

No. 10-16645

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

United States of America,	)	Appeal from the United States
	)	District Court for the
Plaintiff-Appellee,	)	District of Arizona
	)	
v.	)	No. CV 10-1413-PHX-SRB
	)	
State of Arizona; Janice K. Brewer,	)	
Governor of the State of Arizona ,	)	
in her Official Capacity,	)	
	)	
<u>Defendants-Appellants.</u>	)	

**MOTION BY ARIZONA CITIES OF FLAGSTAFF, TOLLESON, SAN  
LUIS, AND SOMERTON FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF IN SUPPORT OF PLAINTIFF-APPELLEE**

Noel Fidel, Ariz. Bar 002486

**MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A.**

2901 N. Central Ave., Suite 200, Phoenix, AZ 85012

(602) 285-5000; Fax: (602) 285-5100, Noel.Fidel@mwmf.com

José de Jesús Rivera, Ariz. Bar 004604,

Robert E. Pastor, Ariz. Bar 021963, Nathan J. Fidel, Ariz. Bar 025136

**HARALSON, MILLER, PITT, FELDMAN & MCANALLY, P.L.C.**

2800 N. Central Ave., Suite 840, Phoenix, AZ 85006

(602) 266-5557; Fax: (602) 266-2223, jrivera@hmpmlaw.com,

rpastor@hmpmlaw.com, nfidel@hmpmlaw.com

Stanley G. Feldman, Ariz. Bar 00838

Rebecca Reed, Ariz. Bar 23419, Jeffrey A. Imig, Ariz. Bar 25552

**HARALSON, MILLER, PITT, FELDMAN & MCANALLY, P.L.C.**

1 S. Church Ave., Ste. 900, Tucson, AZ 85701

(520) 792-3836; Fax: (520) 624-5080, sfeldman@hmpmlaw.com,

rreed@hmpmlaw.com, jimig@hmpmlaw.com

David L. Abney, Ariz. Bar 09001  
**LAW OFFICES OF DAVID L. ABNEY**  
4025 E. Chandler Blvd., No. 70-A8, Phoenix, AZ 85048  
(480) 833-8800, abneymaturin@aol.com  
Co-Counsel for proposed Amici Curiae Arizona Cities of  
Flagstaff, Tolleson, San Luis, and Somerton

Under Federal Rule of Appellate Procedure 29(b), the Arizona Cities of Flagstaff, Tolleson, San Luis, and Somerton move for leave to file an amicus curiae brief in this matter, in support of the Plaintiff-Appellee. The proposed Amici Curiae have researched the historical context of Arizona Senate Bill 1070, and hope to provide the Court with a perspective that is different from the one that the parties have offered in their opening and answering briefs. Indeed, no other amicus curiae has approached the issues and problems raised in this case from the perspective of either legislative or judicial history.

The proposed amicus curiae brief, which the proposed amici curiae are lodging contemporaneously with this motion, helps place the actions of the Arizona Legislature in the broader context of American legal history. Viewed in perspective, the solution to the appeal is apparent. The Arizona Legislature is trying to turn the clock back to 1870, before the United States Supreme Court and the United States Congress wrested control over immigration from the states. That historical perspective should assist this Court in understanding that what the Arizona Legislature has done is not a fair extension of the law, but an anachronism contrary to the historical development of American immigration law.

### **Interest of the Proposed Amici Curiae**

The proposed amici curiae are all Arizona municipal public entities.

They are all providing costly and extensive police, social, and other government services that require constant contact with undocumented immigrants living, working, and passing through their jurisdictions. If the key provisions of Arizona Senate Bill 1070 are revived on appeal, those revived provisions will impose expensive, unwieldy, and unconstitutional requirements on Amici Curiae.

Those requirements will strain already overstrained budgets, divert funds and public safety resources needed for the detection and suppression of serious and violent crime, and force the cities to enforce divisive and questionable state mandates.

If the key provisions of SB 1070 are revived on appeal, they will also foster a flawed, second-rate image of Arizona that will reduce tourism and commercial development—costing jobs in each city and reducing municipal tax receipts.<sup>1</sup>

For each proposed amicus curiae, the proper municipal authorities have granted authority to prepare and file this amicus curiae brief.

The proposed amici curiae respectfully move the Court for leave to file the contemporaneously lodged amicus curiae brief.

---

<sup>1</sup> See, e.g., Molly O’Toole, *Warning Away Visitors*, NEWSWEEK 14 (May 15, 2010) (If Mexicans follow Mexican President Felipe Calderón’s warning for them to avoid Arizona, “the economic impact on Arizona could be devastating”).

**DATED** this 30th day of September, 2010.

/s/ David L. Abney

David L. Abney

Co-Counsel for proposed Amici Curiae

Arizona Cities of Flagstaff, Tolleson, San Luis, and Somerton

### **Certificate of Compliance**

This amicus curiae brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) and 29(d). It contains 872 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), complies with the typeface rules of Fed. R. App. P. 32(a)(5), and complies with the typestyle rules of Fed. R. App. P. 32(a)(6), since it uses proportionally spaced 14-point Times New Roman typeface using Microsoft Word 2003-2007.

**DATED** this 30th day of September, 2010.

/s/ David L. Abney

David L. Abney

Co-Counsel for proposed Amici Curiae

Arizona Cities of Flagstaff, Tolleson, San Luis, and Somerton

### **Certificate of Service**

I hereby certify that I electronically filed the foregoing motion with the Clerk of the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on this 30th 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 service.

**DATED** this 30th day of September, 2010.

/s/ David L. Abney

David L. Abney

Co-Counsel for proposed Amici Curiae

Arizona Cities of Flagstaff, Tolleson, San Luis, and Somerton