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

13 In the Matter of:

Supreme Court No. R-24-0023

14 PETITION TO AMEND APPENDIX  
 15 A, ARIZONA RULES OF  
 16 PROCEDURE FOR EVICTION  
 17 ACTIONS

**Comment to Petition to Amend Appendix  
 A, Arizona Rules of Procedure for  
 Eviction Actions**

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

24 In summary, Petitioners revised redline version of RPEA Appendix A  
 25 (“Petitioners’ Proposed Appendix A”) contains factually incorrect statements of the  
 26 law, restates duplicative and repetitive information, and provides no nexus between  
 the alleged harm and the Petitioners’ Proposed Appendix A. Petitioners’ Proposed

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Appendix A will only cause more confusion and harm for the litigants for whom the Petitioners’ allegedly advocate.

Petitioners again recite the same lengthy recitation of the harm of evictions and homelessness generally. Petitioners: (1) do not provide justification for the current rule change, and (2) do not clearly articulate the harm they seek to correct. This is another attempt to change evictions, not by looking at a specific issue, but solely by arguing that evictions are bad.

Petition R-24-0023 includes a cut-and-paste of the same justifications and arguments provided in every petition made by these tenant advocates: that tenants are uneducated, tenants are unrepresented, and the perils of evictions. Nothing new is stated identifying any evidence-based problem with RPEA Appendix A. It is yet another rule change by Petitioners attempting to unnecessarily complicate evictions in Petitioners’ Proposed Appendix A.

Petition R-24-0023 and the conflicting and repetitive verbiage proposed therein, highlights the problem of Petitioners not seeking input from advocates for property owners, who must consider issues beyond those raised by Petitioners. It’s clear that Petitioners’ Proposed Appendix A is one-sided and does not consider the unintended consequences of such language.

**I. STATEMENT OF INTEREST.**

The MHCA is a non-profit organization that protects and promotes the interest of Arizona’s manufactured housing community owners. MHCA is the largest

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manufactured housing community owners’ association in Arizona. The MHCA remains active within Arizona, by tracking legislative and legal issues, educating community owners and managers, and working to improve Arizona’s manufactured housing. Manufactured housing communities are one of Arizona’s greatest sources of low-cost/low-income housing.

**II. THE PETITION.**

Petitioners stated the alleged purpose behind Petition R-24-0023 is

The proposed rule amendment would make the current Sheet clearer and easier to read and understand so that unrepresented eviction litigants, including tenants facing the loss of their homes, are able to better navigate the eviction process, effectively represent themselves, and access all available resources. This in turn will help more tenants stay in their homes and help alleviate Arizona’s housing shortage problem.

<sup>1</sup> The Petitioners further justify Petition R-24-0023 by copying and pasting the same type of justifications previously stated within other proposed rule changes

Compounding the housing shortage issue is the fact that most tenants in eviction actions are unrepresented by counsel. Thus, most tenants facing eviction must figure out the court system and eviction process on their own, which can be complicated and confusing to persons inexperienced with landlord/tenant law. It is, thus, no surprise that most eviction actions end up with a judgment for the landlord and the tenant being forced to move.

<sup>2</sup> Petitioners attempt to bolster their claims by including a citation to a two (2) year old eviction statistic, “[i]n 2022 in Maricopa County alone, there were 39,705 eviction actions where the eviction was granted.”<sup>3</sup> Petitioners’ main point is that

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<sup>1</sup> Pet., at 6.  
<sup>2</sup> Pet., at 5.  
<sup>3</sup> Pet., at 5–6.

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evictions are generally bad and tenants are forced to leave rented properties. Among other issues, the main flaw in Petitioners logic is that changing the language within the RPEA Appendix A does not impact whether or not a tenant receives a judgment against them in an eviction action.

The MHCA’s redline of Petitioners’ Proposed Appendix A is attached to this comment and incorporated herein.

**A. PETITIONERS’ PROPOSED APPENDIX A CONTAINS INCORRECT STATEMENTS OF LAW.**

Petition R-24-0023 must be denied as it contains factually incorrect statements of the law. Petitioners’ Proposed Appendix A states “The tenant may file a counterclaim if the tenant believes the landlord violated the lease agreement or a federal or state law in some way.”<sup>4</sup> Counterclaims are only available in limited situations, are not permitted in all eviction actions, and alleged violations of federal law do not qualify as counterclaims in eviction actions. Petitioners, as counsel who appear in eviction actions, must know their language conflicts with the applicable statutes and case precedent. RPEA Rule 8(a) provides:

Unless specifically provided for by statute, no counterclaims, cross claims, or third party claims may be filed in eviction actions. Any counterclaim filed without a statutory basis shall be stricken and dismissed without prejudice. All counterclaims must be filed in writing and served upon the opposing party.

The RPEA only allows for counterclaims that are provided for by statute.

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<sup>4</sup> Pet’rs’ Proposed App. A., at 1.

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Specifically, under the Arizona Residential Landlord and Tenant Act,

In an action for possession based upon nonpayment of the rent or in an action for rent where the tenant is in possession, if the landlord is not in compliance with the rental agreement or this chapter, the tenant may counterclaim for any amount which he may recover under the rental agreement or this chapter...In an action for rent where the tenant is not in possession, the tenant may counterclaim as provided in subsection A but the tenant is not required to pay any rent into court.<sup>5</sup>

The statutory provisions above are not stated within the Arizona Mobile Home Parks Residential Landlord and Tenant Act or the Recreational Vehicle Long-Term Rental Space Act (“AMPRLTA”).<sup>6</sup> It is a blatant misstatement of the law to make a generalization that defendants in an eviction action can file a counterclaim without providing the qualifier that its only permitted by statute in a limited number of cases. The general rule is that counterclaims, offsets and cross complaints are not available either as a defense or for affirmative relief in eviction actions.<sup>7</sup>

Furthermore, Petitioners’ Proposed Appendix A states “Parties wishing to appeal from a judgment have five (5) days to do so after the judgment is entered and can obtain forms and information from the court filing counter...If the tenant wins, the court will dismiss the case.”<sup>8</sup> This statement is factually and legally incorrect. Petitioners are misleading defendants to a conclusion that if a defendant wins on appeal the direct result is the Superior Court will dismiss the case. A Superior Court’s order in favor of a defendant on appeal does not mean the Superior Court or the

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<sup>5</sup> A.R.S. § 33-1365.  
<sup>6</sup> See A.R.S. § 33-1401 *et seq.*; See A.R.S. § 33-2101 *et seq.*  
<sup>7</sup> See *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 205 (1946).  
<sup>8</sup> Pet’rs’ Proposed App. A., at 2.

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Justice Court will dismiss the case. Petitioners, as counsel, are aware that several outcomes could occur including the Justice Court entering a new judgment against the defendant after a new trial or merely to correct a clerical error in the record. The Superior Court may affirm, affirm in part, reverse, reverse in part, dismiss, or modify the rulings of a Justice Court in an eviction action.

Petitioners, once again, are not only misleading this Court, but are providing defendants in eviction actions half-truths. Petitioners maintain RPEA Appendix A ...is a one-page sheet that provides a general overview of the eviction process. The Sheet has provided valuable information to eviction litigants. However, it has at times caused confusion, especially among tenants, who are far less likely to have legal counsel in eviction cases and far more likely to rely on the Sheet for information about their rights.

<sup>9</sup>As stated by Justice Sandra Day O'Connor "I don't know that there are any short cuts to doing a good job." Instead of Petitioners petitioning for carefully considered and formed rule changes to advocate for tenants, Petitioners request this Court amend RPEA Appendix A to include factually incorrect statements of the law. These statements are misleading and will only create more confusion and issues for litigants, many of whom, Petitioners allegedly advocate for.

**B. PETITIONERS' REVISIONS TO RPEA APPENDIX A ARE DUPLICATIVE AND UNNECESSARY.**

RPEA Appendix A requires that "[a] landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have

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<sup>9</sup> Pet., at 3.

1 received this notice before this lawsuit was filed or with the summons.” Petitioners  
2 even add separate sections within Petitioners’ Proposed Appendix A, specifically  
3 addressing the summons and complaint.<sup>10</sup> However, the summons and complaint are  
4 served together with RPEA Appendix A. In other words, the information Petitioners  
5 request to add is already listed within the corresponding documents. Repeating the  
6 same information that is included in the summons and complaint is duplicative,  
7 repetitive, and unnecessarily expands the length of the RPEA Appendix A.  
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10 Furthermore, Petitioners’ request to include a separate section for the initial  
11 hearings in court in Petitioners’ Proposed Appendix A.<sup>11</sup> The information Petitioners  
12 request to include discusses telephonic appearance, default judgments, and  
13 implications for a defendant’s credit report, among other items.<sup>12</sup> However, excluding  
14 implications for a defendant’s credit report, the same information is already listed  
15 within the before court section of Petitioners’ Proposed Appendix A.<sup>13</sup> As to the credit  
16 report information, undersigned counsel is unaware of any other area of the law,  
17 where such information is provided with a summons and complaint.  
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21 Petitioners when discussing RPEA Appendix A state, “[t]he Sheet has  
22 provided valuable information to eviction litigants. However, it has at times caused  
23 confusion, especially among tenants, who are far less likely to have legal counsel in  
24 eviction cases and far more likely to rely on the Sheet for information about their  
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27 <sup>10</sup> Pet’rs’ Proposed App. A., at 1.  
28 <sup>11</sup> Pet’rs’ Proposed App. A., at 2.  
<sup>12</sup> Pet’rs’ Proposed App. A., at 2.  
<sup>13</sup> Pet’rs’ Proposed App. A., at 1.

1 rights.”<sup>14</sup> Petitioners acknowledge defendants rely on RPEA Appendix A for  
2 information, then request this Court to add duplicative and repetitive information that  
3 does nothing more than overcomplicate a document that should be one page, clear,  
4 and concise. If defendants, as the intended audience, are unable to understand the  
5 current version of the RPEA Appendix A, then repeating the same information  
6 multiple times does nothing but cause more confusion.  
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9 **C. NO NEXUS EXISTS BETWEEN PETITIONERS’ INTENDED**  
10 **GOAL AND PETITIONERS’ PROPOSED APPENDIX A.**

11 Petitioners provide legal services, or advocacy, or both, for low-income  
12 residents in Arizona.<sup>15</sup> The main theme of Petitioners’ proposed rule change, as in  
13 every rule change Petitioners submit, is that evictions are bad.<sup>16</sup> Petitioners do not  
14 want defendants to be removed from their homes, regardless if a defendant fails to  
15 tender rent, causes a material health and safety issue in the community, or is  
16 noncompliant with the rental agreement. However, Petition R-24-0023 does nothing  
17 to stop defendants from receiving a judgment in an eviction action. Petitioners’  
18 intended goal has nothing to do with the language stated within RPEA Appendix A.  
19 Petitioners’ anecdotal evidence does not justify the requested rule change. Simply,  
20 the Petitioners refuse to provide substantive research or statistics to support their  
21 arguments.  
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<sup>14</sup> Pet., at 3.  
<sup>15</sup> See Pet., at 2–3.  
<sup>16</sup> See Pet.

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Petitioners attempt to bolster their argument that defendants are unable to understand the current RPEA Appendix A by stating

In Arizona, there is a shortage of approximately 136,282 rental homes that are affordable and available for extremely low-income renters, who account for about 20 percent of the population. Of the housing inventory that is available, it can be near impossible for a low-income family to successfully secure an available apartment or house. To be able to afford a two-bedroom rental home at the Fair Market Rent, an Arizona family needs an annual household income of \$62,252, far higher than the approximately \$26,500 average annual income of a low-income household.

<sup>17</sup>The information and statistics provided by Petitioners has no correlation with clarifying the language of the RPEA Appendix A for defendants. Nor does the information support Petitioners' claims that defendants don't understand the current RPEA Appendix A. The information relates to Petitioners' underlying goal of stopping eviction actions and prohibiting landlords from exercising their constitutional and statutory rights. This conclusion is reinforced by the fact that Petitioners biasedly state the information is for tenants instead of providing the information for all parties involved in the litigation.<sup>18</sup> Petitioners, who primarily assist defendants, also request to include their contact information within RPEA Appendix.<sup>19</sup> Petitioners fail to adequately address what would occur if the requested information is changed or if the listed agencies become unfunded. In that scenario, a Defendant's alleged confusion would only be exacerbated.

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<sup>17</sup> Pet., at 4–5.  
<sup>18</sup> See Pet'rs' Proposed App. A.  
<sup>19</sup> Pet'rs' Proposed App. A., at 1.

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Petitioners state:

The proposed rule amendment would make the current Sheet clearer and easier to read and understand so that unrepresented eviction litigants, including tenants facing the loss of their homes, are able to better navigate the eviction process, effectively represent themselves, and access all available resources. This in turn will help more tenants stay in their homes and help alleviate Arizona’s housing shortage problem.

<sup>20</sup> If Petitioners goal is to make RPEA Appendix A more understandable, then repetitive and duplicate information only complicates the eviction process for defendants. Generally, the more information one provides in RPEA Appendix A, the less likely defendants are going to read it. Additionally, defendants can’t navigate the eviction process effectively if they are basing their decisions on factually incorrect legal statements.

Further, if RPEA Appendix A is made longer than one page, then it will increase the cost of evictions, and make the information less concise, ultimately hurting the defendants they claim to be helping.

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<sup>20</sup> Pet., at 6.

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**III. CONCLUSION.**

Petition R-24-0023 and Petitioners’ Proposed Appendix A should be denied because Petitioners state incorrect statements of law, include repetitive and duplicate information, and have failed to articulate a specific problem which is supported by data. Further, Petitioners fail to set forth a nexus between the language in the Petitioners’ Proposed Appendix A and the alleged problem.

RESPECTFULLY SUBMITTED this 23rd day of April, 2024.

ZONA LAW GROUP, P.C.

By: /s/ Scott A. Baluha  
Scott A. Baluha  
*Attorneys for Commenting Party*

CERTIFICATE OF SERVICE

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COPY OF THE FOREGOING

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