PACIFIC LEGAL FOUNDATION

March 30, 2023

The Honorable Scott S. Harris
Clerk of Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: *Tyler v. Hennepin County* (No. 22-166)
Minnesota's Request to Include Property Records

Dear Mr. Harris:

Petitioner Geraldine Tyler opposes the request by the State of Minnesota, acting as *amicus curiae* in support of Respondent Hennepin County, to supplement the record with certain property records related to her condominium. It is an inappropriate attempt by an *amicus curiae* to introduce new evidence in support of disputed claims made by the County (for the first time in its Brief for Respondents) about the value of Ms. Tyler's equity.

An appellate court properly considers "only the record and facts before the district court and thus only those papers and exhibits filed in the district court can constitute the record on appeal." *Bath Junkie Branson, LLC v. Bath Junkie, Inc.*, 528 F.3d 556, 559–60 (8th Cir. 2008); *see also* Fed. R. App. P. 10(a).

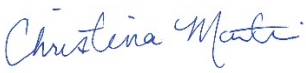
Because this case pending before the Court is on a motion to dismiss, the Court will presume that general allegations of the complaint embrace the specific facts necessary to support the claim. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Bennett v. Spear*, 520 U.S. 154, 171 (1997). In such a posture, *amicus curiae*'s requested supplementation is inappropriate.

Moreover, the doctrine of judicial notice does not apply here. First, judicial notice is not a "talisman" to fill gaps in the trial record. *Am. Stores Co. v. Comm'r*, 170 F.3d 1267, 1270 (10th Cir. 1999); *see also Melong v. Micronesian Claims Comm'n*, 643 F.2d 10, 12 n.5 (D.C. Cir. 1980) ("judicial notice was never intended to permit ... introduction of substantive evidence at the appellate level"). Otherwise the doctrine of judicial notice would allow circumvention of the district court's

gatekeeping role in defining the record. *Ross v. Blake*, 578 U.S. 632, 649 (Thomas, J., concurring in part and concurring in the judgment) ("Perhaps Blake's newfound documents are subject to judicial notice as public records. *See* Fed. Rule Evid. 201. But I would not take such notice for the first time in this Court. It appears that Blake had a chance to submit many of his documents to the lower courts and failed to do so. Taking notice of the documents encourages gamesmanship and frustrates our review."). Second, the County failed to supply the Court with the necessary information as required by the Rule, a plain error that *amicus curiae* now improperly seeks to redress. Finally, even when the doctrine is properly invoked, judicial notice is not appropriate unless the materials are "not subject to reasonable dispute." Fed. R. Evid. 201(b). Even if the proffered transaction history might be authentic and complete, Petitioner Tyler disputes the validity and extent of encumbrances on her property alleged by Respondent Hennepin County, a matter expanded upon in her forthcoming Reply Brief. Fed. R. Evid. 201(e) says that a party is "entitled to be heard on the propriety of taking judicial notice" which the district court can facilitate on remand after this Court's decision.

For these reasons, *amicus curiae* Minnesota's request to supplement the record should be denied.

Sincerely,



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