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24 **ARIZONA COURT OF APPEALS**
25 **DIVISION ONE**

26 JIE CAO, et al.,

27 Plaintiffs/Appellants,

28 v.

PFP DORSEY INVESTMENTS,

LLC, et al.,

Defendants/Appellees.

Court of Appeals

Division One

Case No. 1 CA-CV 21-0275

Maricopa County Superior Court

Case No. CV2019-055353

**DEFENDANTS/APPELLEES PFP
DORSEY INVESTMENTS, LLC AND
DORSEY PLACE CONDOMINIUM
ASSOCIATION'S OPPOSITION TO
MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE OF PACIFIC LEGAL
FOUNDATION IN SUPPORT OF
PLAINTIFFS/APPELLANTS**

1 Defendants/Appellees PFP Dorsey Investments, LLC and Dorsey Place
2 Condominium Association (collectively the “Appellees”), by and through their
3 respective counsel, hereby oppose and respectfully request this Court use its
4 discretion to deny Pacific Legal Foundation’s Motion for Leave to File Brief as
5 Amicus Curiae. Pacific Legal Foundation (“PLF”) does not meet the requirements of
6 Arizona Rule of Civil Appellate Procedure 16 and further, their arguments presented
7 in its proffered brief are repetitive of the arguments already raised by Appellants in
8 their briefing with the Court.
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12 Pursuant to Arizona Rule of Civil Appellate Procedure 16(b)(1)(C), an
13 appellate court may allow an amicus curiae brief if “(i) the party has incompetent
14 representation or no representation at all; (ii) amicus curiae has an interest in another
15 case that the decision in the present case may affect; or (iii) amicus curiae can provide
16 information, perspective, or argument that can help the appellate court beyond the
17 help that the parties’ lawyer provide.” Subsections (i) and (ii) are inapplicable in this
18 case and PLF has only alleged that it can provide its “public interest perspective and
19 national litigation experience” to provide an “additional viewpoint on the issues
20 presented in the case.” (*See* PLF Motion for Leave, p. 3). However, in reviewing its
21 motion and proffered brief, PLF does not provide anything new or different beyond
22 what Appellants’ counsel has already provided to this Court and its motion for leave
23 should be denied.
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1 PLF claims its public interest perspective and national litigation experience will
2 aid this Court; however, its alleged experience has nothing to do with the narrow
3 issues in this case. Although Appellants are raising a constitutional issue with ARS §
4 33-1228, they admit they do so only on an *as-applied* challenge as they have not
5 properly notified the Arizona Legislature of their challenge pursuant to A.R.S. § 12-
6 1841. Further, Appellants expressly state in their briefing that “the relief they seek is
7 limited to their property” and they have not asked to enjoin the statute or for any
8 declaratory relief that extends beyond the four walls of their unit.
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12 Participation as amicus curiae, meaning “a friend of the court,” has traditionally
13 been used for the benefit and assistance of the court, to inform the court of matters of
14 law in regard to which the judge is doubtful or mistaken. *See Leigh v. Engle*, 535
15 F.Supp. 418, 419 (N.D.II. 1982). An amicus curiae is supposed to be an impartial
16 individual whose function is to advise in order that justice be done, rather than to
17 advocate a point of view so that a cause may be won by one party or another. *Id.* at
18 420. In this case, PLF’s arguments are far from impartial, even commenting on
19 Defendants’ argument that the parties’ agreement in the Declaration allow for the sale
20 of the unit. (*See Amicus Brief* at p. 9, n. 3). PLF does not provide any broader or
21 abstract perspective to the arguments in its proffered brief relevant to its counsel’s
22 alleged expertise. Rather, it recites the same arguments already provided by
23 Appellants, i.e., the sale of the property is an improper taking because it is for private
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1 use without just compensation. The proffered brief is nothing more than a third-party
2 agreeing with the arguments raised by Appellants, which is contrary to the purpose of
3 allowing amicus curiae participation. See *DeVries v. State*, 219 Ariz. 314, 319 n.5
4 (App. 2008) (“[A]micus briefs should provide a broader, more abstract presentation of
5 law that is not narrowly tied to the facts of the case. It should provide background
6 and context for the Court’s decision.”).

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9 In comparing the arguments between PLF’s proffered brief and Appellants’
10 briefs, the headings of both briefs show PLF’s proffered brief is nothing more than a
11 recitation of Appellants’ arguments:
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- 13 • Compare PLF’s section I, “The Termination Statute’s Sale Provisions Cannot
14 be Read to Deprive Property Owners of Their Property Rights,” with
15 Appellants’ arguments in their Opening Brief under section II(A), “Allowing
16 one party to take another’s private property violates the Arizona Constitution.”
- 17 • Compare PLF’s section II(A), “Converting Private Condominium Units to
18 Rent-Generating Apartments Is a Purely Private Use,” with Appellants’
19 arguments in their Opening Brief under sections II(A)(3), “Authorizing a third
20 party to take privately owned property for a private purpose violates the takings
21 claims;” II(A)(4), “Under Arizona law, property taken for a private
22 development has a private, not public, purpose;” and II(B)(2), “The taking was
23 for private use with no public benefit or purpose.”
- 24 • Compare PLF’s section II(B), “An Insider Sale Does Not Ensure Just
25 Compensation,” with Appellants’ arguments in their Reply Brief under section
26 I(D), “Contrary to Defendants’ contention, § 33-1228 requires that all the units
27 be sold on the open market consistent with the association acting as a trustee.”

28 Given that PLF’s proffered brief merely echoes the exact same arguments
already provided in Appellants’ briefs and provides no additional help beyond what

1 Appellants' counsel has already provided to this Court, Appellees respectfully request
2 that this Court deny PLF's Motion for Leave to File Brief Amicus Curiae.
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4 DATED this 13th day of December, 2021.
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