

Congress of the United States
Washington, DC 20510

November 3, 2022

Honorable John D. Bates
Chair, Judicial Conference Committee on Rules of Practice and Procedure
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Honorable Jay S. Bybee
Chair, Advisory Committee on Appellate Rules
Lloyd D. George U.S. Courthouse
333 Las Vegas Boulevard South
Las Vegas, Nevada 89101

Re: Rule 29's *Amicus* Disclosure Requirements

Dear Judge Bates and Judge Bybee,

Please find attached an amicus brief we recently submitted to the Supreme Court in *Moore v. Harper*. This is an unusual amicus brief, but we are in unusual times and the Court is in an unusual situation. We offer it to the Advisory Committee on Appellate Rules as it considers the problem of amicus disclosure, which we are grateful that it has taken up.

The brief relates three sets of problems that result from hidden amici, which the changes the Committee is considering would be a welcome first step toward addressing. One is the problem of not knowing who is in the courtroom, in the sense of not having context as to other mischief amici or their backers and corporate siblings might be up to. In *Moore v. Harper*, that missing context is the undisclosed overlay between the amici urging the Supreme Court to accept a novel reading of the Constitution, and individuals and organizations who weaponized that reading in an active effort to overturn the 2020 presidential election.

A second problem of not knowing who is in the courtroom is the lack of information about coordination or orchestration of briefing. For reasons we have explained to both the Committee and the Court, loading up the record through multiple amici without letting courts know of background connections among the supposedly independent filers is a disservice to our judges, litigants, and the public.

Third is the problem of undisclosed relationships with the Court itself, a problem that is worrisome at the Supreme Court but of concern to the entire federal judiciary. In this case, one amicus appeared before the Court under a legally “fictitious name” that helped disguise its connections to an individual and related organizations that were heavily involved in the selection, nomination, and confirmation of sitting justices, including the expenditure of millions of dollars. That amicus is virtually indistinguishable from its 501(c) partner organization that raised and spent millions of anonymously sourced dollars in these selection and confirmation efforts. This amicus and its partner 501(c) also link to a group in that network with a promotional contract with a sitting justice.

We would all be better served if there were adequate disclosure by amici, so courts and parties are not blinded to these hazards. The issues are complex, and multiple corporate veils may need to be pierced to find the true party in interest. We wish the Committee well in its work. This stuff isn’t easy. But it matters. Thank you for giving it your close attention.

Sincerely,



Sheldon Whitehouse
United States Senator



Henry C. “Hank” Johnson, Jr.
Member of Congress

Enclosure