COMMENT OF PUBLIC JUSTICE

TO THE CIVIL RULES ADVISORY COMMITTEE ON THE PROPOSED AMENDMENT TO FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)

Rule 30(b)(6): Empowering Efficient Litigation in the Public Interest

January 24, 2019

Public Justice, P.C. and the Public Justice Foundation (collectively, "Public Justice") respectfully submit this Comment to the Advisory Committee on Civil Rules in response to the Request for Comment on the proposed amendment to Federal Rule of Civil Procedure 30(b)(6).

INTRODUCTION

Public Justice, P.C. is a national public interest law firm that pursues impact litigation to combat social and economic injustice, protect the environment, and challenge predatory corporate conduct and government abuses. We have one of the most diverse public interest litigation portfolios in the country. We protect consumers, employees, civil rights, and the environment. We litigate to stop sexual assault and bullying in schools, to promote a more sustainable and safe food system, to safeguard water sources from pollution, and to provide consumers and employees with access to the courts. The list goes on, but our litigation has one common theme: it aims to protect the underprivileged and the powerless. As a result, we've seen firsthand the role Rule 30(b)(6) depositions play in a diverse range of litigation contexts where an individual with limited resources is trying to hold a larger, more powerful organization—be it a corporation, a government agency, or a school district—accountable.

The Public Justice Foundation is a not-for-profit charitable membership organization that supports the work of Public Justice, P.C. and educates lawyers, judges, and the broader public about critical social and economic issues that affect the public interest. Its almost 2,800 members, from all fifty states, represent plaintiffs in a broad range of personal injury, employment discrimination and wage and hour cases, consumer, tort (both mass and individual), antitrust and securities fraud, commercial, and civil rights cases. Public Justice is dedicated to ensuring that the justice system is accessible to and protects all individuals who've been harmed by illegal conduct.

Public Justice supports the proposed amendment to Rule 30(b)(6) because it preserves the fundamental purpose of the Rule: to ensure organizations receive no special advantages that enable them to avoid or delay legitimate discovery.[1] With the proposed amendment, 30(b)(6) depositions will remain an invaluable discovery tool that empowers individuals to efficiently access the facts and evidence that are in a defendant-organization's exclusive control.

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[1] Subcommittee Report: Rule 30(b)(6), Advisory Committee on Civil Rules, at 241 (April 25–26, 2017), http://www.uscourts.gov/sites/default/files/2017-04-civil-agenda_book.pdf (explaining Rule 30(b)(6) was introduced in 1970 to stop organizational litigants from making it difficult for the opposing party to "nail down organizational information").

At Public Justice, the preservation of Rule 30(b)(6) is essential to our public interest work in a diverse array of litigation contexts. In this Comment, we begin by highlighting a few examples from some areas of our own litigation. We explain how Public Justice uses Rule 30(b)(6) depositions to protect farmers from anticompetitive and exploitative labor practices, consumers from deceptive advertising, local communities from polluted waterways, and sexual assault survivors from deliberately indifferent schools. In each context, the power and flexibility of Rule 30(b)(6), based on good faith cooperation instead of one-size-fits-all limits and procedures, makes discovery fairer and more efficient.

Next, we explain why Public Justice supports the proposed amendment's addition of a duty to confer in good faith. Beyond preserving the power and flexibility of Rule 30(b)(6), the amendment ensures the parties will cooperate to resolve issues outside of the court room. Public Justice strongly believes that the duty to confer about the identity of designated witnesses should stay in the Rule. We do, however, recommend that the committee remove any duty to confer about the number of topics and clarify, in the Committee Note, that the duty to confer should not become an excuse to further delay discovery.

Finally, we strongly oppose the continued calls for (1) an unnecessary procedure for pre-deposition objections that will only further delay discovery, (2) an unfair and inefficient one-size-fits-all notice requirement, and (3) limits on the number of topics, and the number and duration of depositions, that would gut Rule 30(b)(6), promote gamesmanship, and result in endless discovery disputes. The committee should not reconsider these radical proposals.

I. THE PROPOSED AMENDMENT PRESERVES RULE 30(b)(6) AS A POWERFUL AND FLEXIBLE DISCOVERY DEVICE ESSENTIAL TO PUBLIC JUSTICE'S WORK.

As with all discovery, judicial efficiency is best served through cooperative dialogue between the parties outside of court. That's exactly what the proposed amendment requires. Instead of adding new standards, limits, and procedures that will over-complicate the process and cause parties to repeatedly turn to the court to resolve discovery issues, the proposed amendment encourages parties to resolve issues on their own, keeping them out of court. By requiring parties to confer about the matters for examination and the identity of the designated witnesses, the proposed amendment ensures Rule 30(b)(6) remains an efficient and productive discovery tool for all litigants.

Public Justice attorneys regularly rely on Rule 30(b)(6) to hold large, powerful organizations accountable, including, among others, exploitive corporate employers, deceptive food producers, reckless polluters, and schools indifferent to gender-based violence. To help the committee understand how important Rule 30(b)(6) is to public-serving litigation, we highlight four concrete examples. Each example is different from the next, but in each, Rule 30(b)(6) makes discovery fairer and more efficient, empowering individuals to bring lawsuits that hold powerful organizations accountable and advance the public interest.

A. Protecting Farmers from Exploitative Labor Practices

Public Justice uses Rule 30(b)(6) to protect farmers trapped in unfair and anticompetitive agreements with big agricultural companies. *Morris v. Tyson* is an ongoing multi-plaintiff action

brought on behalf of poultry farmers, alleging that Tyson Chicken, Inc.'s system of mass poultry production, specifically related to how it pays its growers, violates antitrust laws and exploits farmers.[2] A major issue in the case is whether Tyson manipulates its compensation system to suppress farmers' wages. Tyson calculates its farmers' wages based on how they perform compared to other Tyson farmers, but Tyson gives each farmer a different set of tools (different kinds of birds, veterinary services, bird feed, etc).

When discovery started, Tyson produced tens of thousands of pages of undifferentiated scanned hard copy documents related to its compensation system—such as feed tickets demonstrating the feed received by particular farmers. This form of production created a time-wasting and obfuscatory system where counsel for the farmers were required to laboriously go through these documents and create tables for what each farmer received.

Plaintiffs then conducted an electronic discovery 30(b)(6) deposition to determine what kind of information Tyson stores electronically, what type of platform the information is stored on, and how to retrieve it.[3] Through the 30(b)(6) deposition, Plaintiffs learned that much of what Tyson produced as scanned PDFs was available electronically in a much more user-friendly format that would save Plaintiffs a significant amount of time and resources in the discovery process. Without Rule 30(b)(6), Tyson would have been able to make it time-consuming and wasteful for the farmers to access this essential information, and pointlessly increase the costs of discovery.

Plaintiffs also conducted a factual Rule 30(b)(6) deposition about how the compensation system operates and how Tyson selects what inputs (type of bird, type of feed) each farmer receives. With a clear record of Tyson's practices, the court will have the information it needs to evaluate our clients' allegations that the system is designed or operated in an anti-competitive and exploitive way. If Rule 30(b)(6) was weakened, Tyson would have been able to avoid or delay legitimate discovery related to its compensation system; Plaintiffs would be forced to swallow the costs of the prolonged, inefficient process; and poultry farmers would be denied fair and efficient access to justice.

B. Protecting Consumers from Deceptive Advertising

Public Justice is also relying on Rule 30(b)(6) depositions in another ongoing case—one about deceptive advertising. In *Animal Legal Defense Fund v. Hormel Foods Corporation*, ALDF alleges that Hormel's "Natural Choice" advertising is deceptive and misleading because animals processed into Natural Choice deli meats are actually raised in factory farms with standard industrial feed. Hormel also adds preservatives and nitrates to the final product.[4]

In this case, *both* parties have benefitted from Rule 30(b)(6) to build their respective cases. The plaintiffs conducted 30(b)(6) depositions to learn what Hormel intended to

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[2] *See Morris v. Tyson Chicken, Inc.*, No. 4:15-cv-00077 (W.D. Ky.).

[3] *See Manual for Complex Litigation, Fourth* § 11.446 (2004) ("Any discovery plan must address issues relating to [electronic] information, including the search for it and its location, retrieval, form of production, inspection, preservation, and use at trial."); Electronic Resources Public Consortium, *Identification Guide* (Nov. 3, 2010) (explaining that electronic storage of information differs with each organization as each has different hardware, software, and storage protocols).

[4] *See Animal Legal Defense Fund v. Hormel Foods Corp.*, No. 2016 CA 004744 B (D.C. Super. Ct.).

communicate with its advertisements, and its policies and practices regarding the treatment and slaughter of animals. Likewise, Hormel took a 30(b)(6) deposition of the Animal Legal Defense Fund to determine, for standing purposes, if ALDF has been harmed by Hormel's advertising. Hormel probed ALDF's agenda, activities, and how it spends its resources. This case illustrates how Rule 30(b)(6) is an invaluable discovery device whenever an organization—plaintiff or defendant—is a party to a case.

Hormel also illustrates the importance of ensuring that Rule 30(b)(6) remains flexible, without arbitrary limits on the number or duration of depositions. Hormel decided to designate five different witnesses in response to a single 30(b)(6) notice, and as a result, the depositions took four days. Presumably, this was the least burdensome way for Hormel to provide a prepared witness for each topic area. However, if there were restrictions on the number or duration of depositions, Hormel's prudential decision would become a strategic one. Instead of determining the least burdensome way to provide the information requested, parties would likely select the number of witnesses that would best limit the opposition's discovery.

With the facts and evidence obtained through flexible, comprehensive 30(b)(6) depositions, Public Justice can advocate for consumers who want to know how their food is produced. We can fight for an open, transparent market that protects the consumer's right to choose safe, healthy, and humane products.

C. Protecting Local Communities from Water Pollution

Public Justice, representing several environmental organizations, successfully sued coal mine operators in West Virginia for violating the Clean Water Act.[5] Rule 30(b)(6) was essential to this effort. To prove the coal mines had violated water quality standards, Public Justice had to establish that the mines were discharging dissolved salts into streams in amounts that greatly exceeded pre-mining baseline amounts. In each case, Public Justice had a large amount of circumstantial evidence in the form of hundreds of pages of maps, permit records, and monitoring data to support its experts' opinions that the discharges were causing violations of water quality standards.

Most courts impose such tight limits on interrogatories and requests for admissions that it is difficult or impossible to resolve disputes involving large data sets. In addition, it is inefficient and time-consuming to have the court review and process these data sets at trial. In such cases, Rule 30(b)(6) provides a workable and efficient alternative. Public Justice drafted a Rule 30(b)(6) notice asking the defendant to produce a designated representative for deposition who would testify to the factual accuracy of an attached summary statement of the data and the authenticity and truthfulness of the supporting documents. In a statement accompanying the notice, Public Justice informed the coal company that it could, alternatively, just stipulate to the factual statement and documents.[6] Each time, the coal company negotiated and agreed to stipulate to the statement of facts, which meant that Public Justice didn't have to burden the trial

[5] *See Ohio Valley Envtl. Coal., Inc. v. Fola Coal Co.*, 845 F.3d 133 (4th Cir. 2017); *Ohio Valley Envtl. Coal., Inc. v. Fola Coal Co.*, 120 F. Supp. 3d 509 (S.D. W. Va. 2015); *Ohio Valley Envtl. Coal. v. Elk Run Coal Co.*, 24 F. Supp. 3d 532 (S.D. W. Va. 2014).

[6] *See, e.g., Ohio Valley Envt'l Coal. v. Fola Coal Co.*, Civil No. 2:13-21588 (S.D. W.Va.), Docket No. 53.

judge with hundreds of pages of raw data and the court could focus its attention on the expert testimony.

The coal companies agreed to stipulate to the statement of facts because they knew it was the same information Public Justice could establish through a Rule 30(b)(6) deposition. If the Rule didn't exist or was substantially weakened, then coal companies would likely refuse to stipulate to any facts, no matter how objective or undisputed they were. But because Rule 30(b)(6) requires companies to disclose facts known to them, just like any other party to a lawsuit, the companies are motivated to cooperate with plaintiffs and promote an efficient discovery process.

These coal mining cases also highlight the importance of ensuring Rule 30(b)(6) depositions remain a flexible, cooperative process. If a coal company had refused to stipulate to a statement of facts, establishing these facts through standard fact depositions would have wasted scores of hours with repetitive testimony. Public Justice would have needed to establish facts based on hundreds of data points, which would have required an arduous process of asking the company how it interprets an enormous amount of raw data. If there were strict limits on the topics covered, or the number or duration of 30(b)(6) depositions, Public Justice wouldn't have been able to get through all the data and establish the necessary factual background. Public Justice would be forced to bring the raw data to trial and waste everyone's time extracting basic facts from the hundreds of data points. Thus, artificial, one-size-fits-all limits on 30(b)(6) depositions would interfere with legitimate discovery and complicate trials.

Even worse, limits on the duration of 30(b)(6) depositions would motivate companies to refuse to stipulate to clearly understood facts, no matter what could be established through a 30(b)(6) deposition, because going through every data point would help companies run out the clock. If every hour spent reviewing undisputed data points is an hour not answering questions about the company's policies and practices, why stipulate to anything?

But under the proposed amendment, requiring parties to confer in good faith, all parties have an incentive to make discovery more efficient. The Rule ensures productive discovery, empowering local communities and environmental organizations to hold coal companies accountable. In each of these West Virginia coal mining cases, the court held that the coal mine was discharging excessive amounts of ionic pollution, damaging the aquatic ecosystem in violation of the Clean Water Act and federal mining laws. The West Virginia streams polluted by coal mines are "relied upon by West Virginians for drinking water, fishing, recreation, and important economic uses."[7] Rule 30(b)(6) was essential to Public Justice's efforts to protect the safety and well-being of West Virginians.

D. Protecting Sexual Assault Survivors from Deliberately Indifferent Schools

Rule 30(b)(6) helps students hold schools accountable for failing to take appropriate steps to prevent and respond to gender-based violence. Public Justice litigates Title IX cases against primary and secondary schools, as well as colleges and universities. For example, Public Justice is currently litigating a Title IX lawsuit against Virginia's Fairfax County School Board for violating the rights of a sixteen-year-old student survivor of sexual assault. In response to the

[7] *Ohio Valley*, 24 F. Supp. 3d at 579.

reported assault, the school threatened to punish the student survivor, interrogated her, and discouraged her from contacting the police—all without contacting her parents. The school failed to appropriately discipline the assailant or ensure the survivor's well-being. The complaint alleges the school's treatment of this one survivor is part of a pattern of ignoring and minimizing student-on-student sexual harassment in Fairfax County.

Attorneys litigating Title IX cases frequently rely on Rule 30(b)(6) depositions. To start, 30(b)(6) depositions are the most efficient way of establishing whether a school receives federal financial assistance and thus whether Title IX even applies. Attorneys also can use 30(b)(6) depositions to uncover the school's policies and procedures for investigating complaints of sexual harassment or assault. This is much more efficient than fishing around for all university personnel ever involved in crafting or editing the schools' sexual harassment and assault policies, especially when the policies have changed over time.

And a clear understanding of the school's policies and procedures is essential to building a Title IX case. Once plaintiffs determine whether the school has policies in place and what those policies are, the plaintiffs can determine whether there are deficiencies in those policies or highlight the ways in which the school failed, in practice, to follow its own policies. In cases where the school has operated with deliberate indifference, this discovery is essential to establishing these facts. The school can't claim that it just didn't know how to respond to a complaint when the school's very own policies explain what response is necessary to hold assailants accountable and keep student survivors emotionally and physically safe.

If Rule 30(b)(6) were limited or weakened, it would make it more difficult for students to hold their schools accountable under Title IX, thwarting nationwide efforts to ensure students, regardless of their sex, receive an education free of harassment or violence. Rule 30(b)(6) ensures schools cannot escape liability under Title IX by hiding behind their complex organizational structures, filled with teachers and administrators trying to pass the buck. It ensures student survivors of sexual harassment or assault receive the support and education to which they are entitled.

II. PUBLIC JUSTICE SUPPORTS THE PROPOSED AMENDMENT, WITH A FEW MINOR CHANGES.

Public Justice supports the proposed amendment's requirement that parties confer in good faith about the description of the matters for examination and the identity of each person the organization will designate to testify. We strongly encourage the committee to retain the duty to confer about the identity of designated witnesses. However, the committee should remove the duty to confer about the number of topics for examination. Finally, the committee should clarify in the Committee Note that this new duty to confer should not be used to delay discovery.

A. The Duty to Confer about the Identity of an Organization's Designated Witness Should Stay in the Rule.

Under current practice, when parties receive 30(b)(6) notices, they generally inform the requesting party about the identity of the person or persons who will be testifying. This common practice should be codified in the Rule because it helps ensure the organization is choosing an appropriate witness and makes the process more efficient. While the organization is not required

to designate witnesses with personal knowledge about the matters for examination, they often do. It's more efficient to designate an already knowledgeable witness than prepare a witness from scratch.[8] And a witness with personal knowledge often provides the most comprehensive and reliable information. This is especially true with respect to highly technical topics that may be difficult for a layperson to learn for a deposition.[9]

By requiring the parties to confer about the identity of the designated witnesses and the matters for examination, the parties can work together to ensure the organization provides well-prepared witnesses. Further, the duty to confer about the identity of designated witnesses serves efficient case management. Once a witness is identified, the parties can start planning the logistics of the deposition based on the witness's availability and location.

B. The Duty to Confer about the Number of Topics for Examination Should be Removed.

Parties should confer about the matters for examination without getting caught up in technicalities such as the number of topics. Communicating about the substantive topics, not the *number* of topics, ensures the organization has notice of the scope of the deposition and can adequately prepare its witnesses. The number of topics does not control the scope of the matters for examination. If parties agree to a limited number of topics, then counsel seeking discovery may make each topic broader than necessary. This makes it *more* difficult for witnesses to prepare and would lead to more disputes about whether topics describe matters with reasonable particularity.

Furthermore, a duty to confer about the number of topics suggests that the parties have to agree to a set number. But during a 30(b)(6) deposition, a party may learn about another topic that it needs to ask questions about. The majority rule is that 30(b)(6) testimony is not limited by the topics in the notice and that the scope of the deposition is determined solely by relevance.[10] Requiring parties to confer about a particular number of topics would undermine the majority rule and create confusion in the law.

Thus, conferring about the number of topics—as opposed to just the substantive matters for examination—serves no purpose; it's a meaningless guidepost. And worse, it may cause counsel to put forth overly broad topics in an attempt to cooperate with the opposing party's preference regarding the number of topics. The requirement to confer about the "number of topics" should be removed from the proposed amendment.

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[8] *See* David L. Johnson and Kyle Young, A Primer on 30(b)(6) Depositions: A Defense Perspective, MILLER & MARTIN PLLC (2011), https://www.americanbar.org/content/dam/aba/administrative/labor_law/meetings/2011/ac2011/134.authcheckdam.pdf.

[9] *See* Practical Considerations in Identifying and Preparing Your Rule 30(b)(6) Witnesses, ARNALL GOLDEN GREGORY LLP (Oct. 6, 2015).

[10] *See* Eric Kinder & Walt Auvil, *Rule 30(b)(6) at 45: Is It Still Your Friend?*, A.B.A. SEC. OF LITIG – PRETRIAL PRAC. & DISCOVERY (Dec. 3, 2015) (citing *Bracco Diagnostics Inc. v. Amersham Health Inc.*, No. 03-6025 (SRC), 2005 WL 6714281 (D.N.J. Nov. 7, 2005); *Cabot Corp. v. Yamulla Enters.*, 194 F.R.D. 499 (M.D. Pa. 2000); *Detoy v. City & Cty. of S.F.*, 196 F.R.D. 362 (N.D. Cal. 2000)).

C. The Committee Note Should Clarify That the Duty to Confer is Not an Excuse to Stall Discovery.

While Public Justice supports the proposed amendment, we are concerned that recipients of 30(b)(6) notices might use the new duty to confer in good faith to further delay discovery. Another required step in the discovery process is another opportunity for organizations to drag their feet, prolonging the process to hike up costs and avoid liability. The committee could alleviate this concern by clarifying, in the Committee Note, that the duty to confer may be a single conference or a series of discussions, and that the duty is not an excuse to slow down the discovery process and take more time to respond to 30(b)(6) requests. The duty to confer should serve efficient case management and, if anything, speed up the discovery process.

III. PUBLIC JUSTICE STRONGLY OPPOSES EFFORTS TO WEAKEN RULE 30(b)(6).

Some comments continue to call for additional amendments that would harm efficiency and undermine the purpose of Rule 30(b)(6). Adding more obstacles and restrictions to 30(b)(6) depositions would give organizations a special litigation advantage over individuals and make it harder and more costly for human beings of modest means to obtain justice. Below, we address three proposals that would make discovery less efficient and less fair.

A. A Formalized 30(b)(6) Objection Process Would Unnecessarily Delay Discovery.

A new formal objection procedure for Rule 30(b)(6) serves no purpose and would significantly delay the discovery process. Instead of letting attorneys confer in good faith and cooperatively resolve discovery disputes on their own, some comments suggest a formalized objection process that would force courts to consider and resolve preemptive battles about the scope and nature of discovery from the get-go. Because the discovery process often starts with a Rule 30(b)(6) deposition, a formalized 30(b)(6) objection procedure would encourage organizations to bog down and delay discovery from the outset of a case.

And all for nothing. There are existing procedures to oppose truly abusive Rule 30(b)(6) requests. For example, parties can always move for a protective order under Rule 26.[11] There's no evidence that protective orders fail to protect parties from abusive 30(b)(6) requests.

Other comments suggest the committee should adopt an objection procedure akin to Rule 45, which imposes restrictions on subpoenas of *non-parties.* Rule 45 exists because we don't want to impose undue burdens and expenses on non-parties, and the Rule already protects non-party organizations. To adopt a similar procedure for parties that just happen to be organizations would give organizations a unique discovery advantage denied to human beings. This is exactly what Rule 30(b)(6) was designed to prevent in the first place.

[11] *See, e.g., Ingersoll v. Farmland Foods, Inc.*, No. 10-6046-CV-SJ-FJG, 2011 WL 1131129, at *8 (W.D. Mo. Mar. 28, 2011); *Murray v. Tyson Foods, Inc.*, No. 08-4001, 2010 WL 744302, at *6 (C.D. Ill. Feb. 24, 2010); *Doe v. District of Columbia*, 230 F.R.D. 47, 56 (D.D.C. 2005).

B. A One-Size-Fits-All Notice Requirement Would Only Generate More Disputes and Deny Parties Legitimate Discovery.

No amendment to impose a new and more burdensome notice requirement is necessary for Rule 30(b)(6) depositions. Rule 30(b)(1) already requires parties have reasonable written notice of any depositions. "There has been very little controversy as to what constitutes a 'reasonable' time" and "[o]bviously no fixed rule can be laid down because much will depend on the other circumstances of the particular case."[12] There is no reason the standard that has long applied to all parties, without issue, should change for parties that happen to be organizations. Not only is a one-size-fits-all notice requirement unnecessary and unworkable, but it would, again, give organizations—frequently large, powerful corporations—a unique advantage.

Finally, there's no evidence that attorneys often spring Rule 30(b)(6) notices on organizations at the last minute, causing undue burdens. That's because it's in every party's interest to ensure the organization has enough time to provide a well-prepared witness. The reasonable notice requirement, in conjunction with an obligation to confer in good faith, ensures flexibility, allowing parties to schedule depositions in the most efficient and effective way based on the unique circumstances of their case.

C. Limits on the Number of Topics, or the Number or Duration of 30(b)(6) Depositions, Would Cripple the Rule, Enabling Gamesmanship and Endless Discovery Disputes.

Imposing new limits on the number of topics a 30(b)(6) deposition can address—or on the number or duration of 30(b)(6) party depositions that can be taken—would dramatically weaken this powerful and efficient discovery tool for many types of cases. Some cases are bigger or more complex than others. Some require discovery about many different aspects of an organization whereas others require an exploration of just a handful of topics. Arbitrary limits, applicable to all cases, would blindly limit discovery of relevant facts. Parties are perfectly capable of conferring and working out an appropriate plan on their own. And if there is a dispute, a trial judge familiar with the specific case will be in the best position to determine the appropriate limits.

Furthermore, limits would disincentivize a phased discovery process, which is far more efficient and less costly for everyone. An initial 30(b)(6) deposition is often taken to develop a better understanding of the available documents and witnesses, including what kind of data is electronically stored and how it's organized. With this information, attorneys can then go collect and review all relevant documents and data, and develop a much narrower, targeted line of questioning for a second 30(b)(6) deposition focused on the facts of the case. If attorneys are limited in the number or duration of 30(b)(6) depositions, they will forgo this process. If attorneys are limited to just one deposition, they'll be forced to indiscriminately gather all the information they can in one fell swoop. In fact, any limit will deter a phased-discovery process because attorneys will feel like they need to conserve the number of topics and depositions they have left in case a need for additional discovery arises.

[12] 8A Fed. Prac. & Proc. Civ. § 2111 (3d ed.).

Finally, as discussed above in context of *Hormel*, the party that receives a Rule 30(b)(6) notice gets to choose how many witnesses to produce. Often an organization will designate multiple witnesses to cover different topics or different time periods, presumably because different people know more about different topics, and relatedly, it's less burdensome than preparing one witness with all of the information. The party seeking a 30(b)(6) deposition should not be forced to use extra depositions just because the organization chooses to designate multiple witnesses. If that were the case, there's no doubt that many organizations would strategically appoint numerous witnesses to limit the overall discovery of relevant facts.

Limits on the number of topics, the number of depositions, or the duration of depositions will only create opportunities for gamesmanship which will, in turn, drag courts into endless discovery disputes from the very start. By contrast, requiring parties to confer in good faith about these issues allows the parties to develop context-specific plans that ensure fair and efficient discovery of relevant facts, without wasting the court's time and resources. The proposed amendment trusts that attorneys are capable of acting like professional adults and working out their issues. And in the rare circumstance where they can't work out an issue, a trial judge can make a context-specific decision about what kind of discovery is necessary.[13]

CONCLUSUION

The proposed amendment preserves Rule 30(b)(6) as a powerful, efficient discovery device in public interest litigation. In Public Justice's experience, the Rule is invaluable to its efforts to hold large, powerful organizations accountable in a variety of contexts. Whether its exploitive corporate employers, deceptive food companies, polluting coal companies, or schools that fail to protect their students from sexual violence—Rule 30(b)(6) ensures that individuals can access the facts and evidence they need to seek justice. With respect to the specific language of the amendment, Public Justice strongly encourages the committee to keep the duty to confer about the identity of designated witnesses in the Rule. However, Public Justice does recommend that the committee remove the duty to confer about the number of topics and clarify that the duty is not an excuse to further delay the discovery process. Finally, Public Justice continues to oppose calls for radical changes that would prevent efficient and legitimate discovery and give organizations a special litigation advantage.

Amending Rule 30(b)(6) is a daunting task. A lot is at stake. The Rule has long served as an effective discovery tool, empowering organizations like Public Justice to hold large organizations accountable and promote social and economic justice in different contexts. But the proposed amendment rises to the occasion. It preserves the power and flexibility of the Rule while further encouraging cooperation. If adopted with the minor suggested changes, the proposed amendment will make discovery fairer and more efficient, expanding access to justice.

[13] *See, e.g.*, *Murphy v. Kmart Corp.*, 255 F.R.D. 497 (D.S.D. 2009) (court determined appropriate limits on scope of 30(b)(6) notice based on nature of claims and defendant-organization).