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9 Attorneys for Arizona Municipal Risk Retention Pool

10
 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE DISTRICT OF ARIZONA

13 THE UNITED STATES OF
 14 AMERICA,

15 Plaintiff,

16 vs.

17 THE STATE OF ARIZONA, *et al.*,

18 Defendants.
 19

No. 2:10-cv-01413-SRB

**AMICUS CURIAE
 MEMORANDUM OF ARIZONA
 MUNICIPAL RISK RETENTION
 POOL**

20
 21
 22 The Arizona Municipal Risk Retention Pool (“the Insurance Pool”) takes
 23 no position as to whether S.B. 1070 is constitutional or whether it is preempted by
 24 federal law. The cities and towns that comprise the Insurance Pool’s membership
 25 do not have a common view of S.B. 1070. Some support the measure. Some
 26 oppose it.
 27

1 The Insurance Pool’s members do not, however, want to divert any more
2 taxpayer dollars than necessary to paying civil judgments. Because of that
3 concern, the Insurance Pool submits that one sentence of the new law should be
4 preliminarily enjoined pending a ruling on the merits.

5 The sentence with which the Insurance Pool is concerned is found in the
6 amended version of A.R.S. § 11-1051(B): “Any person who is arrested shall have
7 the person’s immigration status determined before the person is released.” The
8 Insurance Pool will refer to this provision as the mandatory-detention provision.
9 Until this Court determines whether S.B. 1070 is valid, the mandatory-detention
10 provision creates an insoluble dilemma for Arizona’s cities and towns, including
11 the seventy-four cities and towns that are members of the Insurance Pool.
12

13 If the Insurance Pool’s members abide by the mandatory-detention
14 provision while this litigation is pending and this Court ultimately finds that the
15 provision is invalid, the Insurance Pool’s members may face large liabilities.
16 Individuals who are detained pursuant to the provision may well bring civil actions
17 if the provision is ultimately ruled invalid. S.B. 1070 requires the Insurance
18 Pool’s members to indemnify law enforcement officials for any liabilities incurred
19 as a result of its provisions. *See* A.R.S. § 11-1051(K).
20

21 If the Insurance Pool’s members do not enforce the mandatory-detention
22 provision while this litigation is pending, they will still face the prospect of
23 significant liabilities. S.B. 1070 authorizes any legal resident of Arizona to sue
24 cities, towns and their officials if the immigration laws are not enforced to the full
25
26
27

1 extent allowed by law. *See* A.R.S. § 11-1051(H). The measure requires that the
2 courts impose significant financial penalties on any city or town that is determined
3 to be under-enforcing the law. *Id.*

4 In short, Arizona’s cities and towns are caught between Scylla and
5 Charybdis. No matter what they do while the validity of the law is being
6 adjudicated, they face the prospect of large liabilities for damages, civil penalties
7 and attorneys’ fees. The Insurance Pool’s members will also incur significant
8 costs for transporting and caring for any individuals who are detained.
9

10 The Court can take judicial notice that many Arizona municipalities are
11 already experiencing severe financial difficulties. The limited resources they have
12 available are acutely needed to provide municipal services. Those resources
13 should not be diverted to paying unnecessary and avoidable civil judgments if that
14 prospect can be avoided.
15

16 In this instance, it can be avoided. Arizona’s cities and towns should not be
17 required to enforce the mandatory-detention provision until this Court determines
18 whether the provision is valid. It must be reiterated that the Insurance Pool takes
19 no position on the validity of the mandatory-detention provision or any other
20 provision of S.B. 1070. The Insurance Pool’s concern is with not wasting
21 taxpayer dollars while the validity of the law is being decided.
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July 19, 2010.

LaSOTA & PETERS PLC

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Original of the foregoing electronically
filed this 19th day of July, 2010 with:

Clerk of the United States District Court
For the District of Arizona
401 W. Washington Street
Phoenix, AZ 85003

Copy of the foregoing hand-delivered this
19th day of July, 2010, to:

The Honorable Susan R. Bolton
United States District Court
For the District of Arizona
401 W. Washington Street
Phoenix, AZ 85003

1 Copy of the foregoing mailed and emailed this
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