

IN THE SUPREME COURT OF THE STATE OF NEVADA

OFFICE OF THE CLERK

ELK POINT COUNTRY CLUB  
HOMEOWNERS, ASSOCIATION, INC., also  
known as ELK POINT COUNTRY CLUB,  
INC., a Nevada non- profit, non-stock  
Corporation,

Appellant,

v.

K.J. BROWN, L.L.C., a Nevada limited  
liability company; TIMOTHY D. GILBERT  
and NANCY AVANZINO GILBERT, as  
trustees of the TIMOTHY D. GILBERT AND  
NANCY AVANZINO GILBERT  
REVOCABLE FAMILY TRUST DATED  
DECEMBER 27, 2013,

Respondents.

Supreme Court No. 82484

District Court Case No. 2020-CV-00124

Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S OPPOSITION TO  
MOTION FOR LEAVE TO FILE  
AMICI CURIAE BRIEF OF  
PROPERTY OWNERS IN SUPPORT  
OF RESPONDENTS**

Appellant, ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC., also known as ELK POINT COUNTRY CLUB, INC., ("Appellant") by and through its counsel of record, hereby submit this Opposition to Motion for Leave to File Amici Curiae Brief of Property Owners in Support of Respondents based on the failure to demonstrate that Proposed Amici have any distinct interests which are not adequately represented by Respondents and that their proposed *amicus curiae* brief will assist the Court in a manner separate from Respondents' Answering Brief pursuant to NRAP 29(c).

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## LEGAL ARGUMENT

***A. Proposed Amici have failed to demonstrate that they have any distinct interests which are not adequately represented by Respondents and that their proposed amicus curiae brief will assist the Court pursuant to NRAP 29(c).***

Pursuant to NRAP 29(c), a motion for leave to file an amicus brief shall be accompanied by the proposed brief and state: (1) the movant's interest and (2) the reasons why an amicus brief is desirable. The function of amici is to aid the court in resolving a matter of public interest, supplement counsel's efforts, and illustrate law that might otherwise fail to be considered. *See, Miller-Wohl Co. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982). Nonetheless, "[t]he vast majority of *amicus curiae* briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief. Such *amicus* briefs should not be allowed." *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999) (quoting *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997)). Further, *amicus curiae* briefs will not assist the Court if the issues raised therein substantially mirror those already raised on appeal. *See, Dow Chem. Co. v. Mahlum*, 115 Nev. 13, 15 n.1, 973 P.2d 842, 843 (1999).

Proposed Amici do not have any interests in the pending appeal that are distinct and separate from Respondents such that their interests are not adequately represented within the briefing already submitted to the Court. Proposed Amici are two property owners in the Elk Point Subdivision who allege that they are currently being exposed to potential damages while the preliminary injunction at issue within this appeal is not in place. Proposed Amici allege that they face potential damages such as being held personally liable for tax fraud, and having to pay IRS back taxes, penalties and interest accumulated from Elk Point Country Club's inception if the 26 USCS § 501(c)(7) tax-exempt status is revoked. This is precisely the same position raised by

Respondents in their Answering Brief as they are also property owners in the Elk Point Subdivision. As such, Proposed Amici have the same objective as Respondents: to re-establish enforcement of the preliminary injunction which would require Appellant to prohibit its social club members from deriving any revenue or profit from the operation of their properties and facilities within the Elk Point Subdivision and prohibit, prevent, and enjoin any transient commercial use and long-term rental use anywhere within the Elk Point Subdivision. Proposed Amici did not identify any conflicting interests or point to any arguments that Respondents had not made in support of such position. Accordingly, Proposed Amici have failed to show any distinct interests that are adequately represented by Respondents in this matter and their motion should be denied.

Furthermore, the motion should be denied because the issues raised within the proposed *amicus curiae* brief substantially mirror those already raised in Respondents' Answering Brief and provide nothing further to assist the Court. *See, Dow Chem. Co. v. Mahlum*, 115 Nev. 13, 15 n.1, 973 P.2d 842, 843 (1999). The proposed *amicus curiae* brief asserts arguments that loss of the 26 USCS § 501(c)(7) tax-exempt status could result in irreparable harm by way of the dissolution of the Elk Point Country Club due to the potential tax liability and that Appellant failed to refute the expert opinions of Michelle Salazar regarding loss of the 26 USCS § 501(c)(7) tax-exempt status.

Not only was the argument regarding irreparable harm due to potential loss of Appellant's USCS § 501(c)(7) tax-exempt status fully briefed within Respondents' Answering Brief, but the points raised by Proposed Amici regarding dissolution do not provide any illustrations of law that might have escaped consideration since Proposed Amici simply cite to several Bylaws and statutes without any reasoning as to how or when they might apply. The contention that dissolution might occur if Appellant's USCS § 501(c)(7) tax-exempt status was revoked is merely another factual scenario of potential damage to add to the list of possibilities claimed by Respondents such as tax

fraud and having to pay back taxes, penalties and interest which Respondents addressed in their Answering Brief.

Additionally, the arguments included in the proposed *amicus curiae* brief regarding the expert opinions of Michelle Salazar are simply duplication of those asserted by Respondents in their Answering Brief and do not add anything to assist the Court in any manner. Respondents argued in their Answering Brief that the district court's findings were based on expert testimony presented by Michelle Salazar who was fully qualified to speak on the issue of the 26 USCS § 501(c)(7) tax-exemption, therefore, no error occurred when the preliminary injunction was granted. A transcript of Michelle Salazar's entire testimony at the hearing was also provided within Appellant's Appendix. *See*, 10 AA 634-879. Recitation of Michelle Salazar's testimony and opinions in the proposed *amicus curiae* brief provides nothing more than an improper extension of Respondent's Answering Brief.

Accordingly, because the issues raised within the proposed *amicus curiae* brief substantially mirror and extend those already raised in Respondents' Answering Brief, the proposed *amicus curiae* brief does not assist the Court and the motion should be denied.

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### CONCLUSION

Appellant respectfully submits Proposed Amici have failed to demonstrate that they have any distinct interests which are not adequately represented by Respondents and that their proposed *amicus curiae* brief would be deisreable pursuant to NRAP 29(c). Thus, the instant motion should be denied.

DATED this 22<sup>nd</sup> day of December, 2021.

*/s/ Prescott T. Jones*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that service of the foregoing **APPELLANT'S OPPOSITION TO MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF OF PROPERTY OWNERS IN SUPPORT OF RESPONDENTS** was served this 22<sup>nd</sup> day of December, 2021, by:

- [ ] **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.
- [X] **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to NEFCR 9.

*/s/ Susan Carbone*

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An Employee of Resnick & Louis, P.C.