

RECEIVED APR 02 2004

ARIZONA SUPREME COURT

HAROLD DONALD STANDHARDT, a  
single man; TOD ALAN KELTNER, a  
single man,

Petitioners,

v.

MICHAEL K. JEANES, CLERK OF THE  
SUPERIOR COURT OF THE STATE OF  
ARIZONA, in and for the County of  
Maricopa,

Respondent,

STATE OF ARIZONA,

Real Party in Interest.

No. CV-03-0422-PR

Court of Appeals No.  
1 CA-SA 03-0150

**STATE'S MOTION TO  
STRIKE AMICUS BRIEF**

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Attorneys for the State of Arizona

Respondent State of Arizona hereby objects to the length of the amicus brief that amicus curiae the Arizona Civil Liberties Union (ACLU) filed on March 31, 2004. Although the Arizona Rules of Civil Appellate Procedure (ARCAP) do not specifically address the filing of amicus documents in this Court at the petition for review stage, the State is aware that the Court permits such documents to be filed. The State therefore does not object to the ACLU's filing of an amicus petition for review. The State questions, however, whether an amicus should be permitted to file a twenty-four page brief at this stage of the case when the parties are limited to filing twelve-page petitions or responses. *See* ARCAP 23(c). The State believes that this question is especially pertinent in this case because the ACLU filed an amicus brief in the court of appeals that simply asked the court to decline to accept special action jurisdiction so that the issues presented could be better developed in the trial court. The ACLU did not in the alternative present the court of appeals with any of the information that it now presents to this Court in support of granting review and reversing the court of appeals' determination.

The ARCAP do not clearly establish page limits for amicus documents filed in this Court. Rule 23(k) simply provides that the Court "may permit participation by amicus curiae as provided for in Rule 16 of these rules." While

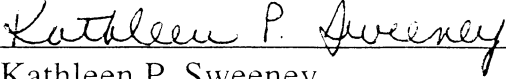
ARCAP 16(b) addresses the time limits for filing amicus briefs after the Court has granted a petition for review, it does not specifically address the page limits that apply to such briefs or to amicus filings at the petition for review stage. Rule 16(a) provides that amicus briefs are limited to 12,000 words if written in proportionately spaced typeface and to 35 pages if written in monospaced typeface. In contrast, ARCAP 14(b) limits the principal briefs of the parties in the court of appeals to 14,000 words if written in proportionately spaced typeface and to 40 pages if written in monospaced typeface. Rule 16(a) therefore appears to establish the principle that at least in the court of appeals, amicus curiae are not permitted to file briefs that are longer than the principal briefs that the parties can file. (The Federal Rules of Appellate Procedure [FRAP] embody a similar principle and limit amicus briefs to “no more than one-half the maximum length authorized by these rules for a party’s principal brief” absent the Court’s permission. FRAP 29(d).)

Because the rules do not address page limits, the State asks that the Court clarify whether an amicus curiae may file an amicus petition for review that exceeds the page limits that govern the parties’ petitions for review or responses. If the Court determines that an amicus curiae is not permitted to do so, the State requests that the Court strike the ACLU’s brief and permit the ACLU to file a

petition that does not exceed twelve pages.

Respectfully submitted this 1st day of April, 2004.

Terry Goddard  
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Kathleen P. Sweeney  
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## CERTIFICATE OF SERVICE

Original and four copies of the foregoing  
filed this 1st day of April, 2004 with:

Arizona Supreme Court  
1501 West Washington  
Phoenix, Arizona 85007

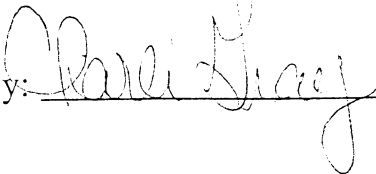
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By:  \_\_\_\_\_