

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

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.
10 425 Third Street, S.W., Suite 800
11 Washington, DC 20024
12 Tel: (202) 646-5172

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

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

16 The United States of America,

17 Plaintiff,

18 v.
19

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

23 Defendants.

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

**REPLY IN SUPPORT OF 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 reply in support its motion seeking leave to intervene as a defendant pursuant to
26 Federal Rule of Civil Procedure 24(b). As grounds therefor, the Legislature states as
27 follows:
28

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. Arizona Should Be Permitted to Defend SB 1070 in the Manner It Has Deemed Appropriate.

With the enactment of SB 1117, the State of Arizona has made clear the manner that it wishes to be sued in this case. The State of Arizona wants to defend SB 1070 with both Governor and the Legislature as defendants. It should have the opportunity to do so.

Plaintiff, the United States, opposes the manner that Arizona seeks to defend itself in this lawsuit, and has raised a host of meritless objections. *See* Dkt. No. 144 (Plaintiff’s Response to the Motion of the Arizona State Legislature for Intervention as a Defendant (“Response”). First, contrary to plaintiff’s suggestion, the Legislature’s motion is both timely and will contribute to the “just and equitable adjudication” of the case. Response at 2-3. The motion was plainly timely, as it was filed prior to the deadline for the first responsive pleading in the case and just days after the enactment of SB 1117. *See* Dkt. Entry No. 135 (Order, issued Dec. 21, 2010). Intervention also will aid in the “just and equitable adjudication” of the matter as it will permit the State of Arizona to be sued in the manner it has specified. *See* Ariz. Const. Art. 4, Part 2, Sec. 18, Suits Against State, (“The legislature shall direct by law in what manner and in what courts suits may be brought against the state.”).

Second, plaintiff objects to intervention on basis that that Arizona has thus far been “adequately represented” by the Governor. Response at 3. It is undeniable, however, that the State of Arizona, through its Legislature and with the support of the Governor, has determined that the defense of SB 1070 going forward is of sufficient importance that a special provision of law (SB 1117) was enacted. SB 1117 specifically provides for a defense of SB 1070 by the Legislature and the Governor and, critically, the Governor supports this. At a minimum, “adequate representation” of Arizona must at least include the representation and type of defense that the State selects – in this case, with the Governor and the Legislature as defendants.

Third, intervention will not “unduly delay” or complicate this case. Response at 4.

1 The Legislature already has lodged a proposed Answer in Intervention (*see* Dkt No. 143)
2 and will fully cooperate with Governor Brewer in defending this action. Moreover, this
3 litigation is procedurally less complex at this point, as most of the other lawsuits
4 challenging SB 1070 have already been dismissed or significantly narrowed. *See National*
5 *Coalition of Latino Clergy and Christian Leaders v. State of Arizona*, No. 10-00943 (D.
6 *Ariz., dismissed* Jan. 7, 2011); *Salgado v. Brewer*, No. 10-00951 (D. Ariz., *dismissed* Jan.
7 13, 2011); *Escobar v. Brewer*, No. 10-00249 (D. Ariz., *dismissed* Aug. 31, 2010);
8 *Frisancho v. Brewer*, No. 10-00926 (D. Ariz., *dismissed* Aug. 24, 2010); *Friendly House*
9 *v. Whiting*, No. 10-1061 (D. Ariz., motion to dismiss *granted in part* Oct. 8, 2010);
10 *League of United Latin American Citizens v. State of Arizona*, No. 10-1453 (D. Ariz.,
11 motion to dismiss *granted* Dec. 15, 2010).

12 Finally, plaintiff makes the patronizing suggestion that if the Legislature happens
13 to have “arguments that it wishes to advance, it should do so through defendants” or
14 simply as an amicus. Response at 5. It is undeniable that the State of Arizona has now
15 unequivocally indicated how it wishes to be sued in this case. It is not the proper role of
16 the United States to try to dictate how Arizona presents its defense. Arizona is entitled to
17 defend itself in the manner it sees fit. With the permission of this Court, it should be
18 allowed to do so.

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

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

1 Dated: March 7, 2011

Respectfully Submitted,
KERCSMAR & FELTUS PLLC

2
3
4 By: s/ Geoffrey S. Kerksmar
5 Geoffrey S. Kerksmar (#20528)
6 Gregory B. Collins (#023158)
7 6263 North Scottsdale Road, Suite 320
8 Scottsdale, Arizona 85250
9 Tel: (480) 421-1001

JUDICIAL WATCH, INC.

10 Paul J. Orfanedes
11 (Motion for admission *pro hac vice* to be filed)
12 James F. Peterson
13 (Motion for admission *pro hac vice* to be filed)
14 Michael Bekesha
15 (Motion for admission *pro hac vice* to be filed)
16 425 Third Street, S.W., Suite 800
17 Washington, DC 20024
18 Tel: (202) 646-5172

*Attorneys for Proposed Intervenor/Defendant
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 March 7, 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/ Geoffrey S. Kercsmar

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