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17 Attorneys for US Airline Pilots Association

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **DISTRICT OF ARIZONA**

20 Don Addington, *et. al.*, )  
21 *Plaintiffs,* )  
22 v. )  
23 US Airline Pilots Association, *et. al.*, )  
24 *Defendants.* )  
25 )  
26 )

Case No.: CV-13-00471-PHX-ROS  
**US Airline Pilots Association's  
Opposition to AMR Corporation's  
and American Airline, Inc's Motion  
for Leave to Participate as *Amicus  
Curiae***

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1 Defendant US Airline Pilots Association (“USAPA”) submits this memorandum  
2 of law in opposition to the motion of AMR Corporation and American Airlines, Inc.  
3 (collectively “American”) for leave to participate as *amicus curiae* in this action (Doc.  
4 196).

### 5 MEMORANDUM OF POINTS AND AUTHORITIES

6 American asks that it be allowed to participate as *amicus* so that it may have “the  
7 opportunity to voice its own unique perspective as to the manner in which the case is  
8 litigated and resolved . . . .” (Doc. 196 at 2) (emphasis added) To the contrary, not only  
9 is there nothing in American’s request to indicate its perspective is unique, it is not  
10 materially different from the point offered by US Airways. USAPA therefore opposes  
11 this application as simply unnecessary.  
12

13 “Leave to file an *amicus* brief should be denied unless a party is not represented  
14 competently or at all, a decision in the present case may affect the interest of the amicus  
15 in another case in which he has an interest, or the amicus has ‘unique information or  
16 perspective that can help the court beyond the help that the lawyers for the parties are  
17 able to provide.’” *Greater Yellowstone Coal., v. Timchak*, CV08-388-E-MHW, 2008 WL  
18 4911410 \*6 (D. Idaho Nov. 13, 2008), citing *Northern Sec. Co. v. United States*, 191 U.S.  
19 555, 556 (1903). *See also Miller-Wohl Co., Inc. v. Comm’r of Labor & Indus. State of*  
20 *Mont.*, 694 F.2d 203, 204 (9th Cir. 1982) (purpose of *amicus* includes “drawing the  
21 court’s attention to law that escaped consideration”).  
22

23 For example, at ¶4 of its application, American states that it is concerned that the  
24 Court might enter injunctive relief in favor of Plaintiffs that would interfere with the  
25 obligations of the parties under the MOU, interfere with the Bankruptcy Court’s  
26 jurisdiction, or complicate the ability of the parties to comply with Court Orders. (Doc.  
27 196, at 3.) There is no likelihood that the Court would enter such an injunction. And, in  
28 any event, this is an interest that is indistinguishable from the interest of Intervenor US

1 Airways.

2 Nor is there any merit to American's assertion (at ¶5) that it has a unique voice or  
3 perspective with respect to whether this case is ripe or whether the Court lacks Article III  
4 jurisdiction. (Doc. 196, at 3). This assertion simply reiterates the positions of Plaintiffs  
5 and US Airways. There is no reason to allow American to participate as an *amicus* to  
6 make those points either now or in the future.

7 Moreover, as reflected in the foregoing and its motion in general, American is not  
8 seeking to fulfill the traditional role of an amicus, but to advocate a partisan point of  
9 view:

10 Historically, *amicus curiae* is an *impartial* individual who suggests the  
11 interpretation and status of the law, gives information concerning it, and  
12 advises the Court in order that justice may be done, *rather than to advocate*  
13 *a point of view so that a cause may be won by one party or another.* *CARE*,  
14 54 F.Supp.2d at 975 (citation omitted) (emphasis added.) Clearly, Ashley  
15 Creek's motivations appear to be driven by economic rather than by  
environmental concerns, and just as clearly, Ashley Creek is advocating a  
point of view that the preliminary injunction issue.

16 *Greater Yellowstone Coal., v. Timchak*, 2008 WL 4911410 \*7. See 9th Cir. R. 29-1, *Adv.*  
17 *Comm. Note* ("Movants are reminded that the Court will review the amicus curiae brief in  
18 conjunction with the briefs submitted by the parties, so that *amici* briefs should not repeat  
19 arguments or factual statements made by the parties."); *Cf. Ctr. for Biological Diversity*  
20 *v. U.S. Bureau of Land Mgmt.*, 09CV8011-PCT-PGR, 2010 WL 1452863 (D. Ariz. Apr.  
21 12, 2010) (limiting *amicus* who requested to address two discrete issues to filing  
22 responsive briefs aimed at aiding the Court in analyzing *relevant issues* that have not  
23 been emphasized by the parties" and prohibiting *amicus* from expanding the scope of  
24 proceedings) (emphasis in original); *Silver v. Babbitt*, 166 F.R.D. 418, 434-35 (D. Ariz.  
25 1994) (permitting an applicant to move as *amicus* where it was possible to do so "without  
26 adding unnecessary volume of pleadings or lengthening these proceedings.").

1 Far from an impartial interest, American's application indicates the clear desire to  
2 advocate a particular point of view with respect to the outcome of the case. USAPA  
3 respectfully submits that any such interest is aligned with US Airways and American  
4 does not purport to offer any perspective that US Airways has not offered in this  
5 litigation. See *In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012) (striking  
6 amicus brief that did not add "anything consequential" to consideration of case).  
7

8  
9 **CONCLUSION**

10 For the foregoing reasons, USAPA respectfully requests that the Court deny  
11 American's Motion for Leave to Participate as *Amicus Curiae*.

12 Respectfully submitted this 7<sup>th</sup> day of October, 2013.

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**CERTIFICATE OF SERVICE**

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I hereby certify that on October 7, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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