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Secretary
 Committee on Rules of Practice and Procedure
 Administrative Office of the United States Courts
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Dear Sir/Madam:

We are writing to propose an amendment to Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure. The purpose of the amendment would be to clarify the permissible length of a brief *amicus curiae*. In particular, it would provide that the statement of interest by an *amicus curiae*, required by Rule 29(c)(4), is not included in the word count for purposes of the type-volume limitation of Rule 32(a)(7)(B). To make that clarification, Rule 32(a)(7)(B)(iii) should be amended as follows:

Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, statement of interest by an amicus curiae, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

Fed. R. App. P. 32(a)(7)(B)(iii) (proposed amendment in underscored text).

Three reasons support amending the rule as proposed.

First, as a matter of textual analysis, an *amicus* statement of interest more closely resembles the corporate disclosure statement or statement with respect to oral argument already excluded from the word count in Rule 32(a)(7)(B)(iii) than it does the headings and quotations of a brief's argument. A statement of interest consists of "a *concise* statement."

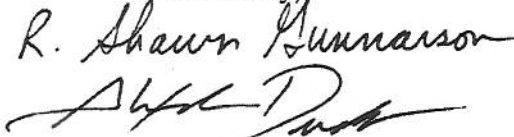
For that reason, there is little danger that excluding the statement from the word count will invite counsel to include legal argument in it improperly. Indeed, we presume that an *amicus* brief whose statement of interest includes legal argument should be stricken as nonconforming for not being "concise."

Second, it will clarify a point of uncertainty on which individual circuits vary. Rule 29(c)(4) requires an *amicus* brief to include a statement of interest, but Rule 32(a)(7)(B)(iii) does not say whether that statement should be included within the type-volume limitation. In our 30 years' combined experience before the U.S. Courts of Appeals, it is the interpretation of individual clerks' offices on this point, not the demands of local rules, that produces contradictory results when filing in different circuits. The proposed amendment would secure the uniformity evidently intended by those who adopted Rule 32's type-volume limitation.

Third, as a practical matter, counting an *amicus* statement of interest within the type-volume limitation has the perverse effect of discouraging exactly those *amicus* briefs that would be of most assistance to the court. Counting the length of a statement of interest toward the total number of words permitted in a brief effectively subtracts an equal number of words from the legal argument. Although that subtraction is insubstantial in a brief filed by one or two *amici curiae*, it may amount to pages of text in an *amicus* brief filed by several organizations. Such briefs, joined by many groups, tend to bring to the court those considerations that do not merely echo the parties' arguments and to reduce the number of *amicus* briefs filed in a single case. Yet such briefs bear the heaviest burden if an individual clerk's office interprets Rule 32(a)(7)(B)(iii) to include statements of interest in the word count permitted by Rule 32(a)(7)(B). Adopting the proposed amendment would remove this burden and, with it, any impediment to furnishing the courts with the most useful *amicus* briefs.

Thank you for considering our request. Please contact R. Shawn Gunnarson at (801) 426-2125 or sgunnarson@kmclaw.com if you have any questions or concerns.

Sincerely,



R. Shawn Gunnarson
Alexander Dushku
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