

ANNUAL MEMBERSHIP MEETING
TEXAS TAXPAYERS AND RESEARCH ASSOCIATION
NOVEMBER 21, 2024

Renn Neilson, Hon. Amy Clark Meachum, Lorri Michel, and Hon. Thomas R. Phillips

EFFECTIVE AMICUS BRIEFS

Table of Contents

01

TTARA'S AMICUS BRIEF COMMITTEE

02

AMICUS BRIEFS IN THE SUPREME COURT

03

AMICUS BRIEFS IN THE TRIAL COURT

04

AMICUS BRIEFS IN PRACTICE

05

AMICUS BRIEFS FILED BY TTARA

TTARA's Amicus Brief Committee

- TTARA's Amicus Brief Committee is tasked with deciding when the association will submit an amicus brief in a particular case and the arguments that will be presented in the brief on behalf of the association.
- The Amicus Brief Committee will guide the organization's involvement in legal cases by ensuring that amicus briefs are thoughtfully prepared, are aligned with the organization's policy statement and purpose, and serve a constructive role in the judicial process.
- The Amicus Brief Committee will ensure that a brief submitted by TTARA aligns with the association's policy statement and purpose.

Amicus Briefs in the Supreme Court

Hon. Thomas R. Phillips

- **What makes an effective amicus brief?**
 - **Timing**
 - Consider filing amicus briefs in conjunction with motions for injunctions or summary judgment, to maximize the brief's relevance.
 - Filing after the supporting party's brief but before the opposition's response ensures procedural fairness.
 - **Clarity**
 - Keep briefs concise. Judges appreciate shorter, impactful submissions.
 - **Add Value**
 - Focus on presenting unique perspectives or expertise rather than reiterating the parties' arguments.
 - Partnering with credible organizations can also enhance the brief's influence.
 - **Request Permission**
 - Unless local rules allow, submit a motion for leave to file the brief, ideally with the consent of the main parties.

Amicus Briefs in the Supreme Court

Hon. Thomas R. Phillips

- **When is an amicus brief helpful to the Court and when is it more of a burden?**
 - Wider industry impact *TGS Nopec*; Parties failed to fully brief, or waived, an important issue (J-W Power)?
 - Is exploring new issues in amicus briefs helpful?
 - Generally, amicus briefs should not introduce issues that the parties have not raised. Courts prefer to decide cases based on the arguments presented by the actual parties.
 - However, exceptions exist for important legal or policy questions.
 - For instance, in *Teague v. Lane*, the U.S. Supreme Court addressed a question of retroactivity raised in an amicus brief. *Teague v Lane*, 489 US 288, 300 (1989).

Amicus Briefs in the Supreme Court

Hon. Thomas R. Phillips

- **When you were on the Court, did it ever solicit amicus briefing on an issue the Court cared about, but which the parties had not adequately briefed?**
 - Does that ever happen? For important legal or policy issues?
- **How does the Texas Supreme Court's unique petition procedure—petition-stage briefing, call for merits briefing (or not), merits briefing, case grant (or deny), argument and submission, then decision—affect parties' strategy in utilizing amicus briefs?**
 - *E.g.*, petition-stage amicus briefs? Merits-stage briefs? Post-submission amicus briefs?

Amicus Briefs in the Trial Court

Hon. Amy Clark Meachum, Hon. Thomas R. Phillips

- **How does an amicus brief in a trial court differ from one in the appellate courts?**
 - Amicus briefs offer a valuable tool for influencing case outcomes and shaping legal developments.
 - Unlike at higher courts, amicus participation in trial courts is rare, with briefs filed in only 0.1% of civil cases.
- **What accounts for limited use of amicus briefs in district courts?**
- **What types of issues are the most amenable to amicus briefing at the trial level?**
- **At what stage in the trial process are amicus briefs typically filed?**
- **What has been the most effective amicus brief you've read as a trial court judge and what made it effective?**

Amicus Briefs in Practice

Lorri Michel

- **How often do you enlist amicus support in your cases?**
 - Statistics show that amicus support increases the likelihood of petition acceptance and positive case outcomes.
- **Under what circumstances do you typically solicit amicus support?**
 - Prospective amici can often be identified by analyzing industry impact or reviewing dockets of similar cases.
 - Building relationships with active trade associations can streamline support alignment with parties having relevant expertise or a unique perspective on the case, which can lend credibility.
 - Recognized organizations or authoritative figures can help gain the court's attention.
- **What are some of the issues for which amicus briefs have been most effective in your practice?**
- **What is your experience with taxing units filing amicus briefs?**

Amicus Briefs Filed by TTARA

Renn Neilson

- **What are the criteria for TTARA to decide to weigh in on a case as an amicus?**

QUESTIONS?

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