IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States of America,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	**No. 10-16645**
	)	
State of Arizona and Janice K. Brewer, Governor of the State of Arizona, in her official capacity,	)	
	)	
Defendants-Appellants.	)	
	)	

REPLY IN SUPPORT OF ARIZONA STATE SENATOR RUSSELL PEARCE'S MOTION TO INTERVENE AS AN APPELLANT

State Senator Russell Pearce of Arizona, by counsel, respectfully submits this reply in support of his motion to intervene in this matter. The Plaintiff-Appellee, the United States, opposes Senator Pearce's motion, despite his undisputed role as the author and chief sponsor of SB 1070. More significantly, perhaps, the State of Arizona and Governor Brewer (the "State") do not oppose Senator Pearce's intervention despite his criticism of the adequacy of the State's defense of SB 1070. Hence, Senator Pearce's motion should be granted as it will not prejudice any party or delay in any way this proceeding.

1. The United States does not dispute Senator Pearce's unique interest as the author and chief sponsor of SB 1070 and his considerable efforts that led to

its enactment. The United States also does not even address this Court's three-part test under which a motion for permissive intervention is reviewed (see Motion at 4), and, in this case, demonstrates that intervention should be permitted.

Instead, the United States argues that Senator Pearce does not have a "defense" that shares a common question of law or fact with the main action. Opp. at 2. This is simply not correct, as Senator Pearce has a "defense" to the claims asserted in the main action that share common questions of law and fact. Senator Pearce will defend each and every challenged provision of SB 1070 from the unique perspective that only he can offer. For the purposes of permissive intervention, the fact that the United States has not sued him is irrelevant.

This Court has recognized that intervention may be permitted when a party with a key role in enacting a statute seeks to defend it. For example, in *Employee Staffing Services, Inc. v. Aubry,* 20 F. 3d 1038 (9th Cir. 1994), the Court upheld the intervention by a union seeking to defend a California workers' compensation law on the grounds that the union's staff had drafted the law and lobbied for its passage through the legislature. While noting that participation as *amicus curiae* was also possible, the Court observed that permissive intervention by the union "added no claims or issues to those already in the case," and did not otherwise "complicate or delay resolution beyond the need of plaintiff to respond to

additional briefing." *Id.* at 1042. The Court thus concluded that permissive intervention by the union was within the discretion of the district court. *Id.*

Here, Senator Pearce's unique interest as the author and chief sponsor of SB 1070, as well as his role as a legislator, provides far stronger grounds for participation as an intervenor compared to the union in *Employee Staffing Services, Inc*., and is certainly within the discretion of the Court to permit. Senator Pearce's defense of SB 1070 will add no new claims and will not prejudice any party or delay this appeal. It will, however, provide the critical perspective of the author and chief sponsor of the legislation.

2. The United States' claim that an intervenor must demonstrate that his interests are not "adequately represented" by other parties also is unavailing. Opp. at 4. Fed. R. Civ. Proc. 24(b) contains no such requirement and the cases relied on by the United States (*see, e.g., Arakaki v. Cayetano*, 324 F.3d 1078 (9th Cir. 2003)) address the requirements of Rule 24(a), not permissive intervention. In any event, the Ninth Circuit has plainly held that the requirement of "inadequacy of representation is satisfied if the applicant shows that representation of its interests 'may be' inadequate and that the burden of making this showing is *minimal*." *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (emphasis added). Senator Pearce has clearly demonstrated that his interests "may be"

inadequately represented, as the State itself, while ostensibly defending the statute, has criticized the language of SB 1070 and raised the possibility of revising certain provisions. *See* Motion at 8-9. In such a unique circumstance, it is well within the discretion of the Court to permit Senator Pearce to intervene and fully defend SB 1070 in its current form.

For these reasons and the reasons set forth in his motion, Senator Pearce should be granted permissive intervention.

Dated: September 20, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **REPLY IN SUPPORT OF ARIZONA STATE SENATOR RUSSELL PEARCE'S MOTION TO INTERVENE AS AN APPELLANT** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on 20th day of September 2010.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ James F. Peterson