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12 *Attorneys for Proposed Intervenor/Defendant the Arizona State Legislature*

13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 The United States of America,) Case No.: 2:10-cv-01413-SRB
17)
18 Plaintiff,)
19 v.) **MOTION OF THE ARIZONA STATE**
20 The State of Arizona; and Janice K.) **LEGISLATURE**
Brewer, Governor of the State of Arizona,) **FOR INTERVENTION AS**
21 in her Official Capacity,) **DEFENDANT**
22) **(Oral Argument Requested)**
23 Defendants.)

24 The Arizona State Legislature (“the Legislature”), by counsel, respectfully submits
25 this Motion for Intervention requesting leave to intervene as a defendant pursuant to
26 Federal Rule of Civil Procedure 24(b). As required by Rule 24(c), a Proposed Answer in
27 Intervention has been lodged contemporaneously with this Motion. As grounds therefor,
28 the Legislature states as follows:

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MEMORANDUM OF POINTS AND AUTHORITIES

I. The Legislature Has Been Authorized to Defend S.B. 1070.

Under a newly enacted Arizona law, the Legislature has been authorized to defend S.B. 1070. See S.B. 1117 (signed by Governor Brewer on February 7, 2011, attached as Exhibit 1). Through this Motion, the Legislature now seeks permission to intervene as a defendant (joining the State of Arizona and Governor Brewer) for the purpose of defending its enactment, S.B. 1070, and the interests of the people of Arizona. Importantly, Governor Brewer supports this proposed intervention, as demonstrated by her signing the legislation authorizing the Legislature’s intervention and by indicating, through counsel, her support of this Motion. Up to this point, pursuant to a specific provision of S.B. 1070, the State of Arizona has been defended in this action by counsel selected by Governor Brewer. Intervention by the Legislature will ensure that S.B. 1070 is fully defended in the manner contemplated under Arizona law.

II. Intervention Should Be Granted.

Under Federal Rule of Civil Procedure 24(b)(1)(B), a district court may grant intervention where the applicant “has a claim or defense that shares with the main action a common question of law or fact.” Where a litigant timely seeks such intervention, courts consider a number of factors including:

the nature and extent of the intervenors’ interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case[,] whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors’ interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to the full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.

Perry v. Schwarzenegger, No. 10-16751, 2010 U.S. App. LEXIS 74, *15 (9th Cir. 2011) (citing *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). In

1 addition, while typically an applicant for intervention need not establish Article III
2 standing to intervene (*Perry*, 2010 U.S. App. LEXIS at *15), the Ninth Circuit has
3 recognized that a state legislature, as a whole, would have standing to defend the
4 constitutionality of a statute. *Yniguez v. Arizona*, 939 F.2d 727, 732 (9th Cir. 1991).

5 In this case, the Legislature's defense of S.B. 1070 undeniably has questions of law
6 and fact in common with this action. The Legislature also has a paramount interest in
7 seeing that its enactment is upheld. Most significantly, as demonstrated by the law
8 authorizing this Motion, Arizona law specifically provides that S.B. 1070 be defended by
9 the Governor and by the Legislature. Notably, Governor Brewer signed the recent
10 legislation which specifically contemplated this motion to intervene.

11 In addition, this Motion is being timely filed on the same day an answer to the
12 Complaint is to be filed. *See* Dkt. Entry No. 135 (Order, issued Dec. 21, 2010).
13 Furthermore, pursuant to Rule 24(b)(3), intervention by the Legislature will not cause
14 undue delay or prejudice the adjudication of the rights of the existing parties. As the
15 Court is well aware, this litigation is in a considerably less complex posture than it was
16 just a few months ago. The addition of the Legislature as a defendant in this case, along
17 with the State of Arizona and Governor Brewer, will not cause any delay or prejudice.

18 **III. Conclusion**

19 For the forgoing reasons, the Legislature respectfully requests that this Court grant
20 it leave to intervene as a defendant in this action.

21
22 Dated: February 11, 2011

Respectfully Submitted,

23 KERCSMAR & FELTUS PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2011, 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 CM/ECF registrants on records, including:

Tony West
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s/ Kelli Dunlap _____

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