

No. 10-16645
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States of America,

Plaintiff-Appellee,

v.

State of Arizona; and Janice K. Brewer,
Governor of the State of Arizona, in her
Official Capacity,

Defendants-Appellants.

Appeal from the United States
District Court for the District
Of Arizona

No. CV-1413-PHX-SRB

LANDMARK LEGAL FOUNDATION'S
MOTION FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*

Richard P. Hutchison (Mo. Bar # 34865)
LANDMARK LEGAL FOUNDATION
3100 Broadway, Suite 1210
Kansas City, Missouri 64111
Telephone: 816-931-5559
Facsimile: 816-931-1115
pete@landmarklegal.org

Attorney for Amicus Curiae Landmark Legal Foundation

Pursuant to Rule 29(a) and (b) of the Federal Rules of Appellate Procedure, movant, Landmark Legal Foundation (“Landmark”) respectfully moves the court for leave to participate as *amicus curiae* and file the accompanying brief in opposition to the Defendant’s motion to dismiss.

I. INTEREST OF MOVANT

Founded in 1976, Landmark is a public is a public interest law firm committed to preserving the principles of limited government, separation of powers, free enterprise, federalism, strict construction of the Constitution and individual rights. Specializing in Constitutional litigation, Landmark maintains offices in Kansas City, Missouri and Leesburg, Virginia. The case before the Court presents important questions pertaining to the scope federal administration’s power to pre-empt a state’s sovereign police power and the district court’s authority to disregard established U.S. Supreme Court, Circuit Court and its own precedent relating to facial constitutional challenges.

II. LANDMARK’S PARTICIPATION IS DESIRABLE AND THE MATTERS RAISED IN ITS BRIEF ARE RELEVANT.

Landmark Legal Foundation’s proposed *amicus curiae* brief presents this Court with a helpful perspective of the implications this litigation has on state and local law enforcement throughout the country. Landmark’s proposed brief demonstrates that the federal administration’s attempt to pre-empt the State of

Arizona's effort to carry out clear mandates set forth by the Congress in the Immigration and Nationality Act is inappropriate. Moreover, Landmark's amicus brief provides an important and forthright perspective on how the district court's improper application of federal preemption and facial constitutional challenge standards and improper application of statutory construction principles was an abuse of discretion.

Finally, movant presents a brief but important historical perspective on the duty and authority retained by the several states for the safety and well-being of its citizens as well as its legal residents and visitors. As such, Landmark's brief will assist the Court in its consideration of this appeal.

III. CONCLUSION

WHEREFORE, movant respectfully requests that this court grant the present motion and allow Landmark Legal Foundation to participate as *amicus curiae*.

LANDMARK LEGAL FOUNDATION

Dated: September 2, 2010

By: /s/ Richard P. Hutchison
Richard P. Hutchison
Attorney for Amicus Landmark Legal
Foundation

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2010 I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the participants in this appeal, all of whom are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

/s/ Richard P. Hutchison
Attorney for Amicus Curiae