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

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

16 The United States of America,  
17  
18 Plaintiff,

19 v.

20 The State of Arizona; and Janice K.  
21 Brewer, Governor of the State of Arizona,  
in her Official Capacity,  
22  
23 Defendants.

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

) **MOTION OF THE ARIZONA STATE**  
) **LEGISLATURE**  
) **FOR INTERVENTION AS**  
) **DEFENDANT**

) **(Oral Argument Requested)**

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:

1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

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

15 **II. Intervention Should Be Granted.**

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

20 the nature and extent of the intervenors' interest, their standing  
21 to raise relevant legal issues, the legal position they seek to  
22 advance, and its probable relation to the merits of the case[,]  
23 whether changes have occurred in the litigation so that  
24 intervention that was once denied should be reexamined,  
25 whether the intervenors' interests are adequately represented  
26 by other parties, whether intervention will prolong or unduly  
27 delay the litigation, and whether parties seeking intervention  
28 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.

27 *Perry v. Schwarzenegger*, No. 10-16751, 2010 U.S. App. LEXIS 74, \*15 (9th Cir. 2011)  
28 (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,

KERCSMAR & FELTUS PLLC

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24  
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**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on February 11, 2011, I electronically transmitted the  
3 foregoing document to the Clerk's Office using the CM/ECF System for filing and  
4 transmittal of a Notice of Electronic Filing to the CM/ECF registrants on records,  
5 including:  
6

7  
8 Tony West  
9 Dennis K. Burke  
10 Arthur R. Goldberg  
11 Varu Chilakamarri  
12 Joshua Wilkenfeld  
13 U.S. Department of Justice, Civil Division  
14 20 Massachusetts Avenue, N.W.  
15 Washington, DC 20530

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*s/ Kelli Dunlap* \_\_\_\_\_

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

*The United States of America v.*

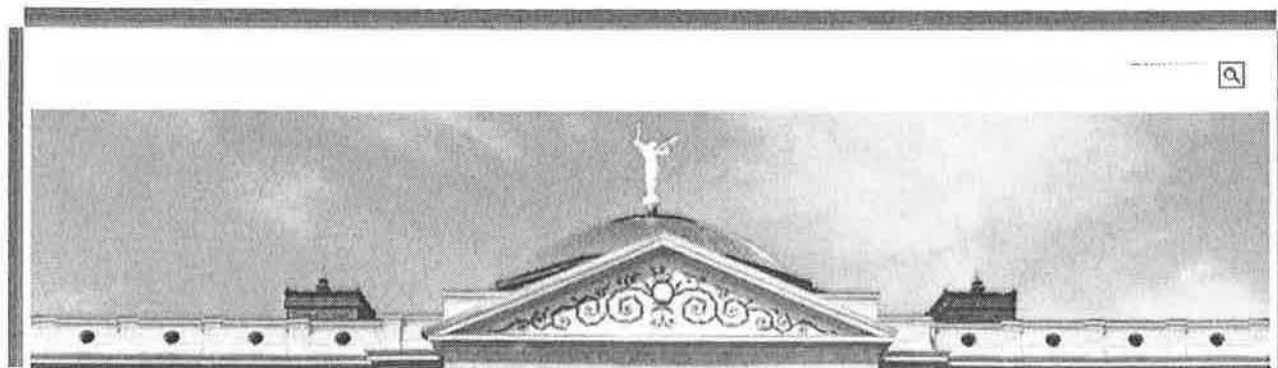
*The State of Arizona; and Janice K. Brewer,*

*Governor of the State of Arizona, in her Official Capacity*

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

MOTION OF THE ARIZONA STATE LEGISLATURE  
FOR INTERVENTION AS DEFENDANT

Exhibit 1 – Senate Bill 1117



Arizona Legislature - First Regular Session

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**BILL STATUS OVERVIEW**

**SB1117**

**SPONSORS:** PEARCE R P ALLEN   P BUNDGAARD P  
 GRAY   P SMITH   P BARTO   C  
 KLEIN   C MCCOMISH C MELVIN   C  
 PIERCE S   C REAGAN   C

**TITLE:** immigration legislation challenges

**SENATE FIRST READ:** 01/13/11

**SENATE SECOND READ:** 01/18/11

**COMMITTEES: ASSIGNED COMMITTEES ACTION**

Vote Detail	01/13/11	JUD	01/20/11 (6-2-0-0) DP
	01/13/11	RULES	01/24/11 PFC

**MAJORITY CAUCUS:** 01/25/11 Y

**MINORITY CAUCUS:** 01/25/11 Y

**CONSENT CALENDAR:** 01/24/11 2:45 PM Object

<b>COW ACTION 1: DATE</b>	<b>ACTION</b>	<b>AYES</b>	<b>NAYS</b>	<b>NV</b>	<b>EXC</b>
01/26/11 DP		0	0	0	0

**AMENDMENTS**

Gallardo fir amend (ref Bill) failed

Sinema fir amend (ref Bill) failed

**THIRD READ: DATE   AYES   NAYS   NV   EXC   EMER   AMEND   RFE   2/3   VOTE   RESULT**

Vote Detail	01/26/11	20	6	4	0	E				PASSED
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**TRANSMIT TO HOUSE:** 01/26/11

**THIRD READ: DATE   AYES   NAYS   NV   EXC   EMER   AMEND   RFE   2/3   VOTE   RESULT**

Vote Detail	02/03/11	40	20	0	0	E				PASSED
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**TRANSMIT TO SENATE:** 02/03/11

**TRANSMITTED TO:** GOVERNOR 02/07/11

**ACTION:**                      SIGNED                      02/07/11

Senate Engrossed

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

## **SENATE BILL 1117**

AN ACT

AMENDING LAWS 2010, CHAPTER 211, SECTION 8; RELATING TO IMMIGRATION  
LEGISLATION CHALLENGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)



S.B. 1117

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Laws 2010, chapter 211, section 8 is amended to read:

3 Sec. 8. Immigration legislation challenges

4 A. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and  
5 any other law, ~~through December 31, 2010,~~ the attorney general shall act at  
6 the direction of the governor in any challenge in a state or federal court to  
7 Laws 2010, chapter 113 and any amendments to that law.

8 B. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and  
9 any other law, ~~through December 31, 2010,~~ the governor may direct counsel  
10 other than the attorney general to appear on behalf of this state to defend  
11 any challenge to Laws 2010, chapter 113 and any amendments to that law.

12 C. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE SPEAKER OF THE HOUSE  
13 OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE MAY DIRECT COUNSEL TO  
14 INITIATE A LEGAL PROCEEDING OR APPEAR ON BEHALF OF THEIR RESPECTIVE CHAMBERS  
15 OR ON BEHALF OF THE LEGISLATURE IN ANY CHALLENGE IN A STATE OR FEDERAL COURT  
16 TO LAWS 2010, CHAPTER 113 AND ANY AMENDMENTS TO THAT LAW.

17 Sec. 2. Retroactivity

18 This act applies retroactively to from and after December 31, 2010.

19 Sec. 3. Emergency

20 This act is an emergency measure that is necessary to preserve the  
21 public peace, health or safety and is operative immediately as provided by  
22 law.