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**COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

ROBERT R. HAWK and CECILIA J.  
HAWK,

Plaintiffs/Appellees,

vs.

PC VILLAGE ASSOCIATION, INC.,

Defendant/Appellant.

No. 1 CA-CV 12-0362

Coconino County Superior Court  
No. CV2011-00776

**REPLY IN SUPPORT OF  
MOTION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF**

Pursuant to Arizona Rules of Civil Appellate Procedure, Rule 16, the Arizona Association of REALTORS® (“AAR”) hereby submits its Reply in Support of Motion for Leave to File Amicus Curiae Brief.

RESPECTFULLY SUBMITTED this 5th day of November, 2012.

MACK DRUCKER & WATSON, P.L.C.

/s/ Scott M. Drucker

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. LAW AND ARGUMENT**

An amicus curiae is a friend of the court. *Ackel v. Ackel*, 83 Ariz. 207, 212, 318 P.2d 676, 679 (1957). Its role is to inform the court of the general concerns of the community regarding the issue before it. *State ex rel. Com'r. of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 758 (Tenn. Ct. App. 2001). An amicus performs this role by drawing the court’s attention to broader legal or policy implications that might otherwise escape the court’s consideration.

*Giammalvo v. Sunshine Mining Co.*, 644 A.2d 407, 409 (Del. 1994); *Miller-Wohl Co., Inc. v. Commissioner of Labor and Industry State of Mont.*, 694 F.2d 203, 204 (9<sup>th</sup> Cir. 1982).

By way of this dispute, Appellant PC Village (“PC Village”) purportedly seeks to protect the aesthetic appeal of its modestly sized gated community located in Flagstaff, Arizona. Appellees Robert and Cecilia Hawk (the “Hawks”) seek permission to advertise their home for sale in the manner they deem best. The parties therefore each seek to protect their own interests, which are limited in scope to a single gated community located near Flagstaff, Arizona.

On the other hand, AAR seeks to protect: (1) a vital form of commercial speech that provides Arizona’s millions of homeowners with a valuable tool in today’s distressed real estate market; and (2) the livelihood of the state’s 38,000 Realtors®. The interests advanced by AAR are therefore more significant and far-reaching than the interests of the parties themselves. Because AAR possesses no adversary interest and cannot appear as a party to the litigation, it must be permitted to share with this Court, as an *amicus curiae*, its particular viewpoint regarding the consequences of invalidating A.R.S. §§ 33-1808 and 33-441. *See* Ariz. R. Civ. App. Pro. R. 16, Comment to the 1998 Amendment (an *amicus* brief may be allowed when the *amicus* has something to offer the court by way of a unique perspective or knowledge).

**A. The Issues Addressed by AAR in its Amicus Curiae Brief Appropriately Respond to the Issues Raised in PC Village's Opening Brief.**

PC Village would have this Court deny AAR's Motion for Leave to File Amicus Curiae Brief on the basis that the Amicus Curiae Brief filed by AAR and the Response Brief filed by the Hawks utilize the same section headings. What PC Village fails to inform the Court is that AAR and the Hawks each use these headings because they reflect the sections set forth in PC Village's Opening Brief. AAR and the Hawks are not intentionally mirroring the arguments asserted by the other. Rather, AAR and the Hawks are each merely responding to PC Village's arguments in the order raised by PC Village in its Opening Brief.

Furthermore, amicus briefs cannot "create, extend or enlarge issues" beyond those raised and argued by the parties. *City of Tempe v. Prudential Ins. Co.*, 109 Ariz. 429, 432, 510 P.2d 745, 748 (1973); *Ruiz v. Hull*, 191 Ariz. 441, 446, 957 P.2d 984, 989 (1998). AAR was therefore careful to address in its Amicus Curiae Brief only the issues raised by PC Village. So too were the Hawks. As a result, the briefs of PC Village, the Hawks and AAR necessarily address similar legal issues. Compliance with this restriction does not in any way mean that the arguments of AAR and the Hawks are "virtually the same," when that is not the case.

**B. AAR Advocates in Favor of A.R.S. §§ 33-1808 and 33-441.**

AAR has no personal stake in the outcome of this particular litigation. Other than the fact that the Hawks' agent is a REALTOR®, it makes little difference to AAR whether the Hawks are individually permitted to utilize a "For Sale" sign in conjunction with the sale of their home. The facts of the underlying litigation, which are not in dispute, are therefore of little consequence to AAR. What is of tremendous concern to AAR, however, is the far-reaching implications to buyers, sellers, REALTORS® and Arizona's housing market should this Court invalidate A.R.S. §§ 33-1808 and 33-441.

The use of "For Sale" signs is an extraordinarily effective and inexpensive tool used by REALTORS® to market real property for sale to the largest possible audience and, in turn, obtain the highest purchase price. For this reason AAR admittedly has a vested interest in having this Court uphold the aforementioned statutes. Fortunately, the law does not require that an amicus curiae be completely disinterested in the outcome of the case. *Funbus Sys., Inc. v. California Pub. Util. Comm'n.*, 801 F.2d 1120, 1125 (9th Cir. 1986). In fact, "by the nature of things an amicus is not normally impartial." *Strasser v. Doorley*, 432 F.2d 567, 569 (1<sup>st</sup> Cir. 1970). AAR's advocacy in favor of A.R.S. §§ 33-1808 and 33-441 therefore does not serve as a basis upon which this Court should preclude it from filing an amicus curiae brief.

## II. CONCLUSION

AAR has a vital interest in this litigation and a unique perspective to share with this Court regarding the importance of A.R.S. §§ 33-1808 and 33-441. It therefore respectfully requests that this Court grant its Motion for Leave to File an Amicus Curiae Brief.

RESPECTFULLY SUBMITTED this 5th day of November, 2012.

MACK DRUCKER & WATSON, P.L.C.

*/s/ Scott M. Drucker*

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ORIGINAL of the foregoing filed  
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