

Case 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.

On Appeal From the United States District Court for the District of Arizona,
Phoenix Division, Case No. 2:10-cv-01413-SRB,
The Honorable Susan R. Bolton, District Judge

MOTION FOR LEAVE TO PARTICIPATE AS AMICI CURIAE OF MEMBERS OF CONGRESS BRIAN BILBRAY, TRENT FRANKS, SENATOR JOHN BARRASSO, SENATOR JIM DEMINT, SENATOR JAMES INHOFE, SENATOR DAVID VITTER, SENATOR ROGER WICKER, ROBERT ADERHOLT, RODNEY ALEXANDER, MICHELE BACHMANN, SPENCER BACHUS, J. GRESHAM BARRETT, ROB BISHOP, MARSHA BLACKBURN, JOHN BOOZMAN, PAUL BROUN, GINNY BROWN-WAITE, MICHAEL BURGESS, DAN BURTON, KEN CALVERT, JOHN CAMPBELL, JOHN CARTER, JASON CHAFFETZ, HOWARD COBLE, MIKE COFFMAN, JOHN CULBERSON, GEOFF DAVIS, JOHN FLEMING, RANDY FORBES, VIRGINIA FOXX, ELTON GALLEGLY, SCOTT GARRETT, PHIL GINGREY, LOUIE GOHMERT, BOB GOODLATTE, RALPH HALL, DEAN HELLER, WALLY HERGER, PETE HOEKSTRA, DUNCAN HUNTER, WALTER JONES, JIM JORDAN, STEVE KING, JACK KINGSTON, JOHN KLINE, DOUG LAMBORN, ROBERT LATTA, DON MANZULLO, PATRICK MCHENRY, GARY MILLER, JEFF MILLER, JERRY MORAN, SUE MYRICK, RANDY NEUGEBAUER, JOE PITTS, TED POE, BILL POSEY, TOM PRICE, ED ROYCE, JOHN SHADEGG, BILL SHUSTER, LAMAR SMITH, JOHN SULLIVAN, GENE TAYLOR, TODD TIAHRT, AND ED WHITFIELD IN SUPPORT OF APPELLANTS AND PARTIALLY REVERSING THE DISTRICT COURT

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Counsel for Amici

Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure and Circuit Rule 29(b), Movants, Members of The United States Congress Brian Bilbray, Trent Franks, Senator John Barrasso, Senator Jim DeMint, Senator James Inhofe, Senator David Vitter, Senator Roger Wicker, Robert Aderholt, Rodney Alexander, Michele Bachmann, Spencer Bachus, J. Gresham Barrett, Rob Bishop, Marsha Blackburn, John Boozman, Paul Broun, Ginny Brown-Waite, Michael Burgess, Dan Burton, Ken Calvert, John Campbell, John Carter, Jason Chaffetz, Howard Coble, Mike Coffman, John Culberson, Geoff Davis, John Fleming, Randy Forbes, Virginia Foxx, Elton Gallegly, Scott Garrett, Phil Gingrey, Louie Gohmert, Bob Goodlatte, Ralph Hall, Dean Heller, Wally Herger, Pete Hoekstra, Duncan Hunter, Walter Jones, Jim Jordan, Steve King, Jack Kingston, John Kline,

Doug Lamborn, Robert Latta, Don Manzullo, Patrick McHenry, Gary Miller, Jeff Miller, Jerry Moran, Sue Myrick, Randy Neugebauer, Joe Pitts, Ted Poe, Bill Posey, Tom Price, Ed Royce, John Shadegg, Bill Shuster, Lamar Smith, John Sullivan, Gene Taylor, Todd Tiahrt, and Ed Whitfield respectfully move the Court for leave to participate as *amici curiae* and file the accompanying brief in support of the Appellants.¹

I. INTEREST OF MOVANTS

Movants, the above-named Members of The United States Congress, are committed to the constitutional principles of federalism and separation of powers, both of which are jeopardized by the district court's decision enjoining key provisions of Arizona's immigration law, S.B. 1070.

II. AN *AMICUS* BRIEF IS DESIRABLE AND THE MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE.

Movants wish to bring to this Court's attention the incompatibility between the Acts of Congress establishing immigration policy and the current Administration's views on immigration. The clash between the federal immigration laws and the Administration's policy preferences require this Court to closely scrutinize the Administration's preemption claims in this case.

¹ All parties consent to the participation of movants as *amici* in this case.

Movants argue further that Congress has plenary power over immigration law, and the Executive must follow Congress's direction. The Executive's power to enforce federal immigration law does not confer the power to preempt state immigration laws by choosing, for foreign policy or other reasons, to selectively enforce the laws. The Administration argued and the district court erroneously held that the Executive's prosecutorial discretion and foreign policy preferences preempt S.B. 1070. The district court ignored Congress's intent in evaluating the Administration's preemption claims. Preemption analysis that is properly focused on Congress's intent establishes that none of S.B. 1070's provisions are preempted. Movants conclude that if this Court does not reverse the district court's decision, preemption analysis will no longer turn on congressional intent, but on each Administration's political views.

III. CONCLUSION

WHEREFORE, Movants request this Court to grant the present motion and allow them to participate as *amici curiae*.

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Respectfully submitted,

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Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2010, I filed the **MOTION FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE*** electronically with the Clerk of the United States Court of Appeals for the Ninth Circuit, using the CM/ECF system, which will send notification of that filing to all counsel of record in this litigation.

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