



THE BUCKEYE INSTITUTE

October 11, 2024

The Honorable Chief Justice Sharon L. Kennedy
The Supreme Court of Ohio
65 South Front Street
Columbus, OH 43215-3431

Re: Proposed Amendment to Ohio Supreme Court Practice Rule 7.06.

Dear Chief Justice Kennedy:

The Buckeye Institute hereby proposes an amendment to the Supreme Court of Ohio's Rules of Practice Rule 7.06. Accompanying this letter is the proposed amendment to Rule 7.06, which modifies the deadline for amicus briefs supporting jurisdiction from no later than one day to no later than thirty days after the appellant's deadline for filing a memorandum in support of jurisdiction.

The proposed amendment aligns the deadline for filing an amicus brief with the Ohio Supreme Court at the jurisdictional stage with the deadline for filing with the Supreme Court of the United States at the certiorari stage. The proposed amendment will benefit the court in deciding which cases are of public or great general interest to Ohioans. As an organization dedicated to advocating for sound public policies, and one of the most effective certiorari-stage amici at the Supreme Court of the United States, *see Anna Staver, Supreme Impact: How an Ohio think tank is shaping the U.S. Supreme Court's agenda, The Columbus Dispatch (Oct. 9, 2023)*, The Buckeye Institute encourages the court to consider and adopt the proposed amendment.

Amicus curiae briefs play an important role in the judicial system. Although fewer amici participate per case, on average, in state court litigation than at the United States Supreme Court, amicus participation in Ohio is no less important. Indeed, current and former members of the Ohio Supreme Court have noted the usefulness of amicus briefs, especially at the jurisdictional stage. *See, e.g., Dennis Hirsch, "Friending" the Court: Using amicus advocacy before the Ohio Supreme Court, Columbus Bar Lawyers Quarterly 10 (Spring 2014)*. Importantly, jurisdictional stage amicus briefs have the potential to inform the court that "there is more at stake than just the dispute between the parties." *Id.* Further, amicus briefs often provide "practical guidance regarding the immediate and long-term effect of a decision," including the decision that is being appealed. Richik Sarkar, *The Amicus Brief: An Efficient and Elegant Public Policy Tool*, For the Defense 37 (Feb. 2021) (citing former Chief Justice Thomas J. Moyer). Yet, current Rule 7.06 limits the ability of parties supporting jurisdiction to file amicus briefs.

Under the current Rule, interested parties supporting jurisdiction must file amicus brief no later than one day after the appellant's deadline for perfecting an appeal or filing a memorandum in

support of jurisdiction, whichever is later. In the ordinary case, these are the same deadline, *see* S.Ct.Prac.R. 7.01(A)(1)(a)(ii), which means that parties supporting jurisdiction must be informed immediately of the lower court's decision and the appealing party's intent to appeal in order to adequately and timely prepare an amicus brief supporting jurisdiction. The time constraint and informational barrier together limit opportunities for parties who are interested in the issue—but are not connected with the appealing party or its council—to prepare amicus briefs at the jurisdictional stage.

The proposed amendment instead allows interested parties to learn of appeals after they have been filed with the Ohio Supreme Court and also provides enough time for interested parties to prepare amicus briefs that the court will find helpful. This change is necessary because jurisdictional appeals are much more likely to be reported by the general media and in legal publications than an opinion from one of the twelve district courts of appeals. Because those appeals will be docketed on the Ohio Supreme Court's website, interested parties can then learn of appeals through the court's useful recent filings page. The additional time will facilitate more meaningful participation by amici. Because jurisdictional appeals are cases that involve "a question of public or great general interest," S.Ct.Prac.R. 5.02, allowing the public more opportunity to inform the court about which cases are important will benefit the court, the law, and the people of Ohio. As your Honor recently said at an event in Dayton, "until [Ohioans] make the argument, [the court] can only ponder what [they] want," and Rule 7.06 currently limits the ability of Ohioans to make arguments.

The Buckeye Institute respectfully requests the Supreme Court of Ohio to consider and adopt the proposed amendment.

Sincerely,
Robert Alt
President and Chief Executive Officer
The Buckeye Institute

David C. Tryon
Director of Litigation
The Buckeye Institute

Enclosure: **Proposed Rule Amendment**

Cc: Justice Patrick F. Fischer
Justice R. Patrick DeWine
Justice Michael P. Donnelly
Justice Melody J. Stewart
Justice Jennifer Brunner
Justice Joseph T. Deters
John VanNorman, Chief Legal Counsel