Policy on Amicus Curiae Briefs

Amicus briefs should be considered only if the interests of ICW members are affected, and if such briefs will advance or elucidate an issue that may not be addressed by the parties or other amici curiae. Consideration will be given to the benefits of participation related to the costs. Review of cases will follow these principles:

1. The results of the legal or constitutional questions raised in the litigation have a substantial impact on ICW members. A brief should be considered if the litigation could adversely affect the fiscal status, autonomy or administrative capacity of the institutions.
2. The litigation uniquely affects the independent colleges and universities. If the issue to be raised in the brief affects the higher education community generally, and is not unique to independent colleges and universities, there should be compelling reasons for ICW to submit its own brief. If appropriate ICW should seek other partners to join in the brief.
3. Serious consideration must be given when a case presents itself that has facts which, if associated with or indirectly endorsed by ICW, could be politically or legally harmful to the independent sector. In this instance, if the principle to be asserted by the brief outweighs the factual inadequacies of the case, and there is a compelling reason to assert such a principle, efforts should be made to emphasize the principle.
4. There should be ICW membership support for filing the brief.
5. The amicus should have significant impact on the case. Have the briefs of the parties adequately explored the issues? Will the brief enable the court to consider a point that may have been otherwise missed or to understand the ramifications of the issue for independent higher education? What will be lost if ICW does not submit a brief?
6. The brief should be considered at the appropriate procedural stage to have the maximum effect, and when it is most needed.
7. How would this brief affect other issues of ICW concern pending before the court?

Process: The ICW Executive Committee will send cases to the Amicus Review Committee for examination. The Review Committee will consider the potential for filing an amicus based on the ICW policy and make a recommendation to the Executive Committee. The Executive Committee will review the recommendation, and make a recommendation to the full Board for approval.

Executive Committee adopted the policy on November 30, 2000.
Board adopted it on October 5, 2001.
Board Reviewed: April 4, 2016