

IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

MAGGY HURCHALLA,

Appellant,

Case No. 4D18-1221

v.

LAKE POINT PHASE I, LLC, and
LAKE POINT PHASE II, LLC,
Florida Limited Liability Companies,

Appellees.

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The League of Women Voters of Florida, Florida Press Association, Florida Society of News Editors, Sierra Club, Natural Resources Defense Council, Inc., American Civil Liberties Union Foundation of Florida, Fane Lozman, and the Brechner Center (collectively, “*Amici*”), by and through their undersigned counsel, seek leave to join with the First Amendment Foundation in presenting a joint *amicus curiae* brief to this Court in support of Appellant, MAGGY HURCHALLA, in the above matter, and in support would show the following:

1. Natural Resources Defense Council, Inc. (“NRDC”) is a non-profit membership corporation founded in 1970 and organized under the laws of the State of New York. NRDC maintains offices in New York, NY; Washington, DC; Chicago, IL; Bozeman, MT; San Francisco, CA; Santa Monica, CA; and Beijing, China. NRDC uses law, science, and the support of more than 400,000 members throughout the United States, including over 16,000 members who reside in Florida, to protect wildlife and wild places and to ensure a safe and healthy environment for all living things. For over forty years, NRDC has engaged in scientific analysis, public education, advocacy, and litigation on a wide range of environmental issues. NRDC has had a longstanding

and active interest in public participation in government decision making to protect the environment. Petitioning government at all levels for change in environmental policy is central to NRDC's advocacy strategy; and NRDC frequently encourages its members to petition their government regarding environmental matters as well.

2. The Florida Press Association is a private, non-profit, nonpartisan membership organization founded in 1879 comprised of Florida daily and weekly newspapers to protect the freedom and advance the professional standards of the press of Florida. The Florida Press Association represents the interests of its members in state and federal courts in cases addressing issues of access to government information and the protection of speech and press freedoms.

3. The Sierra Club, a nonprofit public benefit corporation founded by legendary conservationist John Muir in 1892, is the nation's largest and most influential grassroots environmental organization -- with three million members and supporters. The Sierra Club's mission includes educating and encouraging the public to protect and restore the quality of the natural and human environment by all lawful means. The Sierra Club's successes range from protecting millions of acres of wilderness to helping pass the Clean Air Act, Clean Water Act, and Endangered Species Act. In order to carry out these objectives, the Sierra Club frequently petitions local, state, and national governments regarding environmental issues. Thus, free speech and open government is central to the Sierra Club.

4. The Joseph L. Brechner Center for Freedom of Information is a nonprofit educational center at the University of Florida and is an incubator for ideas and initiatives that give the public timely and affordable access to the information necessary for informed, participatory citizenship. The Brechner Center works to educate journalists, policymakers and the general public about the law of access today and how it should work tomorrow. The Brechner Center exists to

advance understanding, appreciation and support for freedom of information in the state of Florida, the nation and the world. Through education and promotion of freedom of information laws and policies, the Brechner Center seeks to foster open government and a participatory democracy. In addition, the Brechner Center serves the public with information about the First Amendment, freedom of information, and access to government information issues.

5. Mr. Fane Lozman is a private citizen that has dedicated much of his time to upholding citizens' First Amendment free speech rights and Florida's Government in the Sunshine Law. Examples of Mr. Lozman's contributions and activist efforts to uphold such laws include two important cases in front of the United States Supreme Court, *Lozman v. Riviera Beach*, 133 S. Ct. 735 (2013) and *Lozman v. Riviera Beach*, 138 S. Ct. 1945 (2018), and numerous other Sunshine and Public Records cases. Mr. Lozman's experiences will give this Court a unique perspective that will enhance the Court's understanding of the issues involved in the present case.

6. The League of Women Voters is a nonpartisan community-based organization that encourages Americans to participate actively in government. The League of Women Voters of Florida is the Florida affiliate of the national League, with over 13,000 members, supporters, and volunteers and 29 chapters across the State. Over the years it has reached out to increase political participation among women, youth, and traditionally underrepresented communities, including new citizens, the poor, and minorities.

7. Florida Society of News Editors is a membership organization of the editors of the state's newspaper-based media outlets that seeks to advance responsible and effective journalism.

8. The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with over 1.5 million members that works with legislatures and communities to defend and preserve the individual rights and liberties guaranteed to all people in

this country by the Constitution and laws of the United States. The ACLU of Florida is one of its statewide affiliates with over 50,000 members in the State.

9. The protection of one's ability to petition the government and access to open government serves fundamental constitutional values. *Amici* regularly investigate and report to the public on government activity and *Amici* thus frequently rely on free speech and open government laws across the country to observe and scrutinize the conduct of public officials and activities. To that end, *Amici* have an ongoing stake in ensuring such laws remain robust and are not abused by governmental entities, including the judiciary.

10. It is respectfully submitted that the proposed analysis by *Amici* of two important issues raised by this appeal may assist this Court in resolving such issues. First, *Amici* believe that this Court would benefit from an *amicus curiae* brief that addresses the competing interests between a private entity's contractual rights and a citizen's broad First Amendment rights to petition the government. Second, *Amici* believe that the Court would benefit from an *amicus curiae* brief that addresses how the government's constitutional duty to preserve and make available public records is affected by the lower court's granting of an adverse inference instruction against Appellant.

11. *Amici* seek leave to join in the brief that will be submitted by the First Amendment Foundation so that only one single brief will be filed. *Amici* believe this will be the most efficient way for *Amici* to bring its collective knowledge and experiences to the Court. The First Amendment Foundation consents to and agrees with *Amici* joining it in a single *amicus curiae* brief.

12. *Amici* seek leave to file a brief under such schedule and circumstances as the Court may allow as provided in Rule 9.370, Fla. R. App. P.

13. The undersigned has contacted counsel for all parties to this proceeding, and the counsel for LAKE POINT PHASE I, LLC and LAKE POINT PHASE II, LLC object to the relief requested in the motion.

WHEREFORE, *Amici* respectfully request leave to join with the First Amendment Foundation is presenting an *amicus curiae* brief to this Court.

Respectfully submitted,

s/ Paul M. Crochet

Paul M. Crochet, Esq.

FBN:111942

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 8, 2018, I filed a copy of the foregoing using the eDCA portal, which will electronically serve a copy to the following:

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