

ARIZONA COURT OF APPEALS

DIVISION ONE

BARRY GOLDWATER INSTITUTE
FOR PUBLIC POLICY RESEARCH,

Plaintiff/Appellant,

v.

CITY OF PHOENIX; JEFF BARTON;
DENISE ARCHIBALD, and SHEREE
RUCKER,

Defendants/Appellees.

No. 1 CA-CV 24-0176

Maricopa County Superior Court
No. CV2023-003250

DEFENDANT/APPELLEES RESPONSE TO BRIEF OF AMICI CURIAE
PODER IN ACTION AND AMERICAN CIVIL LIBERTIES
UNION OF ARIZONA

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INTRODUCTION

The Brief of Amici Curiae Poder in Action and the American Civil Liberties Union of Arizona (the “Brief”) largely regurgitates arguments already made by Appellant Barry Goldwater Institute for Public Policy Research (the “Goldwater Institute”). For instance, the Brief’s lengthy discussion of the alleged misapplication of the “best interest of the state” exception is duplicative of the extensive briefing by the parties on the identical issue. In this regard, the Brief adds nothing novel for this Court’s consideration.

To the extent that the Brief strays from the issues already raised by the Goldwater Institute, Amici are attempting to introduce new arguments and evidence, thereby exceeding their permissible role. In accordance with longstanding precedent, this Court should decline to consider any matters that the parties did not raise or present during the trial court proceedings.

ARGUMENT

Much of the evidence and arguments relied upon by Amici Poder in Action and the American Civil Liberties Union of Arizona (collectively, “Amici”) exceed the permissible scope of amicus briefs under Arizona law. Arizona jurisprudence firmly establishes that amicus briefs cannot “create, extend, or enlarge issues beyond those raised and argued by the parties.” *Town of Chino Valley v. City of*

Prescott, 131 Ariz. 78, 84 (1981) (citing City of Tempe v. Prudential Ins. Co. of America, 109 Ariz. 429 (1973)). Amici’s Brief violates this principle.

The narrow question before this Court is whether the Superior Court correctly determined that the “best interest of the state exception” justifies non-disclosure of draft bargaining proposals based on the evidence presented to the Superior Court, including testimony, pleadings, exhibits, and motions. *See* Def/Appellees Answering Br. at 11. However, the Brief exceeds this scope by extensively citing material outside the record, discussing issues not previously raised at the trial court level, and making ancillary attacks against police unions.

For example, a central focus of the Brief is an in-depth exploration of “the power of police unions to block police reform throughout the United States and in Phoenix.” *See* Brief at 7. However, this issue was not raised at the trial court level and, therefore, cannot be asserted by the Amici. Likewise, the discussion about the alleged impact of police unions on police reform exceeds the scope of the issues litigated below. *See generally*, Brief at 12-18.

Put simply, Amici have attempted to impermissibly “create, extend, or enlarge issues” beyond those raised and argued by the parties. Instead, their Brief reads more like a policy-based law review article than a permissible legal submission, thereby running afoul of the following admonition by the American Bar Association:

The role of an appellate court is to decide and apply the law. It does not legislate. Given the court's role, an amicus brief comprised of legal arguments more properly directed at the legislature, and not the court, is not helpful to the court.

Cathy S. Trent-Vilim, *The Dos and Dont's of Crafting a Strategic and Helpful Amicus Brief*, American Bar Association, February 17, 2023. [Link](#).

To make matters worse, Amici also launched unnecessary and irrelevant attacks on the police association involved in this case, claiming the union has a “proven record of obstructing attempts at accountability or oversight.” *See* Brief at 16. Besides being wholly opinion-based and unsupported by the trial court record, these attacks do nothing to advance the legal issues being decided on appeal. A proper amicus brief should aim to assist the Court by illuminating the questions before it, not by introducing new issues, expanding the record on appeal, or lodging irrelevant attacks, as is occurring here. This Court should disregard Section III of the Brief, which attempts to use extrinsic evidence to highlight the alleged role of unions in obstructing police reform, in its entirety.

The Court should also reject the following cited material, which falls outside the trial court record:

- Adeshina Emmanuel, *How Union Contracts Shield Police Departments from DOJ Reforms*, IN THESE TIMES (June 21, 2016)
- Barack Obama, *Transparency and Open Government: Memorandum to Heads of Executive Departments and Agencies*, The White House (Jan. 21, 2009)

- Dhammika Dharmapala, Richard H. McAdams, & John Rappaport, *Collective Bargaining Rights and Police Misconduct: Evidence from Florida*, J. OF L., ECON., AND ORGANIZATION 38 (2022).
- James Madison letter to W. T. Barry (August 4, 1822)
- Justin Price, *Phoenix police routinely ‘purge’ officer discipline records, keep misconduct secret* AZ CENTRAL (Aug. 23, 2019)
- Kathryn McKelvey *et al.*, *Exploratory Analysis of Nix the 6 Collective Bargaining Agreements* (CBAs) 28 (2023)
- Mark P. Thomas & Steven Tufts, *Blue Solidarity: Police Unions, Race and Authoritarian Populism in North America* 34 WORK, EMPLOYMENT AND SOCIETY 126 (2020)
- Melissa Blasius, *Phoenix officers union releases report challenging DOJ’s use-of-force findings* ABC 15 ARIZONA (Aug. 29, 2024)
- Peter Valencia, *Letter: Rep. Ruben Gallego opposes consent decree between DOJ and Phoenix PD*, AZ Family (Aug. 27, 2024)
- Phoenix Law Enforcement Association, *Approved Bills in 2022*, OUR MAGAZINE (Sept. 1, 2022)
- Poder in Action, *Who We Are* (June 25, 2018)
- Police Accountability Task Force, *Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve* 70 (2016)
- Robert M. Fogelson, *Big-City Police: An Urban Institute Study* (1977)
- Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS UNIV. PUB. L. REV. 57 (2012)

- Samuel Walker, *The Neglect of Police Unions: Exploring One of the Most Important Areas of American Policing*, 9 POLICE PRAC. & RES. 95 (2008)
- Serena O’Sullivan, *New survey shows many Phoenix police officers would consider leaving if DOJ takes over*, KTAR NEWS 92.3 FM (Jul. 3, 2024)
- Sullivan *et al.*, *In Fatal Shootings by Police, 1 in 5 Officers' Names Go Undisclosed*, WASHINGTON POST (Apr. 1, 2016)
- Tina Daunt, *Police Union Sues to Block Federal Consent Decree*, L.A. TIMES (Oct. 11, 2000)
- TJ L’Heureux, *How Phoenix undercut its own police oversight agency*, PHOENIX NEW TIMES (April 2, 2024)
- U.S. Dept. of Just., Civil Rights Division, *Investigation of the Phoenix Police Dept.: Executive Summary*
- Walter Katz, *Beyond Transparency: Police Union Collective Bargaining and Participatory Democracy*, 74 SMU L. REV. 419 (2021)

To the extent that the Brief does not expand the issue or introduce new evidence, it is repetitive of arguments already raised in the Goldwater Institute’s prior briefing. Therefore, it is the City’s position that no further response is required to address these arguments.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court disregard the new arguments and evidence cited in the Brief of Amici Curiae Poder in Action and the American Civil Liberties Union of Arizona.

RESPECTFULLY SUBMITTED this 18th day of November 2024.

By /s/ Stephen B. Coleman

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