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8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 The United States of America,

)No. 2:10-cv-01413-SRB

12 Plaintiff,)

13 v

)AMICUS BRIEF OF MINUTEMAN

)CIVIL DEFENSE CORPS, A

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

)PROJECT OF DECLARATION

)ALLIANCE, IN SUPPORT OF

15 Defendants.)

)COUNTERCLAIMANTS'

)OPPOSITION TO COUNTER-

)DEFENDANTS' MOTION TO

)DISMISS

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

) Counterclaimants,)

18 v.

19
20 The United States of America; the United States Department of
Homeland Security; Janet Napolitano, Secretary of the United
21 States Department of Homeland Security, in her official
capacity; the United States Department of Justice; and Eric H
22 Holder, Jr., Attorney General for the United States Department
of Justice, in his official capacity,

) Counter-defendants.)

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BRIEF OF AMICUS CURIAE
IN SUPPORT OF COUNTERCLAIMANT'S OPPOSITION TO COUNTER-DEFENDANTS'
MOTION TO DISMISS¹

LEGAL DISCUSSION

Counter-defendants initially filed suit against Counterclaimants on the grounds that any state legislation passed concerning illegal immigrants is preempted by Federal law. Contrary to Counter-Defendants' claim, the Federal government acts in a manner that is inconsistent with this claim, given that the Federal agencies responsible for enforcement of immigration law frequently train local law enforcement on how to enforce federal immigration law. However, when Counterclaimants filed the underlying counterclaim, Counter-Defendants filed a motion to dismiss, arguing that the Federal agencies which have the duty of enforcing Federal immigration law have full discretion to determine what to enforce, and that neither Counterclaimants, nor the court, may compel Counter-Defendants to take any particular action, or to enforce any particular law. Counter-Defendants cannot simultaneously hold both positions. If the court were to accept both of Counter-Defendants' arguments, then Counterclaimants will be left with no reasonable options in defending the health, safety, and welfare of the citizens of the State of Arizona. If the duty to enforce any law even remotely connected to immigration is exclusively the jurisdiction of the Federal government, as Counter-Defendants suggest in their action against Arizona, then Arizona should be permitted to bring an action to compel the appropriate Federal agencies to enforce the immigration laws, if the Federal agencies fail to do so, because the State must rely on the Federal government to enforce that area of law.

The general rule with regard to the preemption doctrine is that no act of Congress is presumed to preempt State law unless Congress has made such an intention "clear and manifest:"

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

1 “ “[B]ecause the States are independent sovereigns in our federal system, we have long presumed
2 that Congress does not cavalierly pre-empt state-law causes of action.” Medtronic, 518 U.S., at
3 485, 135 L. Ed. 2d 700, 116 S. Ct. 2240. In areas of traditional state regulation, we assume that a
4 federal statute has not supplanted state law unless Congress has made such an intention “clear
5 and manifest.” New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins.
6 Co., 514 U.S. 645, 655, 131 L. Ed. 2d 695, 115 S. Ct. 1671 (1995) (quoting Rice v. Santa Fe
7 Elevator Corp., 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146 (1947)); see also Medtronic,
8 518 U.S., at 485, 135 L. Ed. 2d 700, 116 S. Ct. 2240. “

9 Bates v. Dow Agrosociences L L C , 544 U.S. 431

10 Counter-Defendants have alleged, with regard to enforcement of immigration laws, that Congress
11 has intended for Federal immigration laws to preempt State laws and that any attempt by Arizona, or any
12 other State, to find a means to deal with the growing and continuing problem of illegal immigration
13 would be interference with the Federal governments plan of enforcement. However, as Counterclaimants
14 have demonstrated in their Answer and Counterclaim, the Federal agencies responsible for enforcement
15 of Federal immigration laws have neglected to so enforce the law in Arizona, which has caused the State
16 of Arizona to attempt to control the after effects of this non-enforcement of immigration laws at great
17 expense to the State.

18 Counter-Defendants cannot simultaneously claim that Federal law both preempts all State laws
19 concerning enforcement of immigration violations and grants the Federal government the discretion to
20 determine whether to enforce these same laws at all because such a result would, in effect, deprive the
21 State of Arizona from exercising its police powers on behalf of its citizens. Congress has limited powers
22 granted to it by the United States Constitution, and may only legislate into specific areas of law. If this
23 court were to accept Counter-Defendants’ claim that all immigration law enforcement is reserved to the
24 Federal government, then the court should also find that the State of Arizona is entitled to reimbursement
25 for expenses incurred due to the State being precluded from taking action on behalf of its citizens.

1 **CONCLUSION**

2 For these reasons, *Amicus* respectfully requests that the Court grant leave to file this brief in
3 support of Counterclaimants.

4 Respectfully Submitted,

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