

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.

\_\_\_\_\_ /

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

The First Amendment Foundation, Inc. (the “Foundation”), by and through its undersigned counsel and pursuant to Fla. R. App. P. 9.370, seeks leave to file an *amicus curiae* brief in support of Appellant, MAGGY HURCHALLA, in the above matter, and in support would show the following:

1. The First Amendment Foundation is a 501(c)(3) tax-exempt, non-profit organization established in 1984 by other non-profits – the Florida Press Association, the Florida Society of News Editors and the Florida Association of Broadcasters – to ensure government openness and transparency. The Foundation was created to advocate the public interest in free speech, free press and open government, and to provide training and legal advocacy. The Foundation has filed numerous *amicus curiae* briefs in the Florida courts relating to First Amendment free speech issues and Florida’s Public Records Law. The Foundation provides education and training, monitors open records and meetings laws, and assists citizens and journalists in obtaining access to government.

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2. The protection of one’s ability to petition the government and access to open government serves fundamental constitutional values. The Foundation regularly investigates and reports to the public on government activity. To fully realize its constitutionally protected watchdog role, the Foundation frequently relies on free speech and open government laws across the country to observe and scrutinize the conduct of public officials and activities. To that end, the Foundation has an ongoing stake in ensuring such laws remain robust and are not abused by governmental entities, including the judiciary.

3. It is respectfully submitted that the proposed analysis by the Foundation on two important issues raised by this appeal will assist this Court in resolving such issues. First, the Foundation believes 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, the Foundation believes 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.

4. The Foundation seeks leave to file a brief under the time requirements provided for in Rule 9.370, Fla. R. App. P.<sup>1</sup>, or under such other schedule as the Court may allow.

5. 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.

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<sup>1</sup> Rule 9.370 reads as follows: “An *amicus curiae* must serve its brief no later than 10 days after the first brief, petition, or response of the party being supported is filed. An *amicus curiae* that does not support either party must serve its brief no later than 10 days after the initial brief or petition is filed. A court may grant leave for later service, specifying the time within which an opposing party may respond.”

WHEREFORE, the Foundation respectfully requests leave to submit an *amicus* brief under such schedule and circumstances as the Court may permit.

Respectfully submitted,

s/ Paul M. Crochet

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 1, 2018, I filed a copy of the foregoing using the Florida Courts E-filing Portal, which will electronically serve a copy to the following:

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