

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
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**MEMORANDUM TO THOSE INTENDING TO FILE AN *AMICUS CURIAE*
BRIEF IN THE SUPREME COURT OF THE UNITED STATES.**

This memorandum is directed to those who intend to file an *amicus curiae* brief in the Supreme Court of the United States. The core requirements for these briefs are set forth in Supreme Court Rules 33.1, 34 and 37. Most of the relevant requirements apply to *amicus* briefs filed both before the Court's consideration of a petition for a writ of certiorari, jurisdictional statement or other similar document, see Rule 37.2, and to those filed in a case before the Court for oral argument, see Rule 37.3. To the extent that there are significant differences between the requirements at the two stages, those differences are noted below.

1. Consent and Motions for Leave to File *Amicus* Briefs

No motion for leave to file an *amicus* brief is necessary at the cert or merits stage if the brief reflects that written consent of all parties has been provided. Rules 37.2(a) and 37.3(a). Many parties provide blanket consent to the filing of all *amicus* briefs, and such consent is typically reflected on the Court's docket. If blanket consent is provided at the cert stage, it does not apply at the merits stage; a party wishing to consent to the filing of all *amicus* briefs at the merits stage must file a separate blanket consent. Parties may also provide written consent with respect to individual *amicus* briefs directly to counsel for the *amicus*; there is no requirement that the individual written consent be submitted along with the brief, only that the brief note that written consent has been provided by counsel of record for each party. Rules 37.2(a) and 37.3(a). A statement to this effect is typically included in the first footnote of the brief.

If all parties have not provided consent to the filing of an *amicus* brief, a motion for leave to file the brief must be submitted. The motion must be filed together with the proposed *amicus* brief as a single document. The motion must indicate the party or parties that have withheld consent and must state the nature of the movant's interest. Rules 37.2(b) and 37.3(b). The motion must comply with the relevant provisions of Rules 21, 24 and 33.1, and it may not exceed 1,500 words. Rule 37.5.

No motion for leave to file an *amicus* brief is necessary if the brief is filed on behalf of a federal, state, county, town, or similar governmental entity when submitted on behalf of its authorized legal officer. Rule 37.4.

2. Time Limits for *Amicus* Briefs and Notice to the Parties

a. Cert Stage

The deadline to file an *amicus* brief in support of a petitioner or appellant is 30 days after the case is placed on the docket or the Court calls for a response, whichever is later. The deadline to file an *amicus* brief in support of a motion for leave to file a bill of complaint in an original action is 60 days after the case is placed on the docket. Neither of these deadlines may be extended. The deadline to file an *amicus* brief in support of a respondent, defendant or appellee is the same as the deadline to file a brief in opposition or motion to dismiss or affirm; this *amicus* deadline is therefore extended when the deadline to file the brief in opposition or motion to dismiss or affirm is extended. Rule 37.2(a).

An *amicus curiae* at the cert stage must ensure that counsel of record for all of the parties receives notice of its intention to file an *amicus* brief at least 10 days prior to the deadline to file the brief. If the brief is filed at least 10 days prior to the deadline, the brief itself suffices as notice. The notice requirement applies to all *amicus* briefs, including those filed under Rule 37.4. The *amicus* brief must also indicate that counsel for the parties received such notice; a statement to this effect is typically included in the first footnote of the brief. Rule 37.2(a).

b. Merits Stage

In a case before the Court for oral argument, the deadline to file an *amicus* brief

is 7 days after the brief for the party supported. If the *amicus* brief is in support of multiple parties, the due date is 7 days after the last timely-filed brief of a party supported. If the *amicus* brief is in support of neither party, the deadline is 7 days after the time allowed for filing the petitioner’s or appellant’s brief, irrespective of when party briefs are actually filed. The Court will not entertain a motion to extend either of these deadlines. Rule 37.3(a). The 10-day notice requirement for *amicus* briefs at the cert stage does not apply to cases before the Court for oral argument.

3. Contents of an *Amicus* Brief

The only required sections of text of an *amicus* brief are the interests of the *amicus*, the summary of argument, the argument and a conclusion. Rule 37.5. Each of these should be a separate section, with a separate heading and text. The brief need not set forth the questions presented in the case. Specific requirements for these and other aspects of the brief are set forth below.

a. Cover

The cover of an *amicus* brief must comply with all of the requirements applicable to the cover of other booklet-format briefs. Rules 33.1(e), 33.1(g) and 34.1. At the petition stage, an *amicus* brief should have a cream cover; at the merits stage, an *amicus* brief in support of the petitioner or in support of neither party should have a light green cover, and an *amicus* brief in support of the respondent should have a dark green cover. Rule 33.1(g). In consolidated cases, the Court’s docket may provide more specific information concerning the deadlines for and color of *amicus* briefs.

The caption for the case should be identical to the caption listed on the Court’s docket, unless the Clerk’s Office has provided other instructions. In some consolidated cases, there may be too many captions to include on the front cover and still include other required information. In that case, the cover should include all of the case numbers at the top of the page, and should include at least the case caption for the case with the lowest docket number on the front cover, along with the following notation: “(For Continuation of Caption, See Inside Cover).” Additional captions may then be included on the inside front cover, but no other information should be included there.

Required information concerning counsel, see Rule 34.1(f), must be on the front cover page.

The title of the brief should reflect the names of all of the *amici* joining the brief, unless there are so many that listing them is not practical; in such a case, it is permissible to instead list a smaller number of *amici* along with an “et al.” or to characterize the *amici* in an appropriate way. Additional *amici* may not be added as joining a brief after it has been submitted for filing. An individual *amicus* may not join in more than one brief at each stage (i.e., cert and merits) of a given case. The title of the brief should also reflect which party or parties the *amicus* supports or indicate whether it suggests affirmance or reversal. Rules 37.2(a) and 37.3(a).

The name of counsel of record must be included toward the bottom of the cover, along with counsel’s office address, email address, and telephone number. Counsel of record must be a member of this Court’s Bar. Rule 34.1(f). The names of other attorneys may be included, but the names of other persons (such as research assistants and law students) may not be listed. Nor are non-attorneys to be thanked for their assistance or credited with having contributed to the preparation of the brief either in the text, in a footnote, or at the conclusion of the brief. *Pro se amicus* briefs from individuals who are not members of the Court’s Bar are not permitted. Rule 37.1. It is permissible for a single attorney to serve as counsel of record with respect to more than one *amicus* brief in a particular case.

b. Table of Contents and Table of Authorities

Every *amicus* brief that exceeds 1,500 words must contain a table of contents and a table of authorities. Rule 34.2.

c. Interests of the *Amicus Curiae*

The first section of text of an *amicus* brief should be the interests of the *amicus*. Words included in this section count toward the word limit for the brief. If there are an unusually large number of *amici* joining the brief, it is permissible to include a listing of the *amici* in an appendix to the brief, but any description of the *amici* and of their interests in the case must be included in the body of the brief and must count

toward the word limit for the brief.

d. Rule 37.6 Disclosures

The first footnote on the first page of text of an *amicus* brief must include certain disclosures concerning contributions to the brief. Rule 37.6. It should indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief. It should also identify every person other than the *amicus*, its members or counsel, who made such a monetary contribution; the Clerk's Office views it as better practice to state explicitly that no such contributions were made if this is in fact true.

e. Word Limits

Amicus briefs submitted in connection with a petition for a writ of certiorari, jurisdictional statement, motion for leave to file a bill of complaint, or petition for an extraordinary writ are limited to 6,000 words. Rule 33.1(g)(x). *Amicus* briefs submitted at the merits stage by entities identified in Rule 37.4 (i.e., governmental entities) are limited to 9,000 words. Rules 33.1(g)(xi) and 33.1(g)(xiii). *Amicus* briefs submitted at the merits stage by other individuals and entities are limited to 8,000 words. Rules 33.1(g)(xii) and 33.1(g)(xiv). Footnotes count toward word limits. Rule 33.1(d).

4. Miscellaneous Technical Requirements

- a. Forty copies of an *amicus* brief must be submitted in booklet form. Rule 33.1(f). The booklet must be 6 $\frac{1}{8}$ by 9 $\frac{1}{4}$ inches, bound in at least two places on the left margin. Rules 33.1(a) and 33.1(c). Spiral, plastic, metal and string binding are not permitted. Rule 33.1(c).
- b. The brief must be printed on paper that is opaque, unglazed and not less than 60 lbs. Rule 33.1(c). The cover must be on paper that is not less than 65 lb. Rule 33.1(e).
- c. Text must appear on both sides of the page. Rule 33.1(b).
- d. Quotations that exceed 50 words must be indented. Rule 33.1(b).
- e. Margins must be at least $\frac{3}{4}$ inch on each side. The text field, including

footnotes, may not exceed 4 $\frac{1}{8}$ by 7 $\frac{1}{8}$ inches. Rule 33.1(c).

- f. Typeface must be standard 12-point in a Century font, with 2-point or more leading between lines. The typeface of footnotes must be 10-point type, with 2-point or more leading between lines. Rule 33.1(b).
- g. The brief must be accompanied by a proof of service and certification of compliance with applicable word limits. Rules 33.1(h) and 37.5.

5. Electronic Filing of Briefs

While paper remains the official form of filing, *amicus* briefs must also be submitted through the Court's electronic filing system. Rules 29.1 and 29.7. It is not uncommon for a single *amicus* brief to be submitted in connection with more than one case, either at the cert stage or at the merits stage. The requirements for the cover of such a brief are set forth in section 3(a), above. At the cert stage, the brief should be filed electronically in each case. At the merits stage, the brief should be filed electronically in connection with the case with the lowest docket number if the cases have been formally consolidated by the Court; if the cases have not been formally consolidated at the merits stage, the brief should be filed electronically in each case to which it applies.

For more specific information regarding submitting *amicus* briefs through the Court's electronic filing system, please see the [Guidelines for the Submission of Documents to the Supreme Court's Electronic Filing System](#) and [Frequently Asked Questions](#), both of which are available on the Electronic Filing page of the Court's website.

6. Prohibition on Certain Types of *Amicus* Briefs

The Clerk's Office will not accept a reply brief from an *amicus*. Nor is it permissible to file an *amicus* brief in connection with a petition for rehearing. Rule 37.3(a). The filing of *amicus* briefs in connection with emergency applications is strongly discouraged, and the Clerk's Office will accept such briefs only if they are presented along with a motion for leave to file the brief.