

1 Geoffrey S. Kercsmar (#20528)
Gregory B. Collins (#023158)
2 KERCSMAR & FELTUS PLLC
6263 North Scottsdale Road, Suite 320
3 Scottsdale, Arizona 85250
Tel: (480) 421-1001
4 gsk@kflawaz.com
gbc@kflawaz.com
5

6 Paul J. Orfanedes
(Motion for admission *pro hac vice* to be filed)
7 James F. Peterson
(Motion for admission *pro hac vice* to be filed)
8 Michael Bekesha
(Motion for admission *pro hac vice* to be filed)
9 JUDICIAL WATCH, INC.
425 Third Street, S.W., Suite 800
10 Washington, DC 20024
11 Tel: (202) 646-5172
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 Plaintiff,)

18 v.)

LODGED: [PROPOSED] ANSWER IN INTERVENTION

19 The State of Arizona; and Janice K.)
20 Brewer, Governor of the State of Arizona,)
21 in her Official Capacity,)

22 Defendants,)

23 and)

24 The Arizona State Legislature,)

25 Defendant-Intervenor.)
26
27
28

1 Defendant-Intervenor the Arizona State Legislature, by counsel, answers the
2 paragraphs of Plaintiff’s complaint as follows:

3 **INTRODUCTION**

4 1. Defendant-Intervenor admits that the United States of America has sought to enjoin
5 the enforcement of SB 1070. This remainder of the paragraph contains conclusions of
6 law, not allegations of fact, and thus no response is required.

7 2. This paragraph contains conclusions of law, not allegations of fact, and thus no
8 response is required.

9 3. Defendant-Intervenor admits that it adopted, and the Governor signed, SB 1070.
10 The remainder of this paragraph contains conclusions of law, not allegations of fact, to
11 which no response is required. To the extent that this paragraph seeks to characterize SB
12 1070, as amended by HB 2162, Defendant-Intervenor avers that the law speaks for itself.

13 4. Defendant-Intervenor denies the allegations in the first sentence of the paragraph.
14 This paragraph contains conclusions of law, not allegations of fact, and thus no response
15 is required.

16 5. Defendant-Intervenor is without sufficient information to form a belief as to the
17 truth of the averments in the first sentence regarding what the United States “understands”
18 or what efforts it believes it has “undertaken” to secure our nation’s borders. Defendant-
19 Intervenor denies the second sentence that the federal government welcomes cooperative
20 efforts by states and localities to aid in the enforcement of the nation’s immigration laws.
21 The remainder of the paragraph contains conclusions of law, not allegations of fact, and
22 thus no response is required.
23
24
25
26
27
28

JURISDICTION AND VENUE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. The first sentence contains conclusions of law, not allegations of fact, and thus no response is required. Defendant-Intervenor admits that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and that plaintiff seeks remedies under 28 U.S.C. §§ 1651, 2201, and 2202.

7. Admit.

PARTIES

8. Admit.

9. Admit.

10. Admit.

11. Admit.

12. Admit.

13. Admit.

STATEMENT OF THE CLAIM

14. Defendant-Intervenor admits that this paragraph contains a partial quotation from the United States Constitution (the “Constitution”). The Constitution is a document that speaks for itself and any characterizations of the Constitution are denied.

15. Defendant-Intervenor admits that this paragraph contains partial quotations from the Constitution. The Constitution is a document that speaks for itself and any characterizations of the Constitution are denied. The remaining allegations are characterizations of the federal government’s “broad” discretion and such characterizations are denied.

16. Defendant-Intervenor admits that this paragraph contains a partial quotation from

1 the Constitution. The Constitution is a document that speaks for itself and any
2 characterizations of the Constitution are denied. To the extent that this paragraph seeks to
3 characterize the President’s duties, such characterizations are denied.

4 17. Defendant-Intervenor admits that Congress has exercised its authority to make laws
5 governing immigration and the status of aliens within the United States by enacting
6 various provisions of the INA and other laws regulating immigration. To the extent that
7 this paragraph seeks to summarize portions of the INA, the statute speaks for itself and
8 any characterizations are denied.

9 18. Defendant-Intervenor admits the allegations contained in paragraph 18 that the
10 INA at times vests discretion with respect to specific provisions of immigration laws.
11 Upon information and belief, the federal government has from time to time set
12 enforcement priorities for the arrest, detention, prosecution, and removal of aliens.
13 Defendant-Intervenor is without sufficient information and knowledge to either admit or
14 deny the specific enforcement priorities of the federal government.

15 19. Defendant-Intervenor admits the allegations contained in paragraph 19 that
16 Congress has taken into account competing interests and agrees that “effective
17 enforcement of the provisions against illegal migration and unlawful presence is a highly
18 important interest” and it is not the singular goal of the federal immigration laws. To the
19 extent that paragraph 19 attempts to summarize portions of the nation’s immigration laws,
20 the immigration laws and the cases interpreting the laws speak for themselves and any
21 characterizations of such laws and cases are denied.

22 20. Defendant-Intervenor admits the allegations contained in paragraph 20 of the
23 Complaint that DHS, DOJ and the Department of State all have powers and obligations
24
25
26
27
28

1 with respect to aspects of the immigration laws. To the extent that paragraph 20 attempts
2 to summarize portions of the nation’s immigration laws, the immigration laws speak for
3 themselves and any characterizations of such laws are denied.

4 21. Defendant-Intervenor admits the nation’s immigration laws at times vest discretion
5 with respect to specific provisions of immigration laws. Paragraph 21 attempts to
6 summarize portions of the nation’s immigration laws. The immigration laws speak for
7 themselves and Defendant-Intervenor denies any characterizations of such laws.
8

9 22. Defendant-Intervenor admits the immigration laws at times vest discretion with
10 respect to specific provisions of immigration laws and that DOJ and DHS exercise
11 discretion from time to time in enforcing the laws. Paragraph 22 attempts to summarize
12 portions of the nation’s immigration laws. The immigration laws speak for themselves
13 and Defendant-Intervenor denies any characterizations of such laws.
14

15 23. Defendant-Intervenor admits that “unlawful entry into the United States is a
16 criminal offense” under 8 U.S.C. § 1325. Defendant-Intervenor further admits that
17 Congress authorized, without a warrant, “federal immigration officers to patrol the United
18 States border, as well as search vehicles and lands near the border, to prevent aliens from
19 unlawfully entering the United States.” The remaining allegations contained in paragraph
20 23 of the Complaint are incomplete summaries of portions of the nation’s immigration
21 laws. The immigration laws speak for themselves and Defendant-Intervenor denies that
22 such summaries are complete, and further denies the characterizations of such laws.
23

24 24. Paragraph 24 of the Complaint attempts to summarize portions of the nation’s
25 immigration laws related to an alien registration system. The immigration laws speak for
26 themselves and the Defendant-Intervenor denies that such summaries are complete, and
27
28

1 further denies any characterizations of such laws.

2 25. Paragraph 25 of the Complaint attempts to summarize portions of the nation's
3 immigration laws related to an alien registration system. The immigration laws speak for
4 themselves and the Defendant-Intervenor denies that such summaries are complete, and
5 further denies any characterizations of such laws.

6
7 26. Paragraph 26 of the Complaint attempts to summarize portions of the nation's
8 immigration laws related to an alien registration system. The immigration laws speak for
9 themselves and Defendant-Intervenor denies that such summaries are complete, and
10 further denies any characterizations of such laws.

11
12 27. Defendant-Intervenor admits that paragraph 27 of the Complaint quotes certain
13 portions of 8 U.S.C. § 1324. 8 U.S.C. § 1324 speaks for itself and any characterizations
14 of the statute are denied.

15
16 28. Defendant-Intervenor admits that paragraph 28 of the Complaint quotes small
17 portions of 8 U.S.C. § 1324. 8 U.S.C. § 1324 speaks for itself and any characterizations
18 of the statute are denied.

19
20 29. Defendant-Intervenor admits that paragraph 29 of the Complaint quotes small
21 portions of 8 U.S.C. § 1324. 8 U.S.C. § 1324 speaks for itself and any characterizations of
22 the statute are denied.

23 30. Defendant-Intervenor admits that under specific portions of the INA and other
24 immigration laws, DHS is charged with administering and enforcing the laws and that
25 DHS includes, among others, U.S. Immigration and Customs Enforcement ("ICE"), U.S.
26 Customs and Border Protection ("CBP"), and U.S. Citizenship and Immigration Services
27 ("USCIS"). Defendant-Intervenor affirmatively alleges that DHS and its components
28

1 have failed to enforce the nation’s immigration laws. Defendant-Intervenor further admits
2 that Congress has acknowledged numerous ways that the states may assist in the
3 enforcement of the immigration laws. Paragraph 30 of the Complaint attempts to
4 summarize portions of the nation’s immigration laws. The immigration laws speak for
5 themselves and Defendant-Intervenor denies that such summaries are complete, and
6 further denies any characterizations of such laws.
7

8 31. Defendant-Intervenor admits the allegations contained in paragraph 31 of the
9 Complaint that DHS has some programs where DHS works cooperatively with states and
10 localities. Defendant-Intervenor admits that LEAR and LESC are two such programs.
11 Defendant-Intervenor admits that state and local authorities frequently work with DHS for
12 determinations regarding immigration status and other immigration matters. The
13 remaining allegations in paragraph 31 attempt to summarize portions of DHS programs
14 that involve state and local agencies and officers, but Defendant-Intervenor denies that
15 such summaries are complete.
16

17
18 32. Plaintiff’s statements in paragraph 32 of the Complaint are legal conclusions as to
19 which no response is required.
20

21 **Arizona’s SB 1070**

22 33. Defendant-Intervenor admits Governor Brewer signed SB 1070 into law on April
23 23, 2010. Defendant-Intervenor admits that paragraph 33 of the Complaint includes
24 quotes of portions of SB 1070 and paragraph 33 attempts to summarize portions of SB
25 1070. SB 1070 speaks for itself. Defendant-Intervenor denies any characterizations of
26 SB 1070 contained in paragraph 33.
27

28 34. Defendant-Intervenor admits that Governor Brewer issued Arizona State Executive

1 Order 2010-09 (April 23, 2010) and that paragraph 34 of the Complaint includes quotes
2 from a small portion of Executive Order 2010-09. Executive Order 2010-09 speaks for
3 itself.

4 35. Defendant-Intervenor admits that HB 2162 amended SB 1070 and that Governor
5 Brewer made a statement after HB 2162 was signed. The remaining portions of paragraph
6 35 of the Complaint include a quote from a small portion of Governor Brewer's statement.
7
8 HB 2162, SB 1070 (as amended), and Governor Brewer's statement speak for themselves.

9 36. Defendant-Intervenor denies the allegations contained in paragraph 36 of the
10 Complaint. To the extent the allegations are intended to challenge Section 1 of SB 1070,
11 no response is necessary because the Court granted defendants' Motion to Dismiss with
12 respect to Section 1.
13

14 37. Defendant-Intervenor denies the allegations contained in paragraph 37 of the
15 Complaint. To the extent that paragraph 37 attempts to summarize SB 1070, SB 1070
16 speaks for itself. Defendant-Intervenor denies that the summaries contained in paragraph
17 37 are accurate and complete. Defendant-Intervenor further denies any characterizations
18 of SB 1070. Defendant-Intervenor affirmatively states that no response is necessary to the
19 extent the allegations are intended to challenge Section 1 of SB 1070 because the Court
20 granted defendants' Motion to Dismiss with respect to Section 1.
21
22

23 38. Defendant-Intervenor denies the allegations contained in paragraph 38 of the
24 Complaint. To the extent that paragraph 38 attempts to summarize SB 1070 and its
25 influence on foreign relations, trade, national security, etc., SB 1070 speaks for itself as
26 does the article cited in paragraph 38. Defendant-Intervenor denies that the summaries
27 contained in paragraph 38 are accurate and complete, and further denies any
28

1 characterizations of SB 1070. Defendant-Intervenor affirmatively states that no response
2 is necessary to the extent the allegations are intended to challenge Section 1 of SB 1070
3 because the Court granted defendants’ Motion to Dismiss with respect to Section 1.

4 39. Defendant-Intervenor is without sufficient information and knowledge to admit or
5 deny whether other states are “contemplating” similar legislation. Defendant-Intervenor
6 denies all remaining allegations contained in paragraph 39 of the Complaint.
7

8 **Section 2 of SB 1070**

9 40. Defendant-Intervenor admits that paragraph 40 of the Complaint includes quotes of
10 small portions of Section 2 of SB 1070 and paragraph 40 attempts to summarize portions
11 of Section 2 of SB 1070. SB 1070 speaks for itself and Defendant-Intervenor denies that
12 the summaries contained in paragraph 40 are complete. Defendant-Intervenor further
13 denies any characterizations of SB 1070.
14

15 41. Defendant-Intervenor admits that paragraph 41 of the Complaint includes quotes of
16 small portions of Section 2 of SB 1070 and paragraph 41 attempts to summarize and
17 characterize Section 2 of SB 1070. SB 1070 speaks for itself and Defendant-Intervenor
18 denies that the summaries contained in paragraph 41 are complete. Defendant-Intervenor
19 further denies any characterizations of SB 1070 and the truth of any such
20 characterizations. All remaining allegations contained in paragraph 41 are denied.
21

22 42. Defendant-Intervenor denies the allegations contained in paragraph 42 of the
23 Complaint.
24

25 43. Defendant-Intervenor denies the allegations contained in paragraph 43 of the
26 Complaint. To the extent that paragraph 43 attempts to characterize, summarize, and
27 quote from small portions of SB 1070, SB 1070 speaks for itself. Defendant-Intervenor
28

1 denies that the summaries in paragraph 43 are accurate and complete. Defendant-
2 Intervenor further denies any characterizations of SB 1070.

3 44. Defendant-Intervenor denies the allegations contained in paragraph 44 of the
4 Complaint. Defendant-Intervenor affirmatively states that inquiries regarding
5 immigration status under section 2 of SB 1070 are specifically permitted by 8 U.S.C. §
6 1373(a) and 8 U.S.C. § 1644.
7

8 45. Defendant-Intervenor denies the allegations contained in paragraph 45 of the
9 Complaint.
10

11 **Section 3 of SB 1070**

12 46. Defendant-Intervenor admits that paragraph 46 of the Complaint includes quotes of
13 small portions of Section 3 of SB 1070 and that paragraph 46 attempts to summarize
14 portions of Section 3 of SB 1070. SB 1070 speaks for itself. Defendant-Intervenor denies
15 that the summaries in paragraph 46 are complete. Defendant-Intervenor further denies
16 any characterizations of SB 1070 contained in paragraph 46.
17

18 47. Defendant-Intervenor denies the allegations contained in paragraph 47 of the
19 Complaint.
20

21 48. Defendant-Intervenor denies the allegations contained in paragraph 48 of the
22 Complaint. To the extent that paragraph 48 attempts to characterize or summarize portions
23 of SB 1070, SB 1070 speaks for itself. Defendant-Intervenor denies that the summaries
24 contained in paragraph 48 are accurate and complete. Defendant-Intervenor further denies
25 any characterizations of SB 1070.
26

27 49. Defendant-Intervenor denies the allegations contained in paragraph 49 of the
28 Complaint to the extent that such paragraph attempts to characterize SB 1070. SB 1070

1 speaks for itself. Defendant-Intervenor denies the characterizations of SB 1070.

2 **Section 4 of SB 1070/A.R.S. § 13-2319**

3 50. Defendant-Intervenor admits that paragraph 50 of the Complaint includes quotes of
4 small portions of A.R.S. § 13-2319. Paragraph 50 attempts to summarize portions of
5 Section 3 of SB 1070. SB 1070 speaks for itself. Defendant-Intervenor denies that the
6 summaries contained in paragraph 50 are complete, and further denies any
7 characterizations of SB 1070.

8
9 51. Defendant-Intervenor denies the allegations contained in paragraph 51 of the
10 Complaint. To the extent that paragraph 51 attempts to summarize and characterize
11 A.R.S. § 13-2319 and 8 U.S.C. § 1324 and immigration law, these statutes and laws
12 speaks for themselves and Defendant-Intervenor denies the characterizations of these
13 laws.

14 **Section 5 of SB 1070**

15
16 52. Defendant-Intervenor admits the allegations contained in paragraph 52 of the
17 Complaint. Defendant-Intervenor affirmatively alleges that no response is necessary to
18 the extent the allegations are intended to challenge Section 5 of SB 1070 that creates
19 A.R.S. §§ 13-2928(A) and (B) because the Court granted defendants' Motion to Dismiss
20 based on plaintiff's failure to state a claim with respect to portions of Section 5.

21
22 53. Defendant-Intervenor admits that paragraph 53 of the Complaint includes quotes of
23 small portions of A.R.S. § 13-2319. Paragraph 53 attempts to summarize portions of
24 A.R.S. § 13-2319, but A.R.S. § 13-2319 speaks for itself. Defendant-Intervenor denies
25 that the summaries contained in paragraph 53 are complete. Defendant-Intervenor further
26 denies any characterizations of A.R.S. § 13-2319.
27
28

1 54. Defendant-Intervenor denies the allegations contained in paragraph 54 of the
2 Complaint.

3 55. Defendant-Intervenor denies the allegations contained in paragraph 55 of the
4 Complaint. To the extent that Paragraph 55 attempts to summarize and characterize
5 A.R.S. § 13-2929 and 8 U.S.C. § 1324 and immigration law, these statutes and law speak
6 for themselves. Defendant-Intervenor denies the characterizations of these laws.
7 Defendant-Intervenor affirmatively states that no response is necessary to the extent the
8 allegations are intended to challenge Section 5 of SB 1070 based on preemption by federal
9 immigration law for purposes of a facial challenge or based on the dormant Commerce
10 Clause because the Court granted defendants' Motion to Dismiss on these grounds.
11

12 56. Defendant-Intervenor denies the allegations contained in paragraph 56 of the
13 Complaint. Defendant-Intervenor affirmatively alleges that no response is necessary to
14 the extent the allegations are intended to challenge Section 5 of SB 1070 that creates
15 A.R.S. §§ 13-2928(A) and (B) because the Court granted defendants' Motion to Dismiss
16 based on plaintiff's failure to state a claim with respect to portions of Section 5.
17

18 **Section 6 of SB 1070**

19
20 57. Defendant-Intervenor admits that paragraph 57 of the Complaint includes quotes of
21 small portions of A.R.S. § 13-3883. Paragraph 57 attempts to summarize portions of
22 Section 6 of SB 1070, but A.R.S. § 13-3883 and SB 1070 speak for themselves.
23 Defendant-Intervenor denies that such summaries are complete, and further denies any
24 characterizations of A.R.S. § 13-3883 and SB 1070.
25

26
27 58. Defendant-Intervenor denies the allegations contained in paragraph 58 of the
28 Complaint. To the extent that paragraph 58 attempts to summarize and characterize

1 A.R.S. § 13-3883 and SB 1070, these statutes and laws speak for themselves. Defendant-
2 Intervenor denies the characterizations of these laws.

3 59. Defendant-Intervenor denies the allegations contained in paragraph 59 of the
4 Complaint. To the extent that paragraph 59 attempts to summarize and characterize
5 A.R.S. § 13-3883 and SB 1070, these statutes and laws speak for themselves. Defendant-
6 Intervenor denies the characterizations of these laws and the truth of any such
7 characterizations.
8

9 60. Defendant-Intervenor denies the allegations contained in paragraph 60 of the
10 Complaint.
11

12 **First Cause of Action – Violation of the Supremacy Clause**

13 61. Defendant-Intervenor incorporates the responses from paragraphs 1 through 60.

14 62. Defendant-Intervenor denies the allegations contained in paragraph 62 of the
15 Complaint. Defendant-Intervenor affirmatively alleges that no response is necessary to the
16 extent the allegations are intended to challenge Section 1 and subsections 2(A), (C)
17 through (G), (I), (J), (K), and (L) of SB 1070 because the Court granted defendants’
18 Motion to Dismiss finding the Complaint failed to state a claim and the absence of facts
19 sufficient to find Section 2(H) is preempted on its face.
20

21
22 63. Defendant-Intervenor denies the allegations contained in paragraph 63 of the
23 Complaint. Defendant-Intervenor affirmatively alleges that no response is necessary to
24 the extent the allegations are intended to challenge Section 1 and subsections 2(A), (C)
25 through (G), (I), (J), (K), and (L) of SB 1070 because the Court granted defendants’
26 Motion to Dismiss finding the Complaint failed to state a claim and the absence of facts
27 sufficient to find Section 2(H) is preempted on its face.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Second Cause of Action – Preemption Under Federal Law

64. Defendant-Intervenor incorporates the responses from paragraphs 1 through 63.

65. Defendant-Intervenor denies the allegations contained in paragraph 65 of the Complaint. Defendant-Intervenor affirmatively alleges that no response is necessary to the extent the allegations are intended to challenge Section 1 and subsections 2(A), (C) through (G), (I), (J), (K), and (L) of SB 1070 because the Court granted defendants’ Motion to Dismiss finding the Complaint failed to state a claim and the absence of facts sufficient to find Section 2(H) is preempted on its face.

Third Cause of Action – Violation of the Commerce Clause

66. Defendant-Intervenor incorporates the responses from paragraphs 1 through 65.

67. Defendant-Intervenor denies the allegations contained in paragraph 67 of the Complaint. Defendant-Intervenor affirmatively alleges that no response is necessary to the extent that the allegations are intended to challenge Section 5 of SB 1070 based on the restriction of interstate movement of aliens or the Commerce Clause because the Court granted defendants’ Motion to Dismiss on those grounds.

68. Defendant-Intervenor denies the allegations contained in paragraph 68 of the Complaint. Defendant-Intervenor affirmatively alleges that no response is necessary to the extent that the allegations are intended to challenge Section 5 of SB 1070 based on the restriction of interstate movement of aliens or the Commerce Clause because the Court granted defendants’ Motion to Dismiss on those grounds.

GENERAL DENIAL

69. Defendant-Intervenor denies all allegations not specifically admitted.

1 70. Defendant-Intervenor denies all legal conclusions and any allegations based on
2 hearsay.

3 **AFFIRMATIVE DEFENSES**

4 1. Plaintiff's Complaint fails to state a claim upon which relief can be granted. The
5 Court dismissed the following claims or those portions of the Complaint based on the
6 following: Section 1, Subsections 2(A), (C) through (G), (H), (I), (J), (K), and (L),
7 portions of Section 5 of SB 1070 that created A.R.S. § 13-2928(A) and (B), and portions
8 of Section 5 of SB 1070 that created A.R.S. § 13-2929.
9

10 2. Defendant-Intervenor complied with all relevant federal, state and local laws,
11 including the Arizona Constitution and the Constitution.

12 3. Defendant-Intervenor has a right to protect its citizens.

13 4. Arizona has a right to self-defense under the Constitution, particularly when the
14 federal government fails to protect it.
15

16 5. Plaintiff lacks both Article III and prudential standing to bring this Action.
17

18 6. Plaintiff has failed to name DHS, DOJ, and the State Department as the real
19 parties-in-interest.

20 7. Any alleged foreign policy implications were caused by individuals other than any
21 defendant in this matter, including plaintiff and its agencies and officials.
22

23 8. Pursuant to the Constitution, plaintiff should have brought this matter in the United
24 States Supreme Court as it has original jurisdiction of lawsuits between the United States
25 and an individual state under the Constitution.
26

27 9. Plaintiff has unclean hands to the extent it has failed to enforce the immigration
28 laws and otherwise fulfill its duties as required by law and the Constitution and the

1 executive branch of the federal government has failed to enforce the decisions Congress
2 made when it enacted the immigration laws.

3 10. Defendant-Intervenor acted under the State's broad police power under the 10th
4 Amendment of the Constitution.

5 11. Defendant-Intervenor will be irreparably harmed if plaintiff obtains the relief
6 sought in this matter.

7 12. Plaintiff's facial challenge to the constitutionality of SB 1070 is barred to the
8 extent that it relies on hypothetical or speculative circumstances.

9 13. SB 1070 is not preempted by federal law or the Constitution. SB 1070 does not
10 conflict with federal law, does not constitute an improper regulation of immigration, and
11 Congress has not fully occupied the field.

12 14. SB 1070 does not violate the Commerce Clause of the Constitution or discriminate
13 or burden interstate commerce.

14 15. The allocation of power contained in the Commerce Clause does not authorize
15 Congress to regulate state governments' regulation of interstate commerce.

16 16. Defendant-Intervenor does not know if additional affirmative defenses may prove
17 to have some application and, therefore, incorporate by reference the additional defenses
18 contained within Rule 8(c) of the Fed. R. Civ. P.

19 WHEREFORE, having fully answered, Defendant-Intervenor requests that the Court:

20 A. Dismiss plaintiff's complaint with prejudice and that plaintiff take nothing
21 thereby;

22 B. Award Defendant-Intervenor its costs and reasonable attorney fees, and
23 other expenses pursuant to any applicable statutes;

C. Award any such other and further relief as the Court deems appropriate.

Dated: February 11, 2011

Respectfully Submitted,

KERCSMAR & FELTUS PLLC

By: s/ Geoffrey S. Kerksmar

Geoffrey S. Kerksmar (#20528)
Gregory B. Collins (#023158)
6263 North Scottsdale Road, Suite 320
Scottsdale, Arizona 85250
Tel: (480) 421-1001

Paul J. Orfanedes
(Motion for admission *pro hac vice* to be filed)
James F. Peterson
(Motion for admission *pro hac vice* to be filed)
Michael Bekesha
(Motion for admission *pro hac vice* to be filed)
JUDICIAL WATCH, INC.
425 Third Street, S.W., Suite 800
Washington, DC 20024
Tel: (202) 646-5172

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

Kerksmar & Feltus PLLC
6263 N. Scottsdale Road, Suite 320
Scottsdale, Arizona 85250
(480) 421-1001

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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
Dennis K. Burke
Arthur R. Goldberg
Varu Chilakamarri
Joshua Wilkenfeld
U.S. Department of Justice, Civil Division
20 Massachusetts Avenue, N.W.
Washington, DC 20530

s/ Kelli Dunlap _____

Kercsmar & Feltus PLLC
6263 N. Scottsdale Road, Suite 320
Scottsdale, Arizona 85250
(480) 421-1001

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28