
No. 46A05-1404-PL-00146

IN THE INDIANA COURT OF APPEALS

LBLHA, LLC, et al.,

Appellants,

v.

TOWN OF LONG BEACH, INDIANA, et al.,

Appellees.

On Appeal from the LaPorte Circuit Court
Case No. 56C01-1212-PL-1941
Honorable Thomas J. Alevizos, Judge

**VERIFIED MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE
AND FILE A BRIEF IN SUPPORT OF APPELLANTS**

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INTRODUCTION

Pursuant to Indiana Appellate Rule 41, Pacific Legal Foundation (PLF) respectfully moves for permission to file a brief amicus curiae in support of Appellants. In support of this request, PLF states as follows:

IDENTITY AND INTEREST OF AMICUS CURIAE

PLF is a nonprofit, tax-exempt foundation incorporated under the laws of the State of California, organized for the purpose of litigating important matters of public interest. PLF has numerous supporters and contributors nationwide, including in the State of Indiana.

Since 1973, Pacific Legal Foundation has litigated in support of property rights. PLF has participated, either through direct representation or as amicus curiae, in every major property rights case heard by the United States Supreme Court in the past three decades, including *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013); *Sackett v. U.S. Env'tl. Prot. Agency*, 132 S. Ct. 1376 (2012); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); and *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). PLF has also been involved with many cases raising similar questions to those presented in this case. *See, e.g., State ex rel. Merrill v. Ohio Dep't of Natural Res.*, 955 N.E.2d 935 (Ohio 2011); *Severance v. Patterson*, 566 F.3d 490 (5th Cir. 2009) (addressing a legislative expansion of public beach access effecting a taking of private property); *Env'tl. Prot. Info. Ctr. v. California Dep't of Forestry*

& Fire Prot., 187 P.3d 888, 897 (Cal. 2008) (addressing a proposed expansion of the public trust doctrine over all wildlife); *Walton County v. Stop the Beach Renourishment, Inc.*, 998 So. 2d 1102, 1110 (Fla. 2008) (addressing the scope of Florida’s public trust). Moreover, PLF attorneys have contributed to the body of scholarly literature on the public trust doctrine and the background principles of property law. *See, e.g.*, David L. Callies & J. David Breemer, *Selected Legal and Policy Trends in Takings Law: Background Principles, Custom and Public Trust “Exceptions” and the (Mis)Use of Investment-Backed Expectations*, 36 Val. U. L. Rev. 339 (2002); James S. Burling, *Private Property Rights and the Environment After Palazzolo*, 30 B.C. Env’tl. Aff. L. Rev. I (2002).

PLF’s attorneys are familiar with the legal issues raised by this case. PLF appears in this action to offer guidance to this Court on background principles of property law and on the proper application of the public trust doctrine. In furtherance of PLF’s continuing mission to defend private property rights, PLF urges this Court to avoid expanding the scope of Indiana’s public trust doctrine.

The important legal and public policy interests PLF seeks to present to the court are substantially aligned with the interests of Appellants in this action, and counsel for PLF have coordinated with counsel for the Appellants to assure that PLF’s proposed amicus brief avoids unnecessary repetition pursuant to Ind. Appellate Rule 46(E)(2).

PLF submits that its proposed amicus brief will not prejudice the parties with respect to the issues raised in this case, but will permit a broader consideration and discussion of the matters at issue, will supplement the legal and public policy discussions before the Court, and will demonstrate important principles of law and public policy, not only because of PLF's decades of legal experience on this subject, but also because PLF's amicus brief will provide the Court with a national perspective on the usage and interpretation of the public trust, and how it has been applied, since this nation's founding.

The classic role of an amicus curiae is to assist in a case of general public interest, supplement the efforts of counsel, and to draw the court's attention to issues that have escaped consideration. *See, e.g., State ex rel. Reichert v. Youngblood*, 225 Ind. 129, 144, 73 N.E.2d 174, 180 (1947).

Accordingly, PLF respectfully submits that its participation will assist the Court in addressing these important matters to property owners in Indiana and across the nation.

A copy of PLF's proposed amicus curiae brief is being tendered contemporaneously with the filing of this motion for leave to appear as amicus curiae, and, as required by App. R. 41(B)-(C), this motion and the proposed brief are being submitted to the Court within the time period for filing the Appellants' Brief.

WHEREFORE, PLF respectfully requests that it be granted leave to appear as amicus curiae in support of Appellants, that the Court deem the Brief of Amicus Curiae filed as of the date of filing of this motion, and for all other proper relief.

I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

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CERTIFICATE OF SERVICE

I certify that on September __, 2014, I served a true and correct copy of the foregoing document on the following by First Class United States Mail, properly addressed and postage prepaid.

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