

May 2, 2022

Clerk of the Arizona Supreme Court
1501 West Washington Street, Room 402
Phoenix, Arizona 85007

Re: Rule 28 Petition No. R-22-0004

To the Supreme Court of Arizona:

We write on behalf of the Arizona Multihousing Association (the “AMA”), a nonprofit trade association with approximately 2,500 members managing nearly 330,000 rental housing units, 1,400 apartment communities, and hundreds of individual rental home owners. AMA opposes Petition no. R-22-0004 (the “Petition”) to the extent it seeks to obscure facts that are inconvenient to unsuccessful litigants.

There should be a strong presumption against vacating judicial orders or concealing historical facts in a judicial forum. “[A]n opinion is a public act of the government, which may not be expunged by private agreement. History cannot be rewritten. There is no common law writ of erasure. The interests of litigants in general . . . lie with the orderly operation of a system of justice, one in which the conclusions of litigation are recorded and thus preserved for the future . . .” *In re: Memorial Hospital of Iowa County, Inc.*, 862 F.2d 1299, 1300, 1302 (7th Cir. 1988) (Easterbrook, J.).

If a party wishes to undo the direct or collateral effects of a ruling, the party should move for reconsideration or appeal. But when a party either fails to appeal or loses on appeal, the judicial branch should not assist the party in whitewashing inconvenient facts. The long-standing role of Anglo-American courts is to determine facts and law without favoritism, and to memorialize judgments for future consideration. Any policy of intentionally concealing events or covering up prior rulings would be inconsistent with the historical function of our courts.

The presumption against vacatur does not prejudice responsible tenants. At the risk of stating the obvious, the most effective strategy for avoiding an unwanted eviction is to pay rent, refrain from disruptive or destructive behavior, and appear in court when required; tenants who do none of those things—*i.e.*, the overwhelming majority of tenants—face virtually no risk of eviction. For the others, the court records speak for themselves; there is no reason for the judiciary to disavow or discount its own records of such proceedings.

Property owners and public housing authorities, meanwhile, would be adversely affected by the proposed amendment. Arizona law provides that a tenant’s false statements concerning eviction history are material to a leasing agreement, permitting termination of the lease at the property owner’s option. *See* Ariz. Rev. Stat. § 33-1368(A). Federal law similarly provides that tenants evicted for drug-trafficking activities are at least temporarily ineligible for certain rental assistance programs. *See* 24 C.F.R. § 982.553. The existence of a prior eviction is of course helpful to property owners who might otherwise lease to tenants who intentionally default on rent, and critical to property owners and public housing authorities who might otherwise lease to or

subsidize tenants with a history of destroying or committing serious crimes on rented property. The proposed amendment would permit tenants to deny prior evictions when submitting a rental application or request for public assistance—apparently even after a string of evictions on serious grounds (property destruction, on-premises drug manufacturing, etc.). To the extent the proposed amendment abridges the substantive right of property owners to know their tenants’ eviction histories, or expands the substantive rights of tenants to receive public housing assistance when they would otherwise be ineligible, the proposed amendment exceeds the judiciary’s rule-making authority. *See* Ariz. Rev. Stat. § 12-109(B).

For the foregoing reasons, AMA respectfully submits that Petition no. R-22-0004 should be denied to the extent it facilitates vacatur of valid, final decisions of Arizona courts.

Respectfully,

/s/ Kory Langhofer
Kory Langhofer