

ARIZONA COURT OF APPEALS

DIVISION ONE

JIE CAO, et al.,

Plaintiffs/Appellants,

v.

PFP DORSEY INVESTMENTS, LLC, et al.,

Defendants/Appellees.

Court of Appeals

Division One

No. 1 CA-CV 21-0275

Maricopa County

Superior Court

No. CV2019-055353

**REPLY IN SUPPORT OF PACIFIC LEGAL
FOUNDATION'S MOTION TO APPEAR AS AMICUS CURIAE**

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ARGUMENT

Pacific Legal Foundation's ("PLF") motion for leave to participate as amicus curiae in support of the Plaintiffs/Appellants ("Appellants") should be granted. Arizona Rule of Civil Appellate Procedure 16 permits the filing of an amicus brief if: (i) A party has incompetent representation or no representation at all; (ii) Amicus curiae has an interest in another case that the decision in the present case may affect; or (iii) Amicus curiae can provide information, perspective, or argument that can help the appellate court beyond the help that the parties' lawyers provide. Ariz. R. Civ. App. P. 16(b)(1)(C).

PLF's amicus brief meets Rule 16's requirements because it provides a unique perspective and arguments that will assist this Court. The brief focuses on the fundamental nature of the property rights at stake in this appeal and the rule of construction requiring that statutes be interpreted to protect these rights and to avoid constitutional infirmities. The brief is informed by PLF's decades of experience representing property owners and amici curiae in landmark constitutional and property rights cases nationwide.

Defendants/Appellees PFP Dorsey Investments LLC, and Dorsey Place Condominium Association (jointly "Dorsey Investments"), however, oppose PLF's motion for leave to appear as amicus, objecting to the originality and impartiality of PLF's brief. Neither argument has merit.

1. Dorsey Investments’ main objection is that the amicus brief simply repeats the arguments of the Appellants. *Opp.* at 2–4. But although the proposed brief supports Appellants’ position—and, like the Appellants, asserts the Superior Court’s judgment was wrong and should be reversed—it presents unique arguments that do not merely rehash those of the Appellants.

The amicus brief explains why the right to keep and possess property is fundamental, and how the Superior Court’s judgment undermined these rights by failing to interpret A.R.S. § 12-1841 to require a sale of all condominium units at fair market value upon termination of the condominium property regime. *See* Brief Amicus Curiae of Pacific Legal Foundation in Support of Plaintiffs/Appellants (“Amicus Br.”) at 6. The amicus brief also focuses on the requirement that courts avoid constitutional infirmities when interpreting statutes—here, the seizure of the Appellants’ property for a private use with no guarantee of just compensation in violation of the U.S. Constitution’s Fifth and Fourteenth Amendments and article 2, section 17 of the Arizona Constitution. *Amicus Br.* at 10–14. The Opening Brief does not present either argument.

2. Dorsey Investments also argues the amicus brief is not “impartial.” *Opp.* at 3–4. Impartiality, however, plays no part in determining amicus participation under Rule 16. *See* Ariz. R. Civ. App. P. 16(b)(1)(C)(i)–(iii). Indeed, courts nationwide—this Court included—accept that amici are often not neutral, and

routinely permit participation by amici who support one side or the other. *See, e.g., Kaufman v. Langhofer*, 223 Ariz. 249 (Ariz. Ct. App. 2009) (accepting amici curiae briefs on behalf of one party); *State v. Evenson*, 201 Ariz. 209 (Ariz. Ct. App. 2001) (same); *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (“[A]n adversary role of an amicus curiae has become accepted.”); *Leigh v. Engle*, 535 F. Supp. 418, 422 (N.D. Ill. 1982) (“[T]he institution of the amicus curiae brief has moved from neutrality to partisanship, from friendship to advocacy.’ For example, the Supreme Court of the United States makes no pretense of disinterestedness ‘on the part of “its friends”. The amicus is treated as a potential litigant in future cases, as an ally of one of the parties, or as the representative of an interest not otherwise represented.’”) (internal citations omitted).

CONCLUSION

This Court should grant the Motion for Leave to File Brief Amicus Curiae.

RESPECTFULLY SUBMITTED this 17th day of December, 2021.

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