

January 31, 2025

Honorable John D. Bates
Chair, Committee on Rules of Practice and Procedure
Judicial Conference of the United States
One Columbus Circle Northeast
Washington, District of Columbia 20544

Re: Request for Comments on Proposed Amendments to Federal Rule of Appellate Procedure 29

Dear Judge Bates:

The undersigned organizations write to express their opposition to the proposed amendments to Federal Rule of Appellate Procedure 29. Collectively, our associations are concerned that the proposed amendments will infringe on core First Amendment rights and impose unnecessary burdens on amicus curiae and the federal courts of appeals.

First, the proposed disclosure amendments threaten the First Amendment rights of amicus organizations and their members and/or supporters. As the Supreme Court has recently explained, compelled disclosure of information about an association’s members inevitably exerts a “deterrent effect on the exercise of First Amendment rights” and must satisfy at least “exacting scrutiny.” *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 606 (2021); *see also id.* at 619 (Thomas, J., concurring in part and concurring in the judgment); *id.* at 623 (Alito, J., concurring in part and concurring in the judgment). The proposed amendments do not meet that demanding standard because they mandate broad disclosures untethered to the purposes of Rule 29. *See* Fed. R. App. P. 29 advisory committee notes (“The [current] disclosure requirement . . . serves to deter counsel from using an amicus brief to circumvent page limits on the parties’ briefs” and “may help judges to assess whether the amicus itself considers the issue important enough to sustain the cost and effort of filing[.]”). They are also unnecessary, as the disclosure requirements in the current version of Rule 29 already protect the integrity of amicus participation—without intruding on the privacy of relationships between amicus organizations and their members or deterring amicus organizations from submitting their views on important issues.

Second, the proposals to require amicus organizations to file a motion for leave in every case, and to establish new criteria for judges to apply in ruling on those motions, are equally problematic. Amicus briefs are often helpful to the court, and to the extent they are not, the judges who decide the merits of the case are free to ignore them. That is why the Supreme Court has repeatedly loosened its rules on amicus filings and today requires neither a motion nor consent. The opposite approach taken here will burden federal courts with unnecessary motions and undermine the efficient disposition of cases. Moreover, by specifying when an amicus brief is “disfavored,” the proposal places a thumb on the scale against granting leave to file amicus briefs, which is likely to result in the acceptance of fewer amicus briefs and may discourage amicus participation altogether. The proposed motions requirement is also unnecessary to resolving the Advisory Committee’s concerns about judicial recusal. Under the existing version of Rule 29, judges are permitted to strike an amicus brief regardless of whether it is accompanied by a motion

for leave to file. *See* Fed. R. App. P. 29(a)(2). Establishing a motions requirement is a solution in search of a problem that does not exist.

For these reasons, the undersigned organizations respectfully request that the Committee reject the proposed amendments.

Sincerely,

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