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January 17, 2023

**VIA Email: RulesCommittee\_Secretary@ao.uscourts.gov**

H. Thomas Byron III, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE, Room 7-300  
Washington, D.C. 20544

Re: 23-AP-A — Proposal to Amend Fed. R. App. P. 29(a)

Dear Mr. Byron:

On behalf of the Atlantic Legal Foundation (ALF), I am writing in support of the suggestion submitted by the DRI Center for Law and Public Policy on January 6, 2023 to amend Federal Rule of Appellate Procedure 29(a) by eliminating the requirement to obtain the parties' consent, or to file a motion for leave, in order to submit an amicus brief in a federal court of appeals.

Established in 1977, ALF is a national, nonprofit, nonpartisan, public interest law firm that advocates for individual liberty, free enterprise, property rights, limited and efficient government, sound science in judicial & regulatory proceedings, and effective education, including parental rights and school choice. *See* atlanticlegal.org. Over the years, we have filed numerous amicus briefs in federal courts of appeals throughout the United States, as well as in the Supreme Court and some state appellate courts.

As you are aware, the Supreme Court, as of January 1, 2023, has eliminated the requirement for an *amicus curiae* to obtain consent or leave to submit an amicus brief. In response to the Clerk's request for comments when this rules change was proposed by the Court, ALF submitted a letter enthusiastically supporting the proposal. We agreed with the Clerk's observation that the consent requirement imposes unnecessary burdens on litigants and the Court and no longer serves a useful purpose. We also

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expressed our view that requiring the parties to consent to the filing of an amicus brief is inconsistent with an *amicus curiae* not only supporting a party, but also serving as a friend of the court. Equally important, the opportunity to file an amicus brief helps to open the federal appellate process to all interested parties, and affords them a voice on legal issues that are important to them and their members or supporters.

The same is true in the federal courts of appeals. As long as an amicus brief complies with the federal and local rules, neither consent nor leave should be required for its filing.

Thank you for your consideration.

Sincerely,

  
Hayward D. Fisk  
Chairman & President

cc: Lawrence S. Ebner