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Justice Samuel Alito  
United States Supreme Court  
Washington, D.C. 20543

Subject: Removing the "prospective only" limitation in the adoption of FRAP 32.1

Dear Justice Alito:

It is important that the Judicial Conference's "prospective only" limitation be removed in the adoption of proposed Federal Rule of Appellate Procedure 32.1 -- to permit full citation of all unpublished appeals court decisions.

The Judicial Conference gave no public reason to support such a limitation, nor is there any convincing one. The Standing Committee on Rules and Procedures voted unanimously to adopt 32.1 without such limitation. It did so after public hearing, after the memorandum of the Advisory Committee on Appellate Rules following its public hearings and two overwhelming votes to adopt 32.1 without this limitation, and after the survey, study and report by the Federal Judicial Center. There is no public record of any input to the Judicial Conference of additional study, hearing, debate or anything else to justify rejecting the two committees' views and imposing such a limitation.

The "prospective only" limitation may also conflict with first amendment rights to free speech and to petition government, issues referenced, but not developed in the Advisory Committee memorandum. It is also inimical to the transparency and accountability so basic to correcting past errors and improving our system. And, a similar transparency and accountability in the rules adoption process would be marred when the reasons, and the votes of each individual Judicial Conference appointee are not publicly disclosed.

On this basis, it is urged that 32.1 be adopted without the "prospective only" limitation.

Sincerely,

Michael Schmier