

1 Geoffrey S. Kerksmar (#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*

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

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.

Perry v. Schwarzenegger, No. 10-16751, 2010 U.S. App. LEXIS 74, *15 (9th Cir. 2011)
(citing *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). In

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

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

23
24
25 By: s/ Geoffrey S. Kercsmar
26 Geoffrey S. Kercsmar (#20528)
27 Gregory B. Collins (#023158)
28 6263 North Scottsdale Road, Suite 320
Scottsdale, Arizona 85250
Tel: (480) 421-1001

JUDICIAL WATCH, INC.

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

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

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

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

16
17
18
19
20
21
22
23
24
25
26
27
28
s/ Kelli Dunlap _____

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The United States of America v.

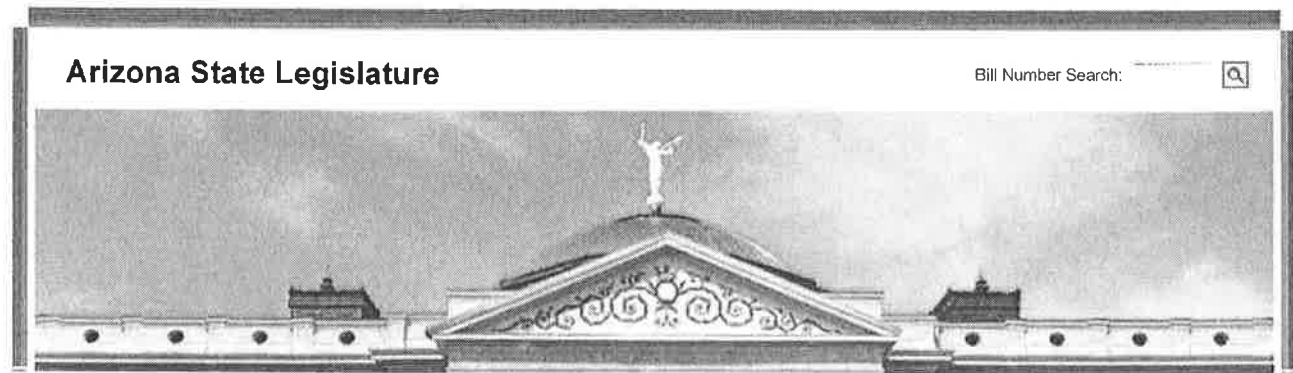
The State of Arizona; and Janice K. Brewer,

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



Fiftieth Legislature - First Regular Session

[Email a Member](#) | [Email Webmaster](#)

[change session](#) | [printer friendly version](#)

[Senate](#) [House](#) [Legislative Council](#) [JLBC](#) [More Agencies](#) [Bills](#) [Committees](#) [Calendars/News](#)

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

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

AMENDMENTS

Gallardo flr amend (ref Bill) failed

Sinema flr 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
-------------	----------	----	---	---	---	---	--	--	--	--	--------

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
-------------	----------	----	----	---	---	---	--	--	--	--	--------

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.