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11 **IN THE SUPREME COURT**
12 **STATE OF ARIZONA**

13 In the Matter of:

Supreme Court No. R-24-0024

14 PETITION TO AMEND RULE 5(d),
15 ARIZONA RULES OF PROCEDURE
16 FOR EVICTION ACTIONS

**Comment to Petition to Amend Rule 5(d),
Arizona Rules of Procedure for Eviction
Actions**

17 Commenting Party, Manufactured Housing Communities of Arizona (“MHCA”),
18 hereby opposes the Petition to amend Rule 5(d) (“Petition”) of the Arizona Rules of
19 Procedure for Eviction Actions (“RPEA”), filed by Community Legal Services (“CLS”),
20 DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid (“SALA”)
21 (collectively “legal services”), and the William E Morris Institute for Justice (“MIJ”), on or
22 about January 10, 2024.

23 In summary, Petitioners yet again attempt to use this Court’s procedural rule making
24 process as an inappropriate mechanism in order to enact their politically backed agendas, in
25 complete disregard of the State of Arizona Constitution and foundational separation of
26 powers principle. Petitioners use Petition R-24-0024 as a trojan horse in attempt to codify a

1 disputed substantive rule that is being debated in courts and legislatures across this country
2 as an “...important procedural notice requirement....”¹

3 Petitioners justify the rule change by using half-truths to mislead this Court.
4 Petitioners state “[i]n Arizona eviction actions, the proposed rule amendment will change
5 nothing. The amendment proposed in this Petition will only affect eviction actions filed to
6 recover possession of rental homes at properties where owners benefit financially and
7 otherwise from participation in various federal housing, mortgage, and rent subsidy
8 programs.”
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10 If the proposed rule change is enacted, many landlords in the State of Arizona would
11 no longer be able to file for evictions until 30 days after a legal notice has been served.
12 Property owners have the right of possession to their home and to contractually provide a
13 tenant the right of possession to their property for a specific period of time in exchange for
14 consideration. Petition R-24-0024 would codify a contested and debated area of the law,
15 which would remove a property owner’s legal right of possession until 30 days after a legal
16 notice has been served, despite state law providing only a 5-day notice period. On this basis
17 alone, a reasonable person could conclude Petitioners statement of “[i]n Arizona eviction
18 actions, the proposed rule amendment will change nothing” is misleading.² At its very core,
19 Petition R-24-0024 seeks to change a landlord’s property rights. Currently, most Arizona
20 courts allow a landlord with a CARES Act covered property to file an eviction action based
21 upon Arizona statutory requirements and only require 30 days from the date of the legal
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28 ¹ Pet., at 4.

² Pet., at 6–7.

1 notice before the constable may execute the writ of restitution. Petitioners improperly seek
2 to change this substantive policy, via court rules governing procedure.

3 Additionally, Petitioners once more recite the same lengthy recitation of the harm of
4 evictions and homelessness generally. Petitioners: (1) do not provide adequate justification
5 for the current rule change, and (2) do not clearly articulate the harm they seek to correct.
6 This is another attempt to change entire statutory scheme for evictions by arguing that
7 evictions are bad.
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9 The Petition includes a cut-and-paste of the same justifications and arguments
10 provided in every petition made by tenant advocates: tenants are uneducated, tenants are
11 unrepresented, tenants are unable to understand eviction proceedings, tenants have a
12 property interest in their residences, and the perils of homelessness after eviction. Although
13 hardship provokes sympathy, this Court is unable to grant the proposed rule change because
14 it is substantive and not procedural. Further, if a CARES Act violation occurs it's a separate
15 cause of action between a mortgage company, not a tenant, and the landlord.
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18 **I. STATEMENT OF INTEREST.**

19 The MHCA is a non-profit organization that protects and promotes the interest of
20 Arizona's manufactured housing community owners. MHCA is the largest manufactured
21 housing community owners' association in Arizona. The MHCA remains active within
22 Arizona, by tracking legislative and legal issues, educating community owners and
23 managers, and working to improve Arizona's manufactured housing. Manufactured housing
24 communities are one of Arizona's greatest sources of low-cost/low-income housing.
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II. THE PETITION.

The Petition and proposed rule amendment seeks to amend RPEA Rule 5(d) to include language stating:

d. Additional Requirements for Complaint.

(...)

(5) If the action involves a residential property, the complaint must contain or be accompanied by a declaration verifying that the plaintiff has provided the defendant with a notice to vacate at least 30 days prior to requiring the defendant to vacate the dwelling unit with the filing of the complaint, as mandated by the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, or that the dwelling from which the plaintiff seeks to evict the defendant is not located on or in a “covered property,” as defined in the CARES Act.

(a) The declaration must include a complete statement of facts to verify compliance with the CARES Act or the inapplicability of the CARES Act to the dwelling unit at issue in the eviction action.

(b) The court shall dismiss a case filed without the declaration required by this provision.

³Additionally, “Petitioners propose adding a comment or Appendix to RPEA 5 specifying which federally subsidized housing assistance and mortgage programs are covered by the CARES Act, 15 U.S.C. § 9058(a)(2).”⁴ One alleged purpose behind the Petition is

RPEA 5(d) represents one of Arizona’s most important due process protections for eviction defendants. The rule requires eviction plaintiffs to be transparent in their disclosure of case-relevant information to eviction defendants. However, the current version of RPEA 5(d) is incomplete without a provision requiring the eviction plaintiff to disclose whether the property is a “covered property.” Such a required disclosure will help ensure eviction plaintiffs’ compliance with the CARES Act 30-day notice provision, along with the other important compliance measures the rule presently includes.

³ Pet., at 8–9.

⁴ Pet., at 9.

1 ⁵Petitioners bolster their arguments by alleging, “[g]iving effect to 15 U.S.C. §
2 9058(c) necessarily requires modification to the general pre-filing notice requirements of
3 Arizona law in certain cases, as the CARES Act imposes a longer notice period than
4 previously required for covered properties.”⁶ Petitioners continue this argument by stating
5 “...to benefit from the enhanced federal 30-day notice requirement, a tenant has to know
6 they live in a rental home subject to the CARES Act.”⁷

8 **A. PETITIONERS’ RULE CHANGE REQUEST IS SUBSTANTIVE NOT**
9 **PROCEDURAL.**

10 Article III of the Arizona State Constitution states

11 The powers of the government of the state of Arizona shall be divided into
12 three separate departments, the legislative, the executive, and the judicial; and,
13 except as provided in this constitution, such departments shall be separate and
14 distinct, and no one of such departments shall exercise the powers properly
15 belonging to either of the others.

16 Article IV, Section 5 of the Arizona State Constitution provides “[t]he supreme court
17 shall have...[p]ower to make rules relative to all procedural matters in any court.”

18 “Under the Arizona Constitution, the legislature possesses those powers ‘not
19 expressly prohibited or granted to another branch of the government.’”⁸ “The legislature
20 possesses authority to enact substantive laws...”⁹

21 Courts cannot enact substantive law. A court is limited to passing rules which
22 prescribe procedure for exercising the right. Any rule of court that operates to
23 lessen or eliminate the right is of no legal force. It has even been held by the
24 Supreme Court of the United States that under some circumstances a
25 procedure that had such effect offended the due process clause of the Federal
26 constitution.

26 ⁵ Pet., at 14.

27 ⁶ Pet., at 12.

27 ⁷ Pet., at 12.

28 ⁸ *State v. Hansen*, 215 Ariz. 287, 289 (2007).

28 ⁹ *State v. Reed*, 248 Ariz. 72, 76 (2020).

1 ¹⁰As this Court is aware, Congress passed The Coronavirus Aid, Relief, and
2 Economic Security Act, 15 U.S.C.A. §§ 9001–3141 (2020) (“CARES Act”), and signed the
3 CARES Act into law on March 27, 2020. Petitioners’ rule change request is based upon
4 Petitioners’ contested interpretation of the CARES Act, specifically 15 U.S.C.A. § 9058(c)
5 (2020). 15 U.S.C.A. § 9058(c) (2020) provides

7 The lessor of a covered dwelling unit...(1) may not require the tenant to vacate
8 the covered dwelling unit before the date that is 30 days after the date on
9 which the lessor provides the tenant with a notice to vacate; and (2) may not
10 issue a notice to vacate under paragraph (1) until after the expiration of the
11 period described in subsection (b).

12 Petitioners interpret the language within 15 U.S.C.A. § 9058(c) (2020) to mean “the
13 CARES Act requires [a] pre-eviction notice of 30 days.”¹¹ Thus, Petitioners request this
14 Court amend RPEA Rule 5(d) to require landlords to provide a 30 day notice to vacate
15 before filing an eviction action and include within the complaint a declaration verifying
16 compliance or inapplicability with the CARES Act, among other items.¹²

17 In order to promote and enforce Petitioners’ contested interpretation, Petitioners
18 attempt to circumvent the Arizona State Constitution, Arizona statutes and case law, and
19 fundamental separation of powers principles. Petitioners, as counsel, understand this Court
20 may only enact rules related to procedural matters. Nevertheless, Petitioners inappropriately
21 propose a rule change that takes a substantive position on the law.

22 There are various, conflicting interpretations of the language in 15 U.S.C.A. §
23 9058(c) (2020). Petitioners themselves even acknowledge this issue by stating “[w]hile 15
24 U.S.C. § 9058(c) plainly imposes a 30-day pre-eviction notice requirement, there have been
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27 ¹⁰ *Marsin v. Udall*, 78 Ariz. 309, 312 (1955).

28 ¹¹ Pet., at 11.

¹² Pet., at 8–9.

1 instances of confusion about the law’s applicability in some courts around the country,
2 including some justice courts in Arizona.”¹³ In fact, even this Court took a differing
3 approach in Administrative Order 2022-14, and discussions remain regarding the actual
4 application of a “covered dwelling” in 15 U.S.C.A. § 9058(a)(1) (2020).¹⁴

5 The purpose of a rule change should be to promote “...simplicity in procedure,
6 fairness in administration, the just determination of litigation, and the elimination of
7 unjustifiable expense and delay...” not to codify a contested area of the law.¹⁵ By setting
8 forth a substantive legal requirement in its rule petition, Petitions are asking this Court to
9 make a substantive determination over a legal issue without it having been litigated and
10 briefed by all interested parties. In order for Petitioners to push their politically backed
11 agendas they must do so through the legislative process or through litigation. The
12 Petitioners’ defective proposed rule change takes a stand and legal conclusion on an issue
13 that is clearly in debate within the courts and legislatures of this country. The Petitioners
14 cannot use a mechanism to create procedural rule changes in order to enforce a contested
15 conclusion of law.
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17 Furthermore, the language within Petition R-24-0024 is ambiguous, and if enacted,
18 creates several factual issues. For example, it is unclear what would occur if a CARES
19 covered property is sold after the 30 day notice to vacate is served but before the complaint
20 is filed and the property is thereafter covered by a conventional home loan. The same factual
21 issues occur if a home is refinanced after the 30 day notice to vacate is served but before
22 the complaint is filed and the home is now under a conventional home loan. It is unclear
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27 ¹³ Pet., at 5–6.

28 ¹⁴ See Admin. Order 2022-14.

¹⁵ 28 U.S.C.A. § 331 (2008).

1 based upon the plain language of Petition R-24-0024, if the landlord would still be under
2 the CARES Act or state law.

3 Petitioners also fail to adequately address what would occur if the defective rule
4 change was in effect and thereafter Congress amends 15 U.S.C.A. § 9058(c) (2020) or
5 clarifies the CARES Act termination date. Arizona Courts would then be stuck in a position
6 where a 30 day notice to vacate requirement remains in effect based upon CARES Act
7 language that is either nonexistent or expired.
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9 It is clear Petition R-24-0024 is a substantive and not procedural rule change. Thus,
10 this Court is an inappropriate forum to effectuate that change and this Court is unable to
11 approve the Petitioner's modification request to RPEA Rule 5(d).
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13 **B. CARES ACT VIOLATIONS ARE A SEPARATE CAUSE OF ACTION.**

14 The current RPEA limits the types of counterclaims a defendant may file in an
15 eviction proceeding. Specifically, RPEA Rule 8(a) provides "[u]nless specifically provided
16 for by statute, no counterclaims, cross claims, or third party claims may be filed in eviction
17 actions. Any counterclaim filed without a statutory basis shall be stricken and dismissed
18 without prejudice. All counterclaims must be filed in writing and served upon the opposing
19 party."
20

21 The RPEA only allows for counterclaims that are provided for by statute. Thus,
22 Petition R-24-0024 seeks to create a right that does not exist. If a landlord were to file a
23 complaint in an eviction proceeding and proceed with a notice that violates the CARES Act,
24 then a financing violation occurs. The CARES Act is separate from evictions laws codified
25 in Arizona statutes. As long as the landlord has complied with the Arizona statutory
26 requirements in an eviction proceeding the case should not be dismissed, as provided for in
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1 Petition R-24-0024. Any potential financing violation that could occur under the CARES
2 Act does not provide the tenant in an eviction action a separate cause of action.

3 Similarly, many federally backed mortgages require landlords to input certain tenant
4 protections. If a landlord did not comply with the tenant protections, the mortgage company
5 has a breach of contract claim. Tenants within the community do not have a separate cause
6 of action. Additionally, just as Congress can modify the language of the CARES Act,
7 mortgage companies may include stricter contractual terms at any time. A landlord's
8 compliance with the CARES Act and statutory eviction requirements under Arizona law are
9 separate and distinct. It is inappropriate to have a rule change that attempts to enter the micro
10 dynamics of financing and contractual obligations.
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12 Furthermore, "...parties have a legal right to make such contracts as they desire to
13 make, provided only that the contract shall not be for an illegal purpose or against public
14 policy."¹⁶ Petition R-24-0024 removes a landlord's Constitutional right to contract by
15 prohibiting a landlord from filing an eviction action until 30 days after the landlord provides
16 a tenant with a legal notice. A rule change is an inappropriate forum for Petitioners to change
17 constitutional, statutory, and contractual rights they disagree with.
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28 ¹⁶ *Com. Standards Ins. Co. v. Cleveland*, 86 Ariz. 288, 293 (1959).

1 **III. CONCLUSION.**

2 Petition R-24-0024 and the proposed rule change should be denied because Petition
3 R-24-0024 is a substantive not a procedural rule change and CARES Act violations are a
4 separate cause of action between the financing company and the landlord. Further,
5 Petitioners once again fail to set forth a nexus between the language in Petition R-24-0024
6 and the alleged problem.
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8 RESPECTFULLY SUBMITTED this 16th day of April, 2024.

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10 ZONA LAW GROUP, P.C.

11 By: /s/ Scott A. Baluha

12 Scott A. Baluha

13 *Attorneys for Commenting Party*
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CERTIFICATE OF SERVICE

COPY OF THE FOREGOING

Mailed this 16th day of April, 2024 to:

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