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6 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

7 In the Matter of:

8 **PETITION TO AMEND THE**
9 **RULES OF PROCEDURE FOR**
10 **EVICITION ACTIONS**

Supreme Court No. R-16-0040

COMMENTS ON
PROPOSED RULE

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12 The Arizona Real Estate Investors Association (“AZREIA”) hereby submits
13 its Comments on the Petition to Amend the Rules of Procedure for Eviction Actions
14 (“Petition”) regarding the use of mandated forms for notices and court pleadings.
15 As demonstrated below, AZREIA members will suffer financial harm if the
16 proposed Rule passes, without having an opportunity for meaningful input.
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19 The Petition sets forth proposed court rules that should be addressed in the
20 legislature, not the judicial system. The fact that the Arizona Commission on
21 Access to Justice (“ACAJ”) did not mandate any forms for tenants serving notices
22 or filing counterclaims in evictions, shows that the Commission’s intent was not to
23 create equal access among litigants but to burden landlords with technical
24 obligations not set forth by statute. The unequal treatment of landlords and tenants
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1 by the ACAJ underscores the fact that the proposal is a legislative determination
2 and not a judicial one. AZREIA hereby incorporates the Comments submitted by
3 undersigned counsel’s firm on behalf of the Manufactured Housing Communities of
4 Arizona, as well as the comments submitted by Paul Henderson and Denise
5 Holliday.
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8 **AZREIA**

9 AZREI is a professional membership association of over 2,000 independent
10 real estate investors. AZREIA chapters in Phoenix, Tucson, and Prescott serve the
11 educational, informational, networking, and support needs of its members to further
12 their success in providing housing to their local communities. AZREIA members
13 invest in residential, small multi-family, and commercial property. AZREIA is a
14 member of the National Real Estate Investors Association, which represents over
15 40,000 independent real estate investors throughout the United States. AZREIA
16 has repeatedly received the National REIA Award of Excellence for Overall Best
17 REIA in the Country.
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21 AZREIA members are separate and distinct from many institutional investors
22 in that they are more actively involved in the day-to-day management of their
23 properties, and many are referred to as “mom and pop” landlords. Members consist
24 of both landlords that handle their legal needs themselves based upon education that
25 AZREIA provides, as well as landlords that retain attorneys to draft their notices
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1 and legal pleadings, including evictions. These landlords are regular people who
2 invest in real estate to provide housing for tenants, and rely upon the income stream
3 it creates.
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5 INTRODUCTION

6 Several of the Comments set forth the history of the ACAJ regarding the lack
7 of meaningful input from entities representing landlords. These comments imply
8 an unfair process by which the current Petition was created, and raises questions
9 about the intent of the ACAJ. This is partially evidenced by the ACAJ's failure to
10 propose mandatory forms for tenants to use. The complete absence of any
11 requirements for tenants, while mandating technical forms for landlords,
12 demonstrates the inherent bias in the proposed Rule. The proposed Rule treats
13 litigants different based upon their status in a given class without any legislative
14 consideration to public policy.
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19 In its brief, the ACAJ stated, "ACAJ concluded the forms should be
20 mandated rather than optional to better promote improved readability of and
21 consistency in forms used by attorneys, landlords and judges." Petition to Amend
22 Rules, page 3. If this were the case, the ACAJ should have primarily been
23 concerned with the forms used by tenants serving landlords notices or filing
24 counterclaims in eviction actions. It is more common for a tenant to handwrite a
25 notice or pleading, whereas landlord attorneys and private notice providers already
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1 have standardized forms and pleadings for landlords to use. If the true intent is to
2 facilitate “readability and consistency” as alleged, mandatory forms would be
3 required for tenants instead of, or in addition to, landlords. Rather, it appears that
4 the purpose of the Petition is to create impediments for landlords seeking to regain
5 possession from defaulting tenants. If landlords, however, were to propose that
6 forms be mandated for tenants to use, tenant advocates would undoubtedly argue
7 that it was an attempt to deny tenants their right to provide notice by creating
8 unnecessary burdens.
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12 Under the Arizona Residential Landlord and Tenant Act, a tenant has a right
13 to serve several notices to a non-compliant landlord. *See* A.R.S. §§ 33-1341(8),
14 -1361, -1362, -1363 and -1364. Furthermore, in a non-payment of rent eviction
15 action, pursuant to A.R.S. § 33-1365, a tenant may raise permissible counterclaims
16 which are founded in statute. Despite the plethora of notices and counterclaims a
17 tenant may serve or file, the ACAJ was not concerned with “improved readability
18 of and consistency in [these] forms.”
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21 Requiring forms for landlords, but not tenants, raises concerns regarding (1)
22 creating unnecessary burdens for landlords, and (2) equal protection issues.
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24 **I. THE PETITION WILL VICTIMIZE AZREIA MEMBERS**
25 **AND ALL SELF-REPRESENTED LANDLORDS.**

26 Administrative Order 2014-83 directed “the ACAJ to make
27 recommendations on assisting self-represented litigants and revising court rules and
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1 practices to facilitate access and the efficient processing of eviction cases.” Petition
2 to Amend Rules, page 2. Despite this, the ACAJ Petition does not facilitate access
3 to the courts by self-represented landlords, but rather creates technical impediments
4 that will only serve to needlessly delay self-represented landlords from obtaining
5 possession of property from defaulting tenants.
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8 As cited in the Comments filed by the Manufactured Housing Communities
9 of Arizona:

10 In 2007, however, the District of Columbia Bar made note of these problems:

11 Unrepresented landlords, who usually own a single dwelling or a
12 small number of units, also face difficulties in court, specifically on
13 technical matters such as filling out a complaint form correctly or not
14 understanding their obligations under the District’s rental housing
15 statutes and regulations, said King.¹

16 The Boston Bar Association has stated:

17 The Task Force also recognized that a landlord might be vulnerable
18 and included a proposal for representation for landlords for whom
19 shelter was at stake and where the tenant was represented.²

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21 It is clear that self-represented landlords are at a unique disadvantage
22 compared to other litigants. Many AZREIA members, like thousands of other
23 “mom and pop” landlords, rely upon their rental properties as part of, or as their
24 sole stream of, their monthly revenue. To ensure that they are able to pay their
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27 ¹ Justice to All: The Continuing Work of the Access to Justice Commission, *Washington Lawyer*, April
28 2007

1 mortgage, they rely upon the streamline eviction process created by the legislature
2 to enable them to get possession from defaulting tenants. *See Olds Bros. Lumber*
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4 *Co. v. Rushing*, 64 Ariz. 199, 204, 167 P.2d 394, 397 (1946)(“the object of such an
5 action is to afford a summary, speedy and adequate remedy for obtaining
6 possession of the premises withheld by a tenant in violation of the covenants of his
7 tenancy or lease.”) It is because of this legislation that thousands of investors flock
8 to Arizona, as opposed to other states, to own rental properties.
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11 Due to narrow profit margins, many such landlords represent themselves to
12 avoid spending needless attorneys’ fees to evict a tenant when it is undisputed the
13 rent has not been paid. Further, AZREIA members who use an attorney to file an
14 eviction may still potentially face delay or having their evictions dismissed if they
15 use the same notice they used for years that meets the statutory mandate but not the
16 new rule.
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19 If the Petition is adopted, it will cause irreparable harm to many AZREIA
20 members for years to come. This will happen in two ways. First, landlords will
21 have their cases dismissed for mere technicalities, which will result in lost rent and
22 affect their ability to pay their mortgage. Second, other AZREIA landlords who
23 handle their cases themselves will be forced to expend additional resources by
24 hiring an attorney for their notices and evictions to ensure compliance, despite
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27 ² *The Importance of Representation in Eviction Cases and Homelessness Prevention*, Boston Bar
28 Association, March 2012, page 10.

1 wanting to do the work on their own. This is because the proposed Complaint is
2 confusing, and will deter landlords from representing themselves. In other words, it
3 prevents the access to justice that is the mission statement of the ACAJ.
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5 Many AZREIA members have used use their own statutorily-compliant
6 notices for years. The Petition will require that evictions filed predicated on such
7 notices will be dismissed, even when each statutory element for an eviction action
8 has been met. While AZREIA understands the serious nature of evictions for
9 tenants, it also understands the critical importance that the eviction process plays
10 for investors. If the eviction process is delayed to accommodate new technicalities,
11 it will simply enable tenants to stay in member properties for longer time without
12 paying rent. This will directly result in an unnecessary financial burden for making
13 mortgage payments for both AZREIA members and similarly situated individual
14 landlords throughout Arizona. It is also likely that such action will result in rents
15 being increased to account for extended periods of time when rent is not paid,
16 which is the case in other states.
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21 AZREIA members have selected Arizona to invest in real estate due to the
22 statutory nature of evictions. The hastily drafted Petition has not considered the full
23 implications in imposing new requirements without sufficient justification, and the
24 overall effect it will have on the residential rental market. These issues are public
25 policy decisions that the legislature needs to make, and not this Court.
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II. THE PROPOSAL RAISES EQUAL-PROTECTION ISSUES BY CREATING MANDATORY FORMS FOR LANDLORDS, BUT NOT FOR TENANTS.

When landlords and tenants are treated unequally, it raises equal protection issues. It further highlights the Rule’s impermissibility because it requires public policy considerations, which are a legislative, not judicial, function.

“The equal protection clauses of the state and federal constitutions generally require that all persons subject to state legislation shall be treated alike under similar circumstances.” *Vong v. Aune*, 235 Ariz. 116, 123, ¶ 32, 328 P.3d 1057, 1064 (App. 2014).

To establish an equal protection violation, a party must establish two facts. First, the party must show that it was treated differently than other people in the same “similarly situated” class. Second, when, as here, that disparate treatment does not “trammel fundamental personal rights or implicate a suspect classification,” the party needs to show that the classification bears no rational relation to a legitimate state interest.”

Aegis of Arizona, L.L.C. v. Town of Marana, 206 Ariz. 557, 570–71, ¶ 54, 81 P.3d 1016, 1029–30 (App. 2003), as corrected (Dec. 22, 2003)(internal citation omitted).

In determining the rational state interest, “[C]ourts are compelled under rational-basis review to accept a **legislature's** generalizations even when there is an imperfect fit between means and ends.” *Vong*, 235 Ariz. at 123, ¶ 32, 328 P.3d at 1064 (emphasis added).

...

1 “It is well-established that **legislation** may discriminate among classes as
2 long as the burden imposed on the affected class is justifiable.” *Standhardt v.*
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4 *Superior Court ex rel. County of Maricopa*, 206 Ariz. 276, 289, ¶ 43, 77 P.3d 451,
5 464 (App. 2003)(emphasis added). In other words, when litigants in a case are
6 treated differently, it is a legislative determination, not a judicial one, if there is a
7 justifiable public policy reason underlying the disparate treatment. When the
8 determination is based upon a social or economic reason, such as presumed herein,
9 the court’s only duty is to determine where the rule “rationally related to a
10 **legitimate government purpose.**” *Church v. Rawson Drug & Sundry Co.*, 173
11 Ariz. 342, 350, 842 P.2d 1355, 1363 (App. 1992)(emphasis added).
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14 The proposal by the ACAJ is an attempt to make a legislative determination
15 without involving the legislature by circumventing the regular policy analysis used
16 to enact statutes. The ACAJ is attempting to force landlords to use mandated, court
17 approved forms and pleadings, and no such requirement is imposed upon tenants
18 and is not required by law.
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21 As noted in the Comments submitted by this firm on behalf of the
22 Manufactured Housing Communities of Arizona, there is no evidence that a cost-
23 benefit analysis was undertaken; there was a complete failure by the ACAJ to
24 consider the financial impact on private businesses engaged in selling forms as well
25 as the financial impact upon self-represented landlords. *See* ARS § 41-2752 (A
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1 state agency shall not engage in the manufacturing, processing, sale, offering for
2 sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or
3 services to the public that are also offered by private enterprise unless specifically
4 authorized by law other than administrative law and executive orders”). These
5 policy determinations can only be made by the legislature.
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8 **CONCLUSION**

9 The Petition demonstrates raises significant public policy considerations that
10 were not properly vetted and which are exclusively reserved for the legislature. It is
11 clear that no meaningful review was given as to the effect the Petition would have
12 upon individual landlords. In the event that the Petition is approved, it will have
13 immediate and irreparable harm to AZREIA members without meaningful review
14 and input.
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17 RESPECTFULLY SUBMITTED this 23rd day of September, 2016.
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19 **Williams, Zinman & Parham, P.C.**
20 (Electronically Signed)

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22 By: Mark B. Zinman

23 A copy of this comment has been e-mailed
24 this 23rd day of September 2016 to:

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