opposes the requiring motions for leave to file non-governmental amicus briefs. Public Justice does not take a position on the disclosure proposal. At a time when courts

are trying to promote cooperation among counsel, this amendment tacks in the opposite direction. She argues that the existing Rule 29 already addresses concerns about amicus briefs forcing recusal and that the motion requirement would not provide additional relevant information. McGowan highlights the inefficiency of requiring motions for leave, as they are often decided by the clerk or motions panel before the merits panel is assigned. She provides examples from Public Justice's experience where motions for leave added to the workload of the motions panel or clerk without improving the court's ability to assess the briefs' utility. McGowan also argues that the proposed amendments would increase litigation time and expense and could lead to unwarranted opposition to amicus briefs. In response to a question, she encouraged the Committee to adopt the Supreme Court's approach, which allows all amicus briefs to be filed without consent or motion.

Patrick Moran (NFIB—National Federation of Independent Business)

Patrick Moran, a senior attorney with the National Federation of Independent Business (NFIB) Small Business Legal Center, argues that the proposed helpful and relevant standards would act as unnecessary barriers to the filing of amicus briefs, discouraging helpful briefs and creating a judicial echo chamber. Moran highlights the high costs of filing amicus briefs, especially for small teams of attorneys, and argues that the motion requirement would drive up these costs and stifle the voices of small businesses in federal courts. He also criticizes the proposed amendments for being out of step with the Supreme Court’s amicus rules, which do not require notice and consent. Moran urges the Committee to adopt a rule consistent with the Supreme Court's rules.

Jaime Santos

Jaime Santos, in her personal capacity, argues that the appropriate purpose of an amicus brief is to provide information to a court that can aid in judicial decision-making. Santos criticizes the proposed amendment to Rule 29(a)(2) for suggesting that an amicus brief can only be helpful if it discusses a matter not mentioned by the parties or other amici. She argues that redundancy among briefs can be helpful: A pharmaceutical company saying in its merits brief the rule the other side is asking you to adopt will have disastrous consequences for patients might be compelling or it might not, given the party's financial interest in winning. But three amicus briefs by patient groups, physician groups, and insurers who are willing to go to the trouble to retain counsel to say no, really, this will completely mangle the way we operate, that can be enormously helpful and powerful and relevant despite being duplicative of something a party says. Santos also opposes the proposed motion for leave requirement, arguing that it would lead to more work for under-resourced and overworked courts and increase the amount of uncompensated work required by lawyers. She notes that parties in the court of appeals typically consent, because withholding consent "violates what I think of as FRAP 101, don't be a jerk." But in the district court, where motions are required, the motions are almost invariably opposed, often for pretty ridiculous reasons. Santos also criticizes the proposed new detailed disclosure rules, arguing that they would make it difficult for numerous small organizations to band together because of the space needed to describe each of them and the lack of access to the required financial information. In response to a question whether a small organization wouldn't know any 25% donors, she responded that "may be right," but between micro grants and irregular funding streams, there may not be sufficient infrastructure to keep track and give counsel the confidence to make a representation in a brief.

Stephen Skardon (APCIA—American Property Casualty Insurance Association)
Stephen Skardon, Assistant Vice President, Insurance Counsel at the American Property Casualty Insurance Association (APCIA), emphasizes that APCIA, representing a significant portion of the U.S. property casualty insurance market, frequently files amicus briefs to provide courts with a broad national perspective on insurance-related matters. Skardon argues that the proposed amendments would limit the valuable role of amici by eliminating the option to file briefs on consent, which would deprive courts of critical context and analysis. He also criticized the proposed standard for assessing the helpfulness of amicus briefs, noting that it would result in fewer briefs being filed and would be detrimental to both the courts and the public. APCIA argues that the proposed disclosure requirements would infringe on First Amendment rights. It recommends maintaining the current permissive filing standard or adopting the Supreme Court's approach of eliminating the consent requirement.

Zack Smith
Zack Smith, Senior Legal Fellow and Manager of the Supreme Court and Appellate Advocacy Program at The Heritage Foundation, argues that the proposed changes, particularly those related to donor disclosures, are a solution in search of a problem and are driven by partisan politics. Smith highlights that the proposed amendments likely violate the First Amendment, as they would not pass the exacting scrutiny test required for compelled disclosures. He also criticized the Committee's rationale that the identity of the amicus matters to some judges, arguing that this undermines the principle of judicial impartiality. In response to the question whether he would object to requiring disclosure if a party provided 100% of the funds to an

amicus, Smith responded, "Yes, as drafted, and more to the point . . . I'm not sure throughout the Committee's study of this matter there's been an identified purpose, and . . . given this lack of a clarified governmental interest, it's hard to see how these proposed changes could pass the exacting scrutiny test."

Tad Thomas (AAJ—American Association for Justice)
Tad Thomas, past president of the American Association for Justice (AAJ) and current Chair of AAJ's Legal Affairs Committee, supports increased transparency and strongly believes that the true identity of the amici should be easy to determine by the courts, the parties, and the public. The 25 percent rule is not a problem at all; in many cases, the tax status of the organization requires it to keep detailed documentation of donations. He emphasized the importance of amicus briefs in educating the court on critical legal issues and noted that AAJ frequently files such briefs through party consent. Thomas argued that removing the party consent provision would increase the burden on courts and lead to unnecessary motion practice. He provided an example from the Eleventh Circuit where AAJ faced opposition to their amicus brief, which resulted in additional work for the court. Thomas also recommended removing or simplifying the proposed purpose section, as it could lead to unintended consequences and promote favoritism for certain well-known amici. He urged the Committee to adopt the Supreme Court's approach to amicus briefs or retain the current consent provision.

Larissa Whittingham (RLC—Litigation Counsel for the Retail Litigation Center)
Larissa Whittingham, Litigation Counsel for the Retail Litigation Center (RLC), testified against the proposed amendments to Rule 29(a). She argued that the existing rule already contains safeguards to address concerns about

recusal and that the proposed amendments would create unnecessary burdens and promote adversarialness. The remedy to the recusal problem the report noted is to appropriately configure systems and processes to allow the implementation of existing Rule 29, not by amending the rule. Whittingham emphasized that amicus briefs provide valuable perspectives and data that parties may not be able to offer, and that the proposed standard for assessing the helpfulness of briefs is too limited. She also noted that the proposed amendments would be particularly detrimental to smaller organizations and would be difficult to administer. Whittingham urged the Committee to reject the proposed amendments and maintain the current rule.

Kirsten Wolfford (ACLI—American Council of Life Insurers)

Kirsten Wolfford, representing the American Council of Life Insurers (ACLI), argues that the amendments would create unnecessary burdens and have a chilling effect on the filing of amicus briefs. Eliminating the option to file by consent and adding new disclosure requirements would discourage amicus participation and increase costs without clear benefits. ACLI believes the current Rule 29 adequately prevents "dark" money from influencing amicus briefs. Wolfford emphasizes the unique perspective that amicus briefs provide, which cannot always be replicated by the parties in a matter. She highlights the value of ACLI's amicus briefs in providing background information on the life insurance industry and argues that creating hurdles for these briefs would hinder the court's ability to make informed decisions.

Gerson H. Smoger

Gerson Smoger, an attorney at Smoger & Associates, emphasizes the importance of amicus briefs in providing information to the court that may not be raised by the parties

and highlights the challenges faced by pro bono amicus brief writers. Smoger supports the 6500-word limit for amicus briefs and the requirement for a concise description of the identity and interest of the amicus. However, he opposes the requirement for motions for leave to file amicus briefs, arguing that it would create unnecessary work and limit the ability of the actual panel to hear the briefs. Smoger also supports the 25 percent rule for disclosing financial contributions but argues that it should be lowered to 10 percent. "I've been involved for a long time in . . . multiple boards and multiple organizations, and you always know who gave 25 percent . . . . Everybody's struggling for money. People do always know who's given at least 10 percent because then they're coming back to them, and 25 percent, frankly, is ridiculous because people absolutely know . . . . "

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE[1]

Rule 32. Form of Briefs, Appendices, and Other Papers

* * * * *

(g) Certificate of Compliance.

(1) **Briefs and Papers That Require a Certificate.** A brief submitted under Rules 28.1(e)(2), 29(a)(5), 29(f)(3) ~~29(b)(4)~~, or 32(a)(7)(B)—and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), or 40(d)(3)(A)—must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely

[1] New material is underlined in red; matter to be omitted is lined through.

on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words—or the number of lines of monospaced type—in the document.

(2) **Acceptable Form.** Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance.

Committee Note

Rule 32(g) is amended to conform to amendments to Rule 29.

Changes Made After Publication and Comment

The cross reference to Rule 29(f)(2) is changed to 29(f)(3), reflecting changes to Rule 29(f).

Appendix:
Length Limits Stated in the
Federal Rules of Appellate Procedure

* * * * *

Amicus briefs	29(a)(5)	• Amicus brief during initial consideration on merits	~~One-half the length set by the Appellate Rules for a party's principal brief~~ 6,500	~~One-half the length set by the Appellate Rules for a party's principal brief~~ Not applicable	~~One-half the length set by the Appellate Rules for a party's principal brief~~ Not applicable
	29~~(b)(4)~~(f)(3)	• Amicus brief during consideration of whether to grant rehearing	2,600	Not applicable	Not applicable

* * * * *

Changes Made After Publication and Comment

The cross reference to Rule 29(f)(2) was changed to 29(f)(3), reflecting changes to Rule 29(f).

UNITED STATES DISTRICT COURT

for the

<_____> DISTRICT OF <_____>

<Name(s) of plaintiff(s)>,	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	Case No. <Number>
<Name(s) of defendant(s)>,	)	
	)	
Defendant(s)	)	
	)	

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the filing fees of my appeal or post a bond for them. I believe I am entitled to relief. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: _____ Date _____

The court may grant a motion to proceed in forma pauperis if you show that you cannot pay the filing fees and you have a non-frivolous issue on appeal. Please state your issues on appeal. (Attach additional pages if necessary.)

My issues on appeal are:

1.	What is your monthly take-home pay, if you have any, from your work?	$_____
2.	What is your monthly income from any source other than take-home pay from work (such as unemployment benefits, alimony, child support, public assistance, pension, and social security)?	$_____
3.	How much are your monthly housing costs (such as rent and utilities)?	$_____
4.	How much are your monthly costs for other necessary expenses (such as food, medical care, childcare, and transportation)?	$_____
5.	What is the total value of all your assets (such as bank accounts, investments, market value of car or house)?	$_____
6.	How much debt do you have (such as credit cards, mortgage, and student loans)?	$_____
7.	How many people (including yourself) do you support?	
8.	Do you receive SNAP (Supplemental Nutrition Assistance Program), Medicaid, or SSI (Supplemental Security Income)? These programs may go by different names in some states.	Yes No

Are you a prisoner seeking to appeal a judgment in a civil action or proceeding? If so, then no matter how you answered the questions above, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

For all applicants: if there is anything else that you think explains why you cannot pay the filing fees, please feel free to explain below. (Attach additional pages if necessary.)

Committee Note

Revised Form 4 simplifies the existing Form 4, reducing the existing form to two pages. It is designed not only to reduce the burden on individuals seeking IFP status but also to provide the information that courts of appeals need and use, while omitting unnecessary information.

Changes Made After Publication and Comment

The phrase "if you have any" was added to question 1. The sentence, "These programs may go by different names in some states," was added to question 8. The first paragraph after the table of questions was revised to begin with a question that makes clear immediately that the paragraph is addressed to prisoners. The second paragraph was revised to make clear that it applies to all applicants.

Summary of Public Comment

USC-RULES-AP-2024-0001-0007
Simon Hernandez
The Proposed Form 4 to apply for in forma pauperis in an appellate court will considerably ease those who are in need. As stated in the proposed amendment, the current Form 4 is overly complicated, intrusive, and includes unneeded information. If a court believes that someone is lying about their status, they can inquire. But why put up one more barrier for someone who already is struggling to navigate the complicated appellate process. For example, the current form includes the employment history of a filer for the last two years. This is not likely relevant to the process of establishing if they are qualified for in forma pauperis, the simplified form which includes only income and expenses will do the job. The Proposed Form 4 is an example of how a government form can be better and should.

USC-RULES-AP-2024-0001-0010
Anonymous
The FRAP should be more flexible for incarcerated inmates.

USC-RULES-AP-2024-0001-0011
Michael Ravnitzky
Michael Ravnitzky supports the proposed changes to Appellate Form 4 to simplify the process for waiving fees and costs in appellate cases.

USC-RULES-AP-2024-0001-0017
Mia Andrade
I agree with the proposed amendments to the Federal Rules of Appellate Procedure. These changes are essential for improving the clarity, efficiency, and fairness of the appellate process. By updating the rules, we can ensure that the legal system remains responsive to contemporary issues, reducing unnecessary delays and ambiguities. This helps maintain the integrity of the judicial process and reinforces public confidence in the legal system, which is crucial for ensuring justice and fairness for all parties involved.

USC-RULES-AP-2024-0001-0025
Anonymous
I strongly urge the passing of this rule to support fairness and justice in the judicial process.

USC-RULES-AP-2024-0001-0029
Avital Fried, Myriam Gilles, Andrew Hammond, Alexander A. Reinert, Judith Resnik, Tanina Rostain, Anna Selbrede, Lauren Sudeall, and Julia Udell
They support the proposed revision of Appellate Form 4, which aims to simplify the form, reduce the burden on individuals seeking in forma pauperis (IFP) status, and provide necessary information to the courts while omitting unnecessary details. They recommend revising the language of specific questions in Appellate Form 4 to make them clearer and more inclusive. For Question 1, they suggest adding "if any" to clarify that the question applies even if the applicant has no income. For Question 4, they recommend including "old-age or other dependents' needs" to the list of necessary expenses. For Question 8, they propose adding a note that the names of programs like SNAP, Medicaid, or SSI vary by state. Lastly, they suggest rephrasing a sentence

about explaining inability to pay filing fees to ensure it applies to all applicants, not just prisoners.

USC-RULES-AP-2024-0001-0307
National Association of Criminal Defense Lawyers
NACDL suggests that Form 4 should be amended to include information indicating that a person for whom counsel has been appointed under the Criminal Justice Act (CJA) is automatically entitled by law to appeal in forma pauperis and is not required to complete Form 4.

Summary of Testimony

Sai
Sai expresses gratitude for the opportunity to testify regarding the proposed amendments to Form 4, which Sai has been advocating for since 2015 and 2019. Sai acknowledges that the proposed form is an improvement but identifies several fundamental flaws. Sai emphasizes that 28 U.S.C. § 1915 and the Prison Litigation Reform Act clearly state that the affidavit of finances is required only for prisoners. Sai suggests adding a question at the beginning of the form asking if the applicant is a prisoner, and if not, to skip the rest of the form. Sai also recommends including a statement of qualification standards to help applicants understand if they qualify for IFP status. Sai proposes that the form should automatically qualify non-prisoners who are on means-tested welfare benefits, represented by a public defender or legal aid, or have income and savings below 1.5 times the federal poverty guidelines. Sai further suggests moving the question about welfare benefits to the top of the form and excluding assets like the primary residence and work-related items from the asset calculation. Sai also recommends sealing the form automatically and providing immunity under 18 U.S.C. § 6002. Lastly, Sai advocates for the form to be applied to the Civil Rules (rather than just a form from the Administrative Office) and for the Committee to include representation from pro se litigants.

Professor Judith Resnik, Avital Fried, Anna Selbrede, and Julia Udell

They support the proposed revisions to Appellate Form 4, aimed at simplifying the process for individuals seeking to appeal in forma pauperis (IFP) and improving access to the legal system. They argue that the proposed revisions would reduce the burden on individuals seeking IFP status and provide the necessary information to the courts while omitting unnecessary details. The group also offers several modest revisions to further improve the form, such as clarifying language and adding explanations for certain questions. They emphasize the importance of simplifying forms to increase accessibility and reduce costs for both litigants and the courts.

Professor Judith Resnik describes the challenges faced by people seeking fee waivers at trial and appellate levels. She highlights that a significant portion of filings at both levels are from self-represented litigants and that the current forms are not user-friendly. Avital Fried adds that the current IFP application process can be confusing and that the proposed form addresses privacy concerns and formatting inconsistencies across circuits. Anna Selbrede discusses the benefits of simplified forms, citing research from justice labs and the positive impact on judicial efficiency. Julia Udell offers minor suggestions to further improve the form, such as noting that the names of public benefits programs may vary depending on the state and including elder care expenses. The proposed revisions can serve as a model for district courts.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE[1]

Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention

* * * * *

(d) Premature Petition or Application. This subdivision (d) applies if a party files a petition for review or an application to enforce after an agency announces or enters its order—but before the agency disposes of any petition for rehearing, reopening, or reconsideration that renders the order nonreviewable as to that party. The premature petition or application becomes effective to seek review or enforcement of the order when the agency disposes of the last such petition for rehearing, reopening, or reconsideration. A party intending to challenge that disposition must file a new or amended petition for review or

[1] New material is underlined in red; matter to be omitted is lined through.

application to enforce in compliance with this Rule 15.

(e)~~(d)~~ **Intervention.** Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion—or other notice of intervention authorized by statute—must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(f)~~(e)~~ **Payment of Fees.** When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

Committee Note

Subdivision (d). Subdivision (d) is new. It is designed to eliminate a procedural trap. Some circuits hold that petitions for review of agency orders that have been rendered non-reviewable by the filing of a petition for rehearing (or similar petition) are "incurably premature," meaning that they do not ripen or become valid after the

agency disposes of the rehearing petition. *See, e.g., Nat'l Ass'n of Immigration Judges v. Fed. Labor Relations Auth.*, 77 F.4th 1132, 1139 (D.C. Cir. 2023); *Aeromar, C. Por A. v. Dept. of Transp*., 767 F.2d 1491, 1493 (11th Cir. 1985) (relying on the pre-1993 treatment of notices of appeal and applying the "same principle" to review of agency action). In these circuits, if a party aggrieved by an agency action does not file a second timely petition for review after the petition for rehearing is denied by the agency, that party will find itself out of time: Its first petition for review will be dismissed as premature, and the deadline for filing a second petition for review will have passed. Subdivision (d) removes this trap.

It is modeled after Rule 4(a)(4)(B)(i), as amended in 1993, and is intended to align the treatment of premature petitions for review of agency orders with the treatment of premature notices of appeal. Recognizing that while review of district court orders is generally case based, *see* Fed. R. Civ. P. 54, review of administrative orders is generally party based, subdivision (d) refers to an order that is made "non-reviewable as to that party" by a petition for rehearing, reopening, or reconsideration.

Subdivision (d) does not address whether or when the filing of a petition for rehearing, reopening, or reconsideration renders an agency order non-reviewable as to a party. That is left to the wide variety of statutes, regulations, and judicial decisions that govern agencies and appeals from agency decisions. Rather, subdivision (d) provides that when, under governing law, an agency order is non-reviewable as to a particular party because of the filing of a petition for rehearing, reopening, or reconsideration, a premature petition for review or application to enforce that order will be held in abeyance and become effective when the agency disposes of the last such petition—that is, the last

petition that renders the order non-reviewable as to that party.

As with appeals in civil cases, *see* Rule 4(a)(4)(B)(ii), the premature petition becomes effective to review the original decision, but a party intending to challenge the disposition of a petition for rehearing, reopening, or reconsideration must file a new or amended petition for review or application to enforce.

Subsequent subdivisions are re-lettered.

Minutes of the Spring Meeting of the

Advisory Committee on Appellate Rules

April 2, 2025

Atlanta, GA

Judge Allison Eid, Chair, Advisory Committee on the Appellate Rules, called the meeting of the Advisory Committee on the Appellate Rules to order on Wednesday, April 2, 2025, at approximately 9:00 a.m. EDT.

In addition to Judge Eid, the following members of the Advisory Committee on Appellate Rules were present in person: Linda Coberley, Professor Bert Huang, Judge Carl J. Nichols, and Lisa Wright. The Solicitor General was represented by Mark Freeman, Director of Appellate Staff, Civil Division, Department of Justice. Judge Richard C. Wesley, Judge Sidney Thomas, Justice Leondra Kruger, and George Hicks attended via Microsoft Teams.

Also present in person were: Judge John D. Bates, Chair, Committee on Rules of Practice and Procedure (Standing Committee); Judge Daniel Bress, Member, Advisory Committee on Bankruptcy Rules and Liaison to the Advisory Committee on Appellate Rules; Andrew Pincus, Member, Standing Committee, and Liaison to the Advisory Committee on Appellate Rules; Christopher Wolpert, Clerk of Court Representative; Carolyn Dubay, Secretary to the Standing Committee, Rules Committee Staff (RCS); Bridget M. Healy, Counsel, RCS; Kyle Brinker, Rules Law Clerk, RCS; Rakita Johnson, Administrative Assistant, RCS; Maria Leary, Federal Judicial Center; Professor Catherine T. Struve, Reporter, Standing Committee; and Professor Edward A. Hartnett, Reporter, Advisory Committee on Appellate Rules.

Professor Daniel R. Coquillette, Consultant, Standing Committee, Tim Reagan, Federal Judicial Center, and Shelly Cox, Management Analyst, RCS, attended via Microsoft Teams.

I. Introduction and Preliminary Matters

Judge Eid opened the meeting and welcomed everyone, including the members attending remotely. She noted that Lisa Wright's term was ending and thanked her for her work on the committee's projects. She also congratulated Scott Myers on his retirement and welcomed Carolyn Dubay. She thanked the Court of Appeals for the Eleventh Circuit for hosting the meeting.

No one had questions about the report from the Federal Judicial Center. (Agenda book page 29).

Mr. Brinker referred to the pending legislation chart and noted that there is no recent Congressional action regarding the Federal Rules of Appellate Procedure. (Agenda book page 26).

Ms. Healy called attention to the rules tracking chart and noted that the amendments to Rules 6 and 39 are in the hands of the Supreme Court. (Agenda book page 19). They are scheduled to take effect December 1 of this year.

Judge Eid noted the draft minutes of the meeting of the Standing Committee and the Report to the Judicial Conference. (Agenda book page 41). We will discuss the matters addressed at the Standing Committee later on the agenda.

II. Approval of the Minutes

The reporter noted a typographical correction to the minutes of the October 9, 2024, Advisory Committee meeting. (Agenda book page 83). There should be a period rather than a comma on the last time of page 90. With this correction, the minutes were approved without dissent.

III. Discussion of Joint Committee Matters

Professor Struve provided an update regarding electronic filing and service for self-represented parties. (Agenda book page 103). The working group has made progress but is not yet seeking publication. The hope is to request publication in the next round. The Bankruptcy Rules Committee has concerns; the Standing Committee is ok with other committees going forward without Bankruptcy. The agenda book sketches a possible amendment to FRAP 25.

The working group is pursuing two major ideas. The first is that since filings made by non-electronic filers are uploaded by the clerk's office, triggering a notice to electronic filers, there does not seem to be a need to require the non-electronic filer to make paper copies and mail them to other parties. The second involves making electronic filing more available to self-represented parties. Future drafts will use the term "unrepresented parties" because of the number of placed in the rules where that phrase is already used.

At the time the sketch was drafted, it was thought that there might not be any situations in the courts of appeals—unlike the district courts—where litigants would have to serve documents on the parties but not file them with the court. But others have since pointed out that there are some, so that aspect of the sketch will have to be changed.

The sketch of FRAP 25 largely follows that sketched for Civil Rule 5, switching the presumption to filing electronically, but allowing local rules that electronic filing so long as they have reasonable exceptions or alternatives. It is also permissible to

impose conditions, particularly limiting an unrepresented party's access to that party's case. Word choices follow the existing Rule. There are ongoing discussions with the style consultants seeking to balance concision with ease of use for unrepresented parties.

Revised FRAP 25 would begin with the idea that notice of electronic filing constitutes service, placing other means of service after that. Service is complete as of the date of the notice. There is no provision, as there is in the current rule, to situations where one learns that a document has not been received; that doesn't seem to be a problem with court-generated notices of electronic filing.

Two issues need to be addressed. The first, already mentioned, is to draft something like the provision for Civil Rule 5(b)(4) for situations where a document is served but not filed. The second is to deal with bankruptcy specific concerns.

It is likely that the Bankruptcy Rules Committee will not be on board. That raises the question of what to do on appeal in a bankruptcy case. The Civil Rules Committee is not inclined to have different service rules for bankruptcy appeals. The sketch for FRAP 25 similarly does not include different service and e-filing rules for bankruptcy appeals.

The Reporter voiced support for the idea described on page 172-73 of the agenda book, surmising that the committees would prefer to keep the practice in the courts of appeals uniform across types of appeal rather than exempting bankruptcy appeals. He invited any member of the Committee to tell us if we are wrong about that surmise. None did.

Mr. Wolpert expressed support for more detail in the rule, urging the inclusion of both sets of bracketed language. Specific provisions make it easier for the Clerk's Office to explain things to self-represented litigants.

Mr. Freeman asked about the structure of the proposed rule and the relationship among the various parts. What is paragraph (3) doing that isn't covered by the others? Professor Struve explained that (3) is addressed to types of cases, while (4) is address to particular litigants. Then what is the difference between (2) and (3)? The point of (2) is to overcome existing rules that bar unrepresented litigants from e-filing, requiring that they be permitted in at least some situations, while (3) is designed to allay concerns that there are cases where electronic filing would be inappropriate, such as prisoner cases. Professor Struve expressed openness to better ways to make these points clear. Mr. Freeman suggested the possibility of combing (2) and (3) in a single paragraph. Professor Struve stated that she would try to clarify, including the interaction with local rules.

Draft

Mr. Wolpert cautioned against requiring that conditions be in a local rule rather than an order. Mr. Freeman yielded to the view of the Clerks. Professor Struve see value in (3), allowing the issuance of an order with conditions.

Professor Struve then turned to privacy issues. (Agenda book page 175). FRAP 25 adopts what applied below; currently this allows for the last 4 digits of a social security number to included. Senator Wyden has suggested the redaction of the complete number. Civil, Criminal, and Appellate seem on board, but Bankruptcy needs a truncated number in some situations. Bankruptcy has done a lot to address the concern, including a published rule that would call for social security numbers on fewer occasions. In addition, there are suggestions to better protect the privacy of minors. There is an interesting twist: how to deal with bankruptcy appeals? There is also a question about whether the same protection is needed for taxpayer identification numbers, but there may be less of a security problem in that area. Criminal is taking the lead regarding pseudonyms for minors, which would also be relevant in some civil habeas actions.

The Reporter pointed to his memo. (Agenda book page 184). He had drafted a possible amendment to FRAP 25 in the expectation that other committees would be proposing amendments to be published this summer. Now it seems that isn't going to happen. The Committee might decide that there is no need to do anything to FRAP 25, on the theory that whatever is done with other rule sets will flow through to the Appellate Rules. Alternatively, it might form a subcommittee to look into the possibility of having a rule along the lines sketched in the agenda book: barring any part of a social security number in an appellate filing by a party not under seal. Most aggressively, it could seek publication this summer, on the theory that, whatever the need for social security numbers in other circumstances, there is no need for them in a public appellate filing by the parties, and getting out ahead of other committees could generate useful public response that those committees could use.

A couple of committee members initially expressed support for the more aggressive approach, but after Judge Bates stated that the Standing Committee would prefer to get proposals from all of the advisory committees at the same time, the Committee decided to wait. But no one saw any need for a subcommittee.

IV. Discussion of Matters Published for Public Comment

A. Amicus Briefs—Rule 29 (21-AP-C; 21-AP-G; 21-AP-H; 22-AP-A; 23-AP-B; 23-AP-I; 23-AP-K)

The Reporter presented the report of the amicus subcommittee. (Agenda book page 189). Proposed amendments to Rule 29 were published for public comment. (Agenda book page 237). The Advisory Committee received hundreds of written comments and about two dozen witnesses testified at a hearing.

There are two major areas that led to comments. First, published FRAP 29(b)(4) would require some limited disclosure regarding the financial relationship between a party and an amicus. Second, published FRAP 29(a)(3) would require nongovernmental amici to move for leave to file.

Taking the latter first: Based on the public comment, there is no support in the bar for a motion requirement. The major reason for this proposal was to deal with recusal issues. Accordingly, the subcommittee offers two alternatives. One alternative is to allow amicus briefs to be filed freely, with no requirement either of a motion or party consent but make clear that a court of appeals may assign matters without regard to possible recusal based on amicus briefs and that a judge who might be recused because of an amicus brief could choose to recuse or to strike the brief. The other alternative is to leave this part of the rule as-is, so that party consent is sufficient at the initial consideration stage of a case, but that a motion is required for nongovernmental amici at the rehearing stage.

The Reporter invited Judge Thomas, whose concerns about recusal led to the proposed motion requirement to express his views. Judge Thomas said that he preferred to leave the rule as-is. The major problem is with petitions for rehearing. Back when the national rule was changed, the Ninth Circuit left in place a local rule permitting amicus filings on consent at the rehearing stage. That wasn't a problem back then, but it has become a problem in recent years. Smetimes six judges are recused because of a consent filing. The Ninth Circuit is inclined to follow the national rule and require a motion at the rehearing stage. The Supreme Court model would harm us significantly. Mr. Wolpert added that at least half of the circuit clerks were concerned about the volume of motions to process if motions were required in all cases. The proposal of the California Appellate Lawyers wouldn't work. With the large number of panel permutations, automated recusal is important.

A different judge member agreed with Judge Thomas. If a decision to recuse or strike is made near the end, by that time the party briefs will have already responded to the amicus brief. Striking the brief at that point is too late; the amicus brief had infected the party briefs on the merits.

The Reporter sought to clarify if there was consensus to leave this aspect of the rule as-is. In response to the possibility of adopting the Supreme Court's approach, a liaison member noted that there are speed bumps in the Supreme Court that we don't have. The Reporter added that the Supreme Court has taken the position that an amicus brief does not create recusals there, but that is not the practice in the courts of appeals and there is reason to question whether a FRAP amendment could so provide in the courts of appeals. A different judge member said leave it alone.

In response to a question from Judge Bates, the Reporter stated his view that he did not think that republication would be necessary if the Committee chose to adopt the Supreme Court's approach, noting that the theme of many comments was

along the lines of "don't change this, but if any change is made, it should be to adopt the Supreme Court's approach." On the other hand, there would certainly be no need for republication if the Committee simply decided not to make the proposed change and leave things as-is.

Mr. Freeman suggested the possibility of adopting the Supreme Court's approach at the panel stage. He rarely sees objections there, and he is not sure what it is doing at the panel stage. Judge Thomas responded that it filters out frivolous amicus briefs, briefs that are more like letters to the editor. Pro se amici don't get consent. It serves as a useful filter to keep all sorts of things out of the public record that do not belong there.

An academic member noted that the comments reflected satisfaction with the culture of consent that seemed to be working.

A judge member moved to leave well enough alone in this area. A different judge member clarified that this included no republication. The proposal was adopted unanimously.

The Committee took a break for approximately twenty minutes and resumed at approximately 10:50.

With that decision regarding the motion requirement, the Committee focused its attention on the alternative contained in the agenda book beginning at page 199. The Reporter noted that there were two areas of concern.

First, some commenters were concerned that the proposed rule's description of the purpose of an amicus brief was too restrictive. (Agenda book page 199, line 7.) In particular, most things that an amicus might want to say would have been "mentioned" by a party, and a rule against redundancy among amicus briefs would be difficult to apply: there is little time between the filing of a party's brief and the filing of an amicus brief, and an amicus might not even know who else is filing.

Many of these concerns were tied to the motion requirement. The decision to continue to allow filing on consent at the initial hearing stage takes care of most of these concerns. But the subcommittee took the point that "mentioned" can be too broad and recognized the difficulty in some cases of checking for redundancy among amicus briefs. It therefore moved the statement regarding redundancy among amicus briefs to the Committee Note and rephrased it as something that is helpful when feasible. (Agenda book page 208, line 227). And it revised the statement of purpose to more closely follow Supreme Court Rule 37.1.

Second, many commentators were concerned about the requirement in proposed FRAP 29(b)(4) for an amicus to disclose whether a party is a major contributor—that is, one who contributes 25% or more of the annual revenue of an

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amicus. While there was considerable opposition to this proposal, there was also some significant support. Some argued that the 25% threshold was too high, and that a 10% threshold would be more appropriate.

It is important to be clear about what this proposal would and would not require. It would not require the disclosure of all contributors to an amicus. It would not require the disclosure of all major contributors to an amicus. It would not require the disclosure of all contributions by parties to an amicus. It would require the disclosure only of major contributions by parties to an amicus. The Committee previously settled on the 25% level as sufficiently high that the party would be in a position to influence the amicus. And there is reason to think that an amicus with that level of funding from a party would be biased toward that party. As Professor Allision Orr Larsen put it, "As any new researcher is taught and any cross-examiner knows well, a source's motivation is intrinsically tied to its credibility." (Agenda book page 190).

A majority of the subcommittee recommends approval of this aspect of the proposed rule as published. A minority of the subcommittee believes that there is not a sufficient problem to warrant moving forward over such broad opposition and that it would be evaded anyway.

By way of comparison, FRAP 26.1, dealing with corporate disclosures, assumes that if a judge owns stock in a publicly held corporation that in turn owns 10% or more of stock in the party, the judge may have sufficient interest to require recusal. And the Corporate Transparency Act defines a beneficial owner as someone who owns or controls not less than 25% of the ownership interests of the entity."

As for earmarked contributions, current FRAP 29(a)(4)(E)(iii) requires the disclosure of all earmarked contributions by anyone other than the amicus, counsel to the amicus, and a member of the amicus. A prior member of the Committee referred to this as the sock-puppet rule, dealing with situations where someone is speaking through an amicus. The proposed amendment would make two changes: First, it would create a de minimis exception for earmarked contributions of less than $100. Second it would retain the member exception, but not apply that member exception unless the person had been a member for the prior 12 months.

The subcommittee is unanimous in recommending final approval of this amendment, with one slight tweak. In order to deal with the possibility that a long-time member has lets its membership lapse, the member exception is rephrased to apply to those who first became a member more than 12 months ago."

A lawyer member stated that she was the minority on the subcommittee. She noted that there will be proposals that should be adopted despite widespread opposition. For example, if there was a real need for judges to require a motion for amicus briefs, that might be appropriate to require despite opposition from lawyers.

But here, there is a high level of opposition, but no significant problem to be solved. Judges will assume, for example, that a trade association will support a party engaged in that trade. Sometimes an amicus filing by a trade association comes as a surprise, but most of the time it is solicited by a party. It is unwise to try to solve something that we don't know is a problem in the face of this level of opposition.

A liaison member stated that he agrees. Many of the commenters disagree about many things but agreed in their opposition to this proposal. The burden is significant and may deter people from participating. The premises underlying the proposal overstates the dangers. The courts of appeals don't get that many amicus briefs. The First Amendment concerns are sincere and worthy of caution. The proposal reflects a more cynical or jaundiced view of the process than is accurate.

The Reporter noted that a witness testified that anyone running a nonprofit would know off the top of their heads anyone who contributed 25% of the revenue; those are the people they go to when they need money.

Judge Bates asked if the commenters were concerned about the 25% percent threshold. The Reporter stated that he asked witnesses whether their objection was that the percentage was too low or whether their objection to disclosure of the financial relationship between a party and an amicus was categorical. He did not think that any witness had a satisfying answer to that question. It appears that they are concerned that this is the camel's nose under the tent and fear any such disclosures now will lead to more extensive disclosures later.

Mr. Freeman stated that the Department of Justice has lots of concerns. An organization might know that someone is a significant contributor, but is it 23% or 26%? Lawyers need to certify and there can be complexity here. That uncertainty can deter amicus filings. The DOJ does not engage in amicus wrangling, but people do. The Reporter noted that a witness stated that if a lot of organizations join an amicus brief it could be burdensome to get all the necessary information for all of them.

A lawyer member added that amicus wrangling is not necessarily a bad thing. It can prevent duplication. A liaison member asked what's the problem to be addressed. To the extent the concern is that an entity was created for the purpose of an amicus filing, other parts of the proposed rule deal with that. While amici who get lots of funding from a party surely exist, the liaison member doesn't know of any. There is a discrepancy between the 50% threshold in (b)(3) and the 25% threshold in (b)(4). Revenue is harder to determine than legal control; there may be multiple streams of income, and the internal accounting may or may not aggregate those separate streams. Perhaps the threshold in (b)(4) should be raised to 50%.

A judge member stated that no judge in this process has ever said that he or she was hoodwinked by not knowing the information that this provision would require to be disclosed. The Reporter noted that one judge previously on the

Committee had said that if a party made this level of contribution to an amicus, he would want to know about it. The judge agreed but noted that there is a difference between wanting to know and being hoodwinked by not knowing.

A lawyer member noted that she was not terribly impressed by arguments against disclosure by people who would have to make disclosures. It is not surprising that they would oppose disclosure. The point of getting this information is to benefit the public and the judges. It's not about whether the judges have been actually influenced; it is about public trust, that is hurt when such ties are later revealed.

A different lawyer member agreed with prior members that this is a solution in search of a problem. The issue came to the Committee's attention because of elected officials. An academic member noted that amicus practice has evolved enough in the last ten to twenty years and that responding to problems is not the only reason for a rule.

Judge Bates asked if 50% is appropriate for (b)(3), why not for (b)(4)? Mr. Freeman responded that control will always be probative, but contributing a majority of the money in a given year might not be. Attorneys would have to certify; the costs could be high.

The Reporter suggested that the Committee might want to entertain one of three motions; to approve (b)(4) with the 25% threshold, change the threshold to 50%, or eliminate (b)(4). Mr. Freeman moved to strike (b)(4). The motion carried by a vote of five to four, with the chair declining to vote.

The Reporter then directed attention to subdivision (e) on page 205 of the agenda book. The subcommittee recommends a slight revision of the member exception to deal with the situation of a lapsed member. As rephrased, it would continue the member exception but limit that exception to those members who first became a member more than 12 months earlier. The corresponding passage of the Committee Note is on page 211 of the agenda book. It was suggested that the phrase should be "at least" 12 months instead of "more than" 12 months.

A liaison member noted that there was a lot of confusion in the comments about this provision and people misread it. A different liaison member asked what the problem is that needs to be addressed. The Reporter stated that there are two changes in the proposed amendment. One is to limit the member exception; otherwise, the requirement that earmarked contributions be disclosed can be evaded by becoming a member upon making the earmarked contribution. Under the existing rule, if a nonmember wants to fund an amicus brief by an organization and do so anonymously, he can do so as long as he becomes a member. Under the proposed rule, he would be told that if he wants to make a contribution earmarked for the brief that would have to be disclosed, but if he wanted to make a contribution to the general funds, that would not have to be disclosed. The second is to allow for de minimis earmarked

contributions by setting a disclosure threshold of more than a $100. It seems that many of the critics of the proposed rule did not know that the existing rule requires the disclosure of earmarked contributions of any amount (other than by the amicus, its counsel, or its members).

A judge member stated that this is a modest tweak to an existing rule. It reduces the burden on crowd funding an amicus brief, and it does not allow evasion of an existing requirement. It's a good change.

A lawyer member agreed but thought that the phrasing makes the rule harder to understand. The Reporter noted that the current phrasing emerged from style. And academic member suggested that subdivision (e) be drafted in a more reticulated way. Rather than do so from the floor, the Reporter agreed to come up with a suggested revision over lunch.

A liaison member asked whether the word "helpful" was needed in line 25 on page 200. He also raised the issue of what has to be in the brief, suggesting that the Committee Note state how the disclosure requirements can be satisfied if there is nothing to be disclosed. The Reporter stated that a prior committee member had made a point of wanting the rule to require the brief to include a statement tracking the disclosure requirement. A lawyer member observed that, as phrased in the agenda book (page 204-05), subdivision (b) requires a brief to "disclose whether"—thus requiring an affirmative statement—while (c), (d), and (e), are phrase so that nothing need be said unless they apply.

Professor Struve, invoking the ghost of Appellate Rules Committee past, stated that this would be a change from the existing rule and that the Committee had previously made a point of requiring a brief to "state whether." The reason is the lawyer must make an affirmative statement and is not simply overlooking the requirement. An academic member suggested changing subdivision (e) to make this clear.

The Committee took a lunch break from approximately 12:05 until approximately 1:05.

Upon resuming, the Reporter presented what he had drafted over lunch in accordance with the Committee's guidance.

In subdivision (a)(3)(B), the provision was simplified to read, "the reason the brief serves the purpose set forth in Rule 29(a)(2)."

The Committee Note to subdivision (e) on page 211 of the agenda book was revised to refer to "those who first became members of the amicus at least 12 months earlier."

Subdivision (e), dealing with earmarked contributions, was rephrased to read as follows:

> (e) Disclosing a Relationship Between an Amicus and a Nonparty.
>
> (1) An amicus brief must disclose whether any person contributed or pledged to contribute more than $100 intended to pay for preparing, drafting, or submitting the brief and, if so, must identify each such person. But disclosure is not required if the person is
>
> - the amicus,
> - its counsel, or
> - a member of the amicus who first became a member at least 12 months earlier.
>
> (2) If an amicus has existed for less than 12 months, an amicus brief need not disclose contributing members but must disclose the date the amicus was created.

With subdivision (e), like subdivision (b) phrased as "disclose whether," discussion turned to the length of such disclosures and excluding them from the word count of the brief. One suggestion was that the disclosure itself could be short, the response was that the practice is to use the full language. The key is not to make the disclosure short; it is to not have it count against the word limit. There is some uncertainty whether the existing disclosure counts or not.

Working with the proposed text projected on a screen, the Committee worked to revise the text to make clear that the disclosures would not be counted. It decided to refer to "the disclosure statement" required by the Rule rather than the "disclosures" required by the rule. This was designed to trigger Rule 32(f)'s exclusion of "disclosure statement" from the length limit.

Judge Bates asked a different question, whether "intended to pay" was necessary. Professor Struve noted that the phrase is in the current rule, and some readers might view the change as substantive.

The Committee then discussed the proper order of the required contents of an amicus brief under FRAP 29(a)(4). As published, the amicus disclosure requirements were listed after the description of the amicus. But this location in a brief is after the pages included in the length count begin. To facilitate word counts, proposed FRAP 29(a)(4)(F) was moved earlier in the text to be FRAP 29(a)(4)(B), immediately after any corporate disclosure statement required by FRAP 29(a)(4)(A).

These changes were adopted by consensus, except for the last one, which was adopted by a vote of seven to one.

The Committee then voted unanimously to give its final approval to the proposed amendments to FRAP 29, as amended at this meeting, along with conforming amendments to FRAP 32(g) and the appendix of length limits.

B. Form 4 (19-AP-C; 20-AP-D; 21-AP-B)

Lisa Wright presented the report of the Form 4 subcommittee. (Agenda book page 812). The review Form 4 that the subcommittee recommends for final approval is greatly simplified. It is designed to provide courts with the information they need while omitting what is not needed. The witnesses and written comments were generally supportive. Sai pressed for more fundamental changes, but the subcommittee thought some of them were addressed to the IFP statute itself.

Professor Judith Resnick and students at Yale Law School viewed it as a great leap forward. They suggested some changes, some of which have been adopted. Plus, there have been tweaks by the style consultants. The National Association of Criminal Defense Lawyers suggested some changes to deal with CJA counsel, but the subcommittee concluded that if a party has appointed counsel, that appointed counsel can deal with it; it is better to keep this form simpler for those without counsel.

After correcting one typo on page 816 (an extra "are" in the first paragraph after the table), the Committee unanimously gave its final approval to Form 4.

V. Discussion of Matters Before Subcommittees

A. Intervention on Appeal (22-AP-G; 23-AP-C)

The Reporter presented the report of the intervention on appeal subcommittee. (Agenda book page 829). The Federal Judicial Center is conducting extensive research into motions to intervene in the courts of appeals. The subcommittee decided to await the results of that research before further proceeding. Best practices call for not providing an interim report at this stage of the research. More information is expected at the fall meeting.

B. Reopening Time to Appeal (24-AP-M)

The Reporter presented the report of the reopening time to appeal subcommittee. (Agenda book page 831). At the last meeting, a subcommittee was appointed to consider a suggestion from Chief Judge Sutton regarding Rule 4, echoed by Judge Gregory, that the Committee look into reopening the time to appeal under Rule 4(a)(6).

Since then, the Supreme Court granted certification in *Parrish*, the case in which Judge Gregory voiced his suggestion. In opposing certification, the Solicitor General noted the appointment of this subcommittee. Particularly because the Supreme Court granted certification, fully aware that this Committee was looking into the question, the subcommittee decided to await the decision in *Parrish* before proceeding further.

C. Administrative Stays (24-AP-L)

Mr. Freeman presented the report of the administrative stays subcommittee. Under FRAP 8, a court of appeals can stay a district court order pending appeal. First, one asks the district court, then the court of appeals. This process is fairly well understood and determines the status of a district court order while the appeal plays out, which can be a year or more.

An administrative stay addresses what happens denying the briefing on a motion to stay. That takes some time, sometimes two weeks or more just to brief the stay motion. What is the status of the district court's injunction during that period? The issue does not arise often, but it does with some frequency in his cases, especially when there is a change in administration. The subcommittee, following common usage, uses the "stay," but the issue also includes injunctions pending appeal and vacatur of prior orders.

Will Havemann of Hogan Lovells, and previously in Mr. Freeman's office, suggested that rulemaking address administrative stays. In the case that prompted the suggestion, the Court of Appeals for the Fifth Circuit granted an administrative stay and referred the motion for a stay pending appeal to the merits panel. That administrative stay remained in effect without a finding of likelihood of success on the merits, or irreparable harm, etc. The Supreme Court declined to rule because the Court of Appeals had not yet rule on the stay application. Justice Barret and Justice Kavanaugh said that an administrative stay should last no longer than necessary to make an intelligent decision on the motion for a stay pending appeal.

The subcommittee does not suggest codifying the standards for granting an administrative stay, but it does suggest making clear what an administrative stay is for and its duration. The proposed text with Committee Note begins on page 839 of the agenda book. How it would fit with the rest of FRAP 8 is shown on page 839. The proposed rule describes an administrative order as one temporarily providing the relief mentioned in FRAP 8(a)(1), calls for it to last no longer than necessary for the court to make an informed decision, and provides that can last no longer than 14 days. It largely tracks Will Havemann's proposal.

A big question is whether 14 days is right. It is sort of modeled on Civil Rule 65, which allows for a TRO to be in place for 14 days, subject to 14-day extension. The subcommittee considered 7 plus 7, and 14 plus 14; it could use some feedback on this.

At the time of the subcommittee meeting, 14 days seemed perfectly fair; now it seems like a long time. The expectation is that a time limit would be treated the way TROs are now: if a TRO runs over, it is treated as an appealable preliminary injunction; if an administrative stay runs over, it would be treated as a grant of a stay pending appeal, enabling SCOTUS review. The idea is to avoid the situation where one can't get a ruling from the Supreme Court because there is no ruling from the court of appeals.

Judge Bates wondered whether 14 days is a little long, compared with the rigid standards applicable to TROs. He also asked about empowering a single circuit judge to grant relief.

Mr. Freeman responded that the power of a single judge is in the existing rule, just as a single justice of the Supreme Court can grant a stay. In his twenty years, he has never seen it and doesn't feel strongly. But if there is an instantaneous need, it could be useful. Or the matter can just be left to internal procedure of the courts of appeals.

Judge Bates asked about the opinion of Justice Sotomayor and Justice Jackson, which emphasized maintaining the status quo. Mr. Freeman explained that their focus on the status quo in that case might have been an artifact of what the United States was saying in that case. There are all kinds of fights about what counts as the status quo. If the district court grants a preliminary injunction, and the court of appeals grants a stay, what is the status quo? It is sometimes said that an injunction requires a higher standard, but this doesn't hold true across all cases.

Judge Bates asked about requiring reasoning. Mr. Freeman responded that most courts do not issue written opinions, at least beyond 1 sentence. Requiring reasoning pushes an administrative stay to look more like a stay pending appeal.

Judge Bates asked about whether there is a need to do to the district court for an administrative stay, as there is for a stay pending appeal; what about jurisdiction? Mr. Freeman responded that he didn't think there was any effect on jurisdiction; Griggs doesn't apply to stay motions. The proposed amendment would not affect at all the obligation in FRAP 8(a)(1) to seek relief in the district court first.

A judge member said that 14 days is not realistic as an absolute cap in all cases and all circuits. Sometimes a court of appeals has to wait for the record, or the briefing; sometimes it takes 6 months to get the record. Leave it to each court whether to allow one judge to grant a stay or whether to require three. A 14-day limit causes more trouble than it is worth. It would be okay to require that the order itself state a timeline. Sometimes the parties don't care if the stay is in effect 1 month or 4 months.

A liaison member stated that not having a time limit defeats the purpose of the rule. It's okay to allow an administrative stay without reasoning. And if the

parties agree to a longer stay, that's fine. We could simply add "unless parties agree otherwise." Or we set a timeframe of 7 or 14 days and allow for 7 or 14 more for good cause.

The judge responded that there is often no urgency. Less than 1% of cases go to the Supreme Court; we should manage our docket.

Mr. Freeman responded that this is very helpful. If the record is not available, that's on the appellant. If the appellant can't put on its case for a stay, then deny the stay. It doesn't matter in a lot of cases but matters a lot in some cases. Not all courts are as good about this as in the Ninth Circuit.

Judge Bates suggested that without a time limit, we play into the same problem that the Supreme Court was troubled about. The other judge responded that the order can set its own time limit; we try not be cute about it.

In response to a point raised by an academic member, Mr. Freeman suggested that the rule, like Civil Rule 65, shouldn't say that an administrative stay that lasts too long is a grant of a stay pending appeal, but rather leave it to the higher court to find appellate jurisdiction at that point.

A judge asked, if the parties don't object, what's the problem? Mr. Freeman agreed in that situation, but there are others where the parties are in a bind creating a classic rules problem: A party is aggrieved but can't do anything. The TRO parallel enables the party to seek further review.

A liaison member suggested that ordinary cases be decoupled from high profile cases. The Supreme Court has put everyone on notice. Is a rule needed, or just await developments.

Judge Bates asked if it was contemplated that an administrative order would issue only after the filing of a notice of appeal? Generally, yes, although an administrative order pending mandamus is possible. How about without a request from a party? Yes, courts can do it, not trying to stop them. But there has to be some stay motion in order for there to be an administrative stay granted. Mr. Wolpert added that the Court of Appeals for the Tenth Circuit uses administrative stays sparingly and never without a stay motion.

A judge member raised the example of a criminal defendant granted immediate release by the district court. The government seeks a stay pending appeal, but there is no transcript available. It seeks an administrative stay pending the receipt of the transcript. It will probably be more than 14 days to get the transcript. At least there must be a good cause ability to extend past 14 days. Mr. Freeman again noted that this is helpful and thanked the judge. We need to think about immigration cases and

criminal cases. An academic member suggested that the time period begin upon receipt of the record.

Professor Struve suggested that the impact of the proposed rule in criminal cases should be explored, including the interaction with Criminal Rule 38. A judge member raised agency cases. Mr. Freeman responded that there is a separate rule, FRAP 18, for agency cases, and the issue doesn't seem to come there (although maybe in immigration). The judge stated that there are lots of requests for a stay of removal. Judge Bates noted that if the proposed rule is ultimately in place, the implication might be that it couldn't be done in agency cases. Mr. Freeman responded that no such negative inference was intended.

It became clear that the Committee was not prepared to recommend publication at this stage. The subcommittee will continue its work.

D. Rule 15 (24-AP-G)

Professor Huang presented the report of the Rule 15 subcommittee. (Agenda book page 841). The subcommittee is considering a suggestion to fix a potential trap for the unwary in Rule 15. The "incurably premature" doctrine holds that if a motion to reconsider an agency decision makes that decision unreviewable in the court of appeals, then the original petition to review that agency decision effectively disappears and a new one is necessary.

The basic idea of the suggestion is to align Rule 15 with Rule 4. At the last meeting, two tasks were left to be done. First, Judge Eid was going to check in with the D.C. Circuit to see if the judges remained opposed to the idea. Second, the subcommittee would continue drafting.

Judge Eid stated that she had raised this issue at the Standing Committee meeting and that Judge Millett said that she would check with her colleagues. Judge Millett reports that there is no large opposition at this point. Technological innovations have alleviated the concerns that were raised when the issue was raised in the past. Judges may wind up with some concerns about particulars of the proposal.

Professor Huang explained that the subcommittee's proposal builds on the prior proposal from 2000, plus the feedback from the D.C. Circuit judges back then. It is designed to reflect the party-specific nature of administrative review, in contract to the usually case-specific nature of civil appeals. It aligns with FRAP 4, and clarifies that, as with civil appeals, if a party wants to challenge the result of agency reconsideration, a new or amended petition is required. The subcommittee chose not to attempt to align with the multicircuit review statute.

In accordance with a suggestion from Professor Struve, the phrase "to review or seek enforcement" on page 843, line 9, should be changed to "to seek review or enforcement".

Professor Struve added that ellipses are needed at the end to avoid accidental deletion of the rest of the rule. The Reporter agreed and added that existing (d) and (e) would be re-lettered.

The question arose whether the phrase "or application to enforce" was need in the last sentence. The Reporter couldn't think of a situation where it would be needed, but Judge Bates noted that it was safer at this stage to keep it in.

The Reporter asked if it was sufficiently clear that the use of the word "such" in line 10 on page 843 refers to a petition that "renders that order nonreviewable as to that party." Committee members responded yes, with one noting that it needs to be read twice, but then it is clear.

The Committee decided to move the discussion of what the amendment is designed to do from the third paragraph to the first paragraph of the Committee Note. means that the is not just held in the court of appeals awaiting the agency's decision on the motion to reconsider. Instead, the petition for review is dismissed, and a new petition for review must be filed after the agency decides the motion to reconsider.

Mr. Freeman suggested that the word "timely" be added to line 5, so that only a timely petition would be entitled to the benefit of the amended rule. Several members of the Committee were troubled by the idea of describing a petition as both premature (too early) and untimely (too late) particularly since the proposed rule operates in a party-specific way. Mr. Freeman's motion to require that a petition be otherwise timely failed for want of a second.

The Committee unanimously decided to ask the Standing Committee to publish the proposed amendment (as amended at this meeting) for public comment.

VI. Discussion of Recent Suggestion

The Reporter presented a recent suggestion from Jack Metzler regarding the calculation of time. (Agenda book page 849). He suggests that FRAP 26(a)(1)(B) be amended to not count weekends. He is concerned about gamesmanship: counsel can deliberately file a motion on Friday so that the ten-day period for responses covers two weekends, reducing the number of workdays available.

A central feature of the massive time computation project was to count days as days. The Reporter would be loath to undo that. The time project usually chose multiples of 7, but for motions it went from 8 days to 10 days. If the Committee does

anything here, it could consider shortening the time to 7 days or lengthening the time to 14 days. Or it could leave well enough alone.

A motion to remove the item from the agenda was approved unanimously.

VII. Review of Impact and Effectiveness of Recent Rule Changes

The Reporter directed the Committee's attention to a table of recent amendments to the Appellate Rules. (Agenda book page 855). This matter is placed on the agenda to provide an opportunity to discuss whether anybody has noticed things that have gone well or gone poorly with our amendments. No one raised any concerns.

VIII. New Business

No member of the Committee raised new business.

IX. Adjournment

Judge Bates announced that this was his last meeting of the Appellate Rules Committee because his term as chair of the Standing Committee is expiring. Everyone congratulated and thanked Judge Bates for his leadership.

Judge Eid announced that the next meeting will be held on October 15, 2025, in Washington, D.C.

The Committee adjourned at approximately 4:30 p.m.

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