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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA

12 The United States of America,

13 Plaintiff,

14 v.

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

18 Defendants.

No. 2:10-cv-1413-SRB

**PLAINTIFF'S RESPONSE TO
THE MOTION OF COCHISE
COUNTY SHERIFF LARRY
DEVER FOR INTERVENTION AS
DEFENDANT**

20 **INTRODUCTION**

21 The United States respectfully submits this memorandum in opposition to the
22 motion by Cochise County Sheriff Larry Dever to intervene as a defendant in this action,
23 which challenges the constitutionality of several provisions of Arizona's S.B. 1070. This
24 Court should deny Sheriff Dever's motion to intervene, because his intervention would
25 unnecessarily complicate this matter without assisting the Court in reaching a decision on
26 the legal issues presented, particularly where the State's interests are adequately
27 represented by the Defendants, who have already included Sheriff Dever's views in their
28 filings to this Court.

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ARGUMENT

Sheriff Dever seeks permission to intervene as a defendant in this action under Federal Rule of Civil Procedure 24(b)(2), which authorizes the Court, in its discretion, to permit a government officer or agency to intervene “if a party’s claim or defense is based on . . . a statute or executive order administered by the officer or agency.” Fed. R. Civ. P. 24(b)(2)(A). Even where the requirements of Rule 24(b) are satisfied, the Court has “discretion to deny intervention, considering such factors as whether the intervention would unduly delay the action or unfairly prejudice existing parties,” as well as “whether the applicant’s interest is adequately represented by the existing parties.” *Medical Protective Co. v. Pang*, 2006 WL 1544192, at *5 (D.Ariz.,2006); *see also So. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002); *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998); *State of California v. Tahoe Regional Planning Agency*, 792 F.2d 775, 779 (9th Cir.1986). Here, although Sheriff Dever contends that he “possesses the statutory duty to enforce and administer [S.B. 1070],” intervention is nonetheless inappropriate, for several reasons.

First, Sheriff Dever’s interests are adequately represented by the Defendants. As the Ninth Circuit has explained, the “‘most important’ factor to determine whether a proposed intervenor is adequately represented by a present party to the action is ‘how the [intervenor’s] interest compares with the interests of existing parties.’” *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950-51 (9th Cir. 2009) (citing *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). Where the proposed intervenor and an existing party share the same “ultimate objective,” a “presumption of adequacy of representation applies, and the intervenor can rebut that presumption only with a ‘compelling showing’ to the contrary.” *Id.* at 951. This presumption applies with special force where, as here, a governmental unit has appeared to defend the legality of its own statutes or ordinances. In *Arakaki*, the Ninth Circuit stated that there is “an assumption of adequacy when the government is acting on behalf of a constituency that it represents. In

1 the absence of a *very compelling showing to the contrary*, it will be presumed that a state
2 adequately represents its citizens when the applicant shares the same interest.” 324 F.3d
3 at 1086 (internal quotation omitted, emphasis added); *see also Gonzales v. Arizona*, 485
4 F.3d 1041, 1052 (9th Cir. 2007).¹

5 Although Sheriff Dever generally contends that one advantage to “government
6 intervention” is a “heightened protection of the public interest,” Mot. to Intervene at 4, he
7 presents no explanation for why the State of Arizona and the Governor – the named
8 defendants in this action – cannot provide for the “protection of the public interest.” In
9 fact, no showing has been made here to overcome the *presumption* that the State will
10 adequately represent the movant’s interests, and no showing can be made where, as here,
11 Defendants have been vigorously defending the constitutionality of S.B. 1070.

12 *Second*, Sheriff Dever’s intervention is entirely unnecessary. He baldly asserts
13 that no party is as familiar as he with the “problems associated with illegal immigration”
14 and the relevant “law enforcement procedures,” and that he can provide “knowledge and
15 information” to the Court that “would otherwise be unavailable to it.” Mot. to Intervene
16 at 3. Setting aside that Sheriff Dever does not point to any specific legal issue in this case
17 that would benefit from his involvement,² his claim that the Court would be unable to
18 hear his views absent intervention is completely without merit. Indeed, Sheriff Dever has
19 *already* submitted a declaration to the Court in this case, in which he discusses his
20 experience with immigration matters and his view of the law enforcement procedures that

21
22 ¹ In cases where the party seeking to intervene has the same ultimate goal as a party
23 already in the suit, the presumption of adequacy can be overcome by a showing of
24 “adversity of interest, collusion, or nonfeasance.” *League of United Latin Am. Citizens*
25 (*“LULAC”*) *v. Wilson*, 131 F.3d 1297, 1305 n.4 (9th Cir. 1997) (quoting *Moosehead San.*
26 *Dist. v. S.G. Phillips Corp.*, 610 F.2d 49, 54 (1st Cir. 1979)).

27 ² *See, e.g., In Resolution Trust Corp. v. City of Boston*, 150 F.R.D. 449, 455 (D.
28 Mass. 1993) (denying the State’s motion to intervene in an action raising a federal challenge
to a city ordinance because the State “has presented no creditable argument that its status as
an intervenor-defendant would in any way reshape the issues in this case or contribute to its
just resolution.”); *Philadelphia Elec. Co. v. Westinghouse Elec. Corp.*, 308 F.2d 856, 860 (2d
Cir. 1962) (State public-utility commission was not permitted to intervene as plaintiff in an
antitrust suit by an electric company against its supplier, in the absence of any showing that
its intervention was vital to the protection of the public interests).

1 will be impacted by S.B. 1070. *See* Defendants’ Response to the Motion for Preliminary
2 Injunction, Exhibit Y (Declaration of Larry A. Dever), Doc. 64-1. Moreover, if Sheriff
3 Dever has additional views that he believes merit this Court’s further attention, he could
4 submit them by working with the Defendants, as he did when submitting his declaration,
5 or he could attempt to submit an *amicus curiae* brief – both without attempting to
6 intervene as a party. Given these more appropriate alternatives, this Court should deny
7 Sheriff Dever’s Motion to Intervene. *See Brewer v. Republic Steel Corp.*, 513 F.2d 1222,
8 1225 (6th Cir. 1975) (finding denial of permissive intervention by State Civil Rights
9 Commission within the discretion of the district court, which invited the Commission to
10 participate in the litigation as *amicus curiae*).

11 *Third*, the proposed intervention would unnecessarily complicate this matter and
12 therefore prejudice the parties. “Increasing the number of parties to a suit can make the
13 suit unwieldy,” *Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Eng’rs*,
14 101 F.3d 503, 508 (7th Cir. 1996); *Philadelphia Elec. Co.*, 308 F.2d at 860 (“It is always
15 a consideration against permissive intervention that additional parties ‘take additional
16 time. Even if they have no witnesses of their own, they are the source of additional
17 questions, objections, briefs, arguments, motions and the like[.]”). This is particularly
18 true here, where there are already a number of related actions and numerous additional
19 filings by non-parties.³ Further, the prospect of permitting Sheriff Dever’s intervention in
20 this action will mean that other sheriffs and law enforcement officials will be similarly
21 justified in intervening in this case to express their diverging viewpoints regarding S.B.
22 1070. Thus, permitting Sheriff Dever’s intervention here would open the dispute well
23 beyond its necessary scope and would have the effect of making the litigation unwieldy
24 and burdensome for the parties and the Court, without cause.

25
26 ³ Sheriff Dever notes that his motion is “timely” because the Defendants have not
27 answered and the Court has not yet made any substantive rulings in this matter. Mot. to
28 Intervene at 5. However, two days before the Sheriff’s motion was filed, the Defendants
filed their response to the Complaint by filing a motion to dismiss, and shortly before the
instant motion was filed, this Court issued its order granting in part the United States’ Motion
for Preliminary Injunction.

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CONCLUSION

For the foregoing reasons, the Court should deny the Motion of Sheriff Dever for Intervention as a Defendant.

DATED: August 12, 2010

Respectfully Submitted,

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Dennis K. Burke
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the CM/ECF registrants on record in this matter.

/s/ Varu Chilakamarri
Varu Chilakamarri