

1 Donald M. Peters 005929
2 Kristin Mackin 023985
3 LaSOTA & PETERS, PLC
4 722 East Osborn Road, Suite 100
5 Phoenix, AZ 85014
6 Telephone: (602) 248-2900
7 Facsimile: (602) 248-2999
8 dpeters@lasotapeters.com

9 Jeffrey T. Murray
10 MOYES SELLERS & SIMS
11 1850 N. Central Avenue, Suite 1100
12 Phoenix, AZ 85004
13 Telephone: (602)604-2169
14 Facsimile: (602)274-9135
15 jtmurray@lawms.com

16 Attorneys for Arizona Municipal Risk Retention Pool

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THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

No. 2:10-cv-01413-SRB

**MOTION FOR LEAVE TO FILE
AMICUS CURIAE
MEMORANDUM**

The Arizona Municipal Risk Retention Pool moves this Court for an order allowing it to file the attached, proposed amicus curiae memorandum. This motion is based on the accompanying Memorandum of Points and Authorities.

1 July 19, 2010.

2
3 /s/ Donald M. Peters

4 Donald M. Peters

5
6
7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8
9 The Arizona Municipal Risk Retention Pool (“the Insurance Pool”) is a
10 self-insurance pool for Arizona cities and towns. The Insurance Pool is owned
11 and operated by the seventy-four cities and towns that comprise its membership.
12 A list of the Insurance Pool’s members is attached as an appendix to this motion.
13 The Insurance Pool is essentially the self-insurance and risk-management arm of a
14 large number of Arizona’s municipalities.

15 The Insurance Pool takes no position on the underlying merits of this
16 dispute. It has a significant practical and financial interest, however, in one aspect
17 of the United States’ request for a preliminary injunction. Until this Court renders
18 a ruling on the merits, the Insurance Pools’ members face the prospect of
19 significant liabilities regardless of how they approach S.B. 1070, as explained
20 more fully in the accompanying memorandum. That dilemma can be alleviated if
21 the Court will stay one portion of S.B. 1070 pending a ruling on the merits.

22 The Court is therefore requested to enter an order permitting the Insurance
23 Pool to participate as amicus curiae and to consider the points raised in the
24 accompanying memorandum.

1 July 19, 2010.

2 LaSOTA & PETERS PLC

3
4 By: /s/Donald M. Peters

5 Donald M. Peters
6 Kristin Mackin
7 722 East Osborn Road, Suite #100
8 Phoenix, Arizona 85014

9 Jeffrey T. Murray
10 MOYES SELLERS & SIMS
11 1850 N. Central Avenue, Suite 1100
12 Phoenix, AZ 85004

13 Attorneys for Arizona Municipal Risk
14 Retention Pool

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

17 Clerk of the United States District Court
18 For the District of Arizona
19 401 W. Washington Street
20 Phoenix, AZ 85003

21 Copy of the foregoing hand-delivered this
22 19th day of July, 2010, to:

23 The Honorable Susan R. Bolton
24 United States District Court
25 For the District of Arizona
26 401 W. Washington Street
27 Phoenix, AZ 85003

1 Copy of the foregoing mailed and emailed this
19th day of July, 2010 to:

2 Joshua Wilkenfeld
3 U.S. Department of Justice
4 Civil Division – Federal Programs Branch
5 20 Massachusetts Avenue
Washington, DC 20530

6 Varu Chilakamarri
7 U.S. Department of Justice
8 20 Massachusetts Avenue NW
Washington, DC 20001

9 John J. Bouma
10 Joseph G. Adams
11 Robert Arthur Henry
12 Snell & Wilmer LLP
13 1 Arizona Center
400 E. Van Buren
Phoenix, AZ 85004

14 Joseph Andrew Kanefield
15 Office of Governor Janice K. Brewer
16 1700 W. Washington Street, 9th Floor
Phoenix, AZ 85007

17 Anne Milgram
18 Center for the Administration of Criminal Law
19 139 MacDougal Street, Suite 307
New York, NY 10012

20 Anthony S. Barkow
21 Center for the Administration of Criminal Law
22 139 MacDougal Street, Suite 307
New York, NY 10012

23 Ellen London
24 Jessica Alexandra Murzyn
25 Friedman Kaplan Seiler & Adelman LLP
1633 Broadway, 46th Floor
New York, NY 10019

26
27 Ricardo Solano, Jr.

1 Friedman Kaplan Seiler & Adelman
2 1 Gateway Ctr., 25th Floor
3 Newark, NJ 07102

4 By: /s/ Toni Vanchieri

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APPENDIX

LIST OF MEMBERS OF ARIZONA MUNICIPAL RISK RETENTION POOL

City of Apache Junction	Town of Miami
City of Avondale	Town of Marana
City of Benson	City of Maricopa
City of Bisbee	Town of Oro Valley
Town of Buckeye	Town of Paradise Valley
City of Bullhead City	Town of Parker
Town of Camp Verde	Town of Patagonia
Town of Carefree	Town of Payson
City of Casa Grande	Town of Pima
Town of Cave Creek	Town of Pinetop/Lakeside
Town of Chino Valley	Town of Prescott Valley
Town of Clarkdale	Town of Quartzsite
Town of Clifton	Town of Queen Creek
Town of Colorado City	City of Safford
City of Coolidge	Town of Sahuarita
City of Cottonwood	City of St. Johns
Town of Dewey-Humboldt	City of San Luis
Town of Diamond Star Valley	City of Sedona
Town of Duncan	City of Show Low
Town of Eagar	City of Sierra Vista
City of Eloy	Town of Snowflake
City of El Mirage	City of Somerton
Town of Florence	City of South Tucson
Town of Fountain Hills	Town of Springerville
Town of Fredonia	Town of Superior
Town of Gila Bend	City of Surprise
City of Globe	Town of Taylor
City of Goodyear	Town of Thatcher
Town of Guadalupe	Town of Tusayan
Town of Hayden	City of Tolleson
City of Holbrook	City of Tombstone
City of Huachuca City	Town of Wellton
Town of Jerome	Town of Wickenburg

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Town of Kearny
City of Kingman
City of Litchfield Park
Town of Mammoth

City of Willcox
Town of Winkelman
City of Winslow
Town of Youngtown
League of AZ Cities &
Towns

1 Donald M. Peters 005929
2 Kristin Mackin 023985
3 LaSOTA & PETERS, PLC
4 722 East Osborn Road, Suite 100
5 Phoenix, AZ 85014
6 Telephone: (602) 248-2900
7 Facsimile: (602) 248-2999
8 dpeters@lasotapeters.com

9 Jeffrey T. Murray
10 MOYES SELLERS & SIMS
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12 Phoenix, AZ 85004
13 Telephone: (602)604-2169
14 Facsimile: (602)274-9135
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14 THE UNITED STATES OF
15 AMERICA,
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17 Plaintiff,
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19 vs.
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21 THE STATE OF ARIZONA, *et al.*,
22
23 Defendants.

No. 2:10-cv-01413-SRB

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

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

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

By: /s/Donald M. Peters

Donald M. Peters
Kristin Mackin
722 East Osborn Road, Suite #100
Phoenix, Arizona 85014

Jeffrey T. Murray
MOYES SELLERS & SIMS
1850 N. Central Avenue, Suite 1100
Phoenix, AZ 85004

Attorneys for Arizona Municipal Risk
Retention Pool

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
2 19th day of July, 2010 to:

3 Joshua Wilkenfeld
4 U.S. Department of Justice
5 Civil Division – Federal Programs Branch
6 20 Massachusetts Avenue
7 Washington, DC 20530

8 Varu Chilakamarri
9 U.S. Department of Justice
10 20 Massachusetts Avenue NW
11 Washington, DC 20001

12 John J. Bouma
13 Joseph G. Adams
14 Robert Arthur Henry
15 Snell & Wilmer LLP
16 1 Arizona Center
17 400 E. Van Buren
18 Phoenix, AZ 85004

19 Joseph Andrew Kanefield
20 Office of Governor Janice K. Brewer
21 1700 W. Washington Street, 9th Floor
22 Phoenix, AZ 85007

23 Anne Milgram
24 Center for the Administration of Criminal Law
25 139 MacDougal Street, Suite 307
26 New York, NY 10012

27 Anthony S. Barkow
Center for the Administration of Criminal Law
139 MacDougal Street, Suite 307
New York, NY 10012

Ellen London
Jessica Alexandra Murzyn
Friedman Kaplan Seiler & Adelman LLP
1633 Broadway, 46th Floor
New York, NY 10019

1 Ricardo Solano, Jr.
2 Friedman Kaplan Seiler & Adelman
3 1 Gateway Ctr., 25th Floor
4 Newark, NJ 07102

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7
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By: /s/ Toni Vanchieri