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9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

11 In the matter of:

Supreme Court No. R-23-0026

12 **PETITION TO AMEND ARIZONA**
13 **RULES OF CIVIL APPELLATE**
14 **PROCEDURE 4(b)(9) *et al.***

COMMENT OF THE PIMA COUNTY
BAR ASSOCIATION IN SUPPORT OF
THE PETITION

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17 Pursuant to Rule 28, Ariz. R. Sup. Ct., the Pima County Bar Association
18 respectfully submits the following comment in support of Petition R-23-0026 filed by
19 Casey D. Ball and Kelley M. Jancaitis. The Petition proposes a long-overdue, common-
20 sense solution to one of the more irritating parts of brief writing: the table of authorities.
21 For most readers, it is functionally a flyleaf. Even granting that the table has some non-
22 negligible utility, the Petition gives litigants the option to include it. It is a sensible
23 middle ground that acknowledges both perspectives, and this Court should adopt it. We
24 join in full the thoughtful and well-reasoned arguments advanced in the Petition.

1 **I. The costs in time and money compiling tables of authorities more than**
2 **outweigh their benefits**

3 Even in a straightforward case, the time it takes to generate, cite check, format,
4 and proof a table of authorities is non-trivial. While it is unlikely that anyone has
5 rigorously quantified it, anecdotally at least, it amounts to the better part of an hour of
6 billable time per brief. Paid by the client of course, or the taxpayer in cases involving
7 government lawyers. The Petitioners estimate—conservatively, we may add—that, in
8 2020, this amounted to 275 *days* of legal work just creating tables of authorities.¹

9 There are essentially two arguments in favor of requiring tables of authorities.
10 The first is that it is a helpful navigational tool for readers, judges and counsel alike. The
11 second is that judges and staff attorneys find it useful for things like getting a “feel” for
12 the case, checking whether an attorney has cited a particular case, and preparing for oral
13 argument.² Candidly, these arguments do not hold water, especially in light of the costs
14 they impose on litigants. First, as of the filing of this Comment, the only appellate judge
15 to weigh in on the Petition supports it unambiguously, stating that “Tables of Authority
16 are rarely used as a navigational tool.”³ Practitioners and former judicial clerks
17 apparently agree, as evidenced by their strong comments in support. Likewise, typed
18 briefs are word searchable. While there are many of us (undersigned included) who often
19 prefer to read longer documents on paper, there is no reason why one can’t use both
20 versions and read from the physical copy while simultaneously using the PDF to perform

21 1. Casey Ball, et al., [Streamlining Briefs: Should We Eliminate the Table of](#)
22 [Authorities?](#), Arizona Attorney. We are unpersuaded that drafting assistants
23 meaningfully cut down this time—just ask anyone who has tried to use one then their
24 brief contains a string cite of statutes. Or anyone whose brief contains citations to
25 authorities other than cases and statutes. Or indeed anyone whose office, like many, has
26 a unique style manual.

 2. *Id.*

 3. See Comment of Hon. James Morse Jr., <https://www.azcourts.gov/Rules-Forum/aft/1414>

1 word searches. The same is true for checking whether an attorney cited to a specific
2 case: a Ctrl-F search takes seconds to a table's rough hour. The only difference is whose
3 time is being spent.

4 Second, it is difficult to imagine what can be gleaned by skimming a table of
5 authorities that cannot be better and more fully understood by simply reading the brief's
6 introduction. Or indeed the brief. Respectfully, any benefit to the courts and their staff is
7 substantially outweighed by the costs in money and time to the litigants who actually
8 have to draft the table.

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10 **CONCLUSION**

11 As of the filing of this Comment, not one judge or practitioner has come forward
12 to oppose the Petition. Quite the opposite. A sitting Court of Appeals Judge, the Chief
13 Counsel of the Attorney General's Civil Appeals Section, former judicial clerks, and
14 appellate practitioners all support the Petition.

15 We echo what one practitioner wrote on this Court's online Rules Forum: "Please
16 do away with this outdated, burdensome, and fruitless requirement."⁴ Anyone who has
17 practiced appellate litigation knows just how much work goes into preparing a table of
18 authorities. Most of us know just how little our clients get out of it. It is vestigial—an
19 inflamed appendix, a legal wisdom tooth long in need of removal. As such, it should be
20 optional as the Petition suggests. To practitioners who would defend the table, the
21 proposed rule changes permit them the freedom to spend their clients' money
22 accordingly. For the rest of us, this is an extremely welcome change that would
23 materially improve appellate practice. The Court should grant the Petition.

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4. See Comment of Lisa Bivens, Esq., <https://www.azcourts.gov/Rules-Forum/aft/1414>

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RESPECTFULLY SUBMITTED this 28th day of April, 2023.

PIMA COUNTY BAR ASSOCIATION

By s/James W. Rappaport
James W. Rappaport
Rules Committee Chair

By s/Joseph A. Ezzo
Joseph A. Ezzo
President