IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The United States of America, Plaintiff, v. The State of Arizona; and Janice K. Brewer, Governor of the State of Arizona, in her Official Capacity, Defendants. Jesse Hernandez, and the Arizona Latino Republican Association (ALRA), Applicants For Intervention As Defendants.	Civil Action No. 2:10CV01413.

JESSE HERNANDEZ'S AND THE ARIZONA LATINO REPUBLICAN ASSOCIATION'S NOTICE OF MOTION AND MOTION FOR LEAVE TO **INTERVENE AS DEFENDANTS, OR IN THE ALTERNATIVE FOR LEAVE TO FILE BRIEFS AS AMICUS CURIAE**

Applicants hereby move this honorable Court pursuant to Rule 24(a) and (b) of the Federal Rules of Civil Procedure for leave to intervene as Defendants in this action in order to defend against the claims asserted by Plaintiff, The United States of America against Defendants the State of Arizona, and Janice K. Brewer, Governor of the State of Arizona, in her Official Capacity which also concern and affect Applicants. Applicant's Answer is not included herein as contemplated by Federal

Rule of Civil Procedure (c). Applicants respectfully request leave from the Court to file their Answer after the Court's ruling on this Motion.

I. Memorandum of Points and Authorities

Introduction

The United States of America, as Plaintiff in the case at bar, has requested that the Court find State of Arizona's Senate Bill 1070, invalid and to enjoin enforcement of Senate Bill 1070. Plaintiff bases its argument on the grounds that Senate Bill 1070 is preempted by federal law and therefore violates, among other things, the Supremacy Clause of the United States Constitution.

Applicants Jesse Hernandez, President and Chief Operating Officer (CEO) of the Arizona Latino Republican Association (ALRA) (and its members), and the ALRA, are American citizens of Latino heritage or immigrants who have gained legal citizenship in the United States of America. Applicants seek to serve the public interest by intervening herein to ensure that Arizona's Senate Bill 1070, or the "Support Our Law Enforcement and Safe Neighborhoods Act" is upheld, but applied in a race and ethnically natural manner recognizing the huge contributions Latinos and other immigrant groups have made to this Country.

Applicants, as Latino-Americans -- who believe in The "Rule of Law" – desire to intervene as they have immigrated to this country legally and believe that as a matter of national and state security they are compelled to strongly support orderly legal immigration and have an interest, as fellow Americans, in upholding the Senate Bill 1070, which is the subject of this action and are so situated that the disposition of this action may as a practical matter impair or impede their ability to protect that

interest, and Applicants wish to intervene on the further ground that the Applicants interests are not adequately protected by existing parties. Applicants are also seeking to intervene to send a message to non-Latinos that they are all Americans and that the Latino culture, so rich in family values, a hard work ethic and great heritage, stand with them to protect Arizona's and the nation's well-being.

Applicants have a membership of approximately 230 persons. Applicants' members are, as American citizens first and foremost, indirectly or directly affected by Arizona law, Senate Bill 1070, in that their livelihood, freedom, safety and interest is dependent upon a sound implementation of immigration laws in the State of Arizona. Applicants also would like to ensure that legal precedent issue from this court concerning correct, constitutional implementation and enforcement of Senate Bill 1070 in a non-discriminatory manner. Pursuant to that directive, Applicants seek leave of Court to file briefings and make oral argument before the court with regard to the legislation under attack in this litigation. Additionally, Applicants share the same and additional defenses to the main action as the Defendants and other Intervenors herein and have the same common questions of law or fact.

Applicants are so situated that disposition of this action without this intervention will, or may as a practical matter, impair or destroy their ability to protect these interests. Permitting Applicants to intervene will not unduly delay or prejudice the adjudication of the rights of the original parties, but in fact further the fair administration of justice.

In the alternative Applicants believe that as amicus curiae brief, submitted by Applicants, would be desirable in that: Applicants are knowledgeable about the

immigration issues involved in this litigation both as a party and as amicus curiae. In connection with this activity, Applicants have accumulated a large and up-to-date library of cases, treatises, economic data, and other materials pertinent to the issues in this cause. Applicants therefore believe that they can be of considerable assistance to the Court in providing the Court with their knowledge on the issues at hand.

II. PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 24(A), APPLICANTS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Federal Rule of Civil Procedure 24(a)(2) states as follows:

> On timely motion, the Court must permit anyone to intervene who: (1) is given an unconditional right to intervene by federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The above requirements have further been clarified by the Ninth Circuit, to allow intervention as a matter of right as follows:

> (1) the intervention must be timely;
> (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject matter of the action;
> (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and
> (4) the existing parties may not adequately represent the applicant's interest.

[Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006).] Case law has further held that this intervention test is to be "broadly construed in favor of applicants for intervention." [United States ex rel. McGough v. Covington Technologies Co., 67 F.2d 1391, 1394 (9th Cir. 1992).]

A. Applicants' Motion For Intervention Is Timely.

The United States filed its Complaint at issue as well as its Motion for Preliminary Injunction on July 6, 2010. Defendants were provided until July 20, 2010 to respond to the Complaint. This motion is submitted approximately only two and one half weeks after the Complaint was filed. [*See* Kozak v. Wells, 278 F.2d 104, 109 (8th Cir. 1960) stating that a filing for intervention that occurs before the case is truly at issue is considered timely.]

B. Applicants Have A Direct And Protectable Interest To Protect By Way Of Intervention.

As citizens of the State of Arizona who are affected by the implementation of the legislation at issue herein, Applicants have a direct right and interest in the legislation and have the right to defend it and to ensure SB 1070 is implemented correctly and in an unbiased and non-discriminatory manner. Applicants worked long and hard to ensure SB 1070 would pass. While Applicants seek to be treated equally to other U.S. citizens and do not believe in providing a safe heaven to illegal immigrants who did not abide by our nations immigrations policies. As such, Applicants would like to ensure immigration laws and policies supported by Senate Bill 1070 are implemented and therefore Applicants have a right to intervene to ensure their efforts which had come to fruition are not thwarted by Plaintiff. [*see* Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 528 (9th Cir. 1983) a public interest group that merely supported a ballot initiative has a "significant protectable interest" in defending legality of the measure and may intervene as a matter of right; *see also* Hazel Green Ranch, LLC v. U.S. Dept. of Interior 2007 WL 2580570,

7 (E.D.Cal.,2007). Therefore Applicants have the right to intervene as a Defendants based on their interest and efforts in the passage of Senate Bill 1070. Applicants have worked exhaustively to ensure that Senate Bill 1070 become law and they have a direct interest in guaranteeing that the law, including all provisions of Senate Bill 1070, as amended, are defended consistent with the objectives and principals of the Bill as stated therein and not changed, manipulated or modified.

C. Applicants Will Be Directly Affected By The Outcome Of This Litigation.

Applicants' significant efforts, in supporting Senate Bill 1070 to ensure its enactment, will be wasted if the Court rules in favor of the United States. [*See* Natural Resources Defense Council, Inc. v. U.S. Nuclear Regulatory Comm'n, 578 F.2d 1341, 1345 (10th Cir. 1978) holding that a "question of impairment is not separate from the question of existence of an interest.").

D. Adequacy of Representation

The burden under this prong has been described as "minimal," as a party seeking to intervene needs to show only that representation of his interest "may be inadequate." [Natural Resources Defense Council, 578 F.2d at 1345; Sagebrush Rebellion, Inc. v. Watt, *713 F.2d 525, 528 (9th Cir.*1983); Trbovich v. UMW, 404 U.S. 528, 538 n.10 (1972); Center for Biological Diversity v. Kempthorne 2008 WL 4542947, 2 (N.D.Cal.,2008).] The Sixth Circuit has clearly held that applicants for intervention should be treated as the best judge of whether the existing parties adequately represent the applicants' rights and interests. [Stupak-Thrall v. Glickman, 226 F.3d 467, 482 (6th Cir. 2000).] The Sixth Circuit has further held that

any doubt regarding adequacy of representation should be resolved in favor or the proposed intervenors. [Id.]

The case at hand presents a situation where Applicants are concerned that Defendants may not adequately represent their interests and that Defendants might agree to manipulate Senate Bill 1070 in a manner unfavorable to Applicants' interests in order to reach a settlement with Plaintiff. It is unusual that the Senate Bill 1070 is being defended not by the Arizona Attorney General, but by a private law firm retained by the Governor. At a minimum, this raises questions as to whether the law will be defended consistent with the views of the legislature and the people of the State of Arizona such as the Applicants who have worked tirelessly to insure the passage of Senate Bill 1070 as it stands. In addition, Applicants are concerned that Defendant Brewer's legal defense of Senate Bill 1070 does not address certain aspects of the law that Applicants find important and necessary, such a non-discriminatory implementation.

By way of example only, the pleadings submitted by the Governor in other cases which concern Senate Bill 1070 do not address the key issue of severability of any potentially "unconstitutional" clauses or portions of the Bill. Plaintiffs in these other cases are seeking to have the entirety of Senate Bill 1070 declared unconstitutional. Defendant Brewer has, however, failed to addressed the significance of the severability clause included in Senate Bill 1070 and the possibility that should one or more portions of Senate Bill 1070 be found unconstitutional, such finding should not affect the other provisions of Senate Bill 1070.

III. Pursuant To Federal Rules Of Civil Procedure, Rule 24(b), Applicants Should Also Be Granted Permissive Intervention.

Federal Rules of Civil Procedure, Rule 24(b)(1) states as follows:

> On timely motion, the Court may permit anyone to intervene who:
> (A) is given a conditional right to intervene by a federal statute; or
> (B) has a claim or defense that shares with the main action a common question of law or fact.

Applicants also qualify under this portion of Rule 24 to intervene. As discuss previously, Applicants have defenses not considered or asserted by the current Defendants. Applicants also benefit from research, data and knowledge they acquired during the course of their campaign in support of Senate Bill 1070 from which they may derive defenses and information not available to Defendants. In addition, Applicants have a novel and different perspective and interest to protect than that of Defendants herein.

If Applicants are forced to litigate a separate lawsuit, that will only force the courts and the parties herein to examine the same law and the same facts to adjudicate these claim; this in not in the interest of efficiency or judicial economy. Particularly in light of the fact that pursuant to Rule 24(b)(3), there will be neither prejudice nor delay to the parties herein. Applicants are prepared to comply with the briefing schedule already in place and their intervention will not cause any delay to any party or the court. While there is not sufficient time to prepare a brief by today, Applicants respectfully request 5 minutes of oral argument at the hearing set for July 22, 2010, given that no other party represents Latino-American interests in this case. This will give the court a unique voice and perspective in deciding this

case. Applicants are not seeking to intervene as Republicans, but as American citizens of Hispanic descent.

IV. Request To File Briefs As Amicus Curiae

In the alternative, given the facts and issues discuss above, Applicants respectfully request that if the Court does not grant Applicants' Motion to Intervene, the Court allow Applicants to file appropriate briefs as Amicus Curiae.

V. Conclusion

Based on the forgoing reasons, Applicants respectfully requests that this Court grant them leave to intervene as Defendants in this litigation or in the alternative to allow them to file briefs as Amicus Curiae

Dated: July 20, 2010 Respectfully submitted,

By: Larry Klayman
Larry Klayman, Esq.
(DC Bar No. 334581)
FREEDOM WATCH, INC.
2000 Pennsylvania Avenue,
N.W., Suite 345
Washington, D.C. 20006
Tel: 310-595-0800
Email – leklayman@yahoo.com
Attorney for Applicants to Intervene

By: Rachel Alexander///
Rachel Alexander, Esq.
(Arizona Bar No. 020092)
2917 W. Potter Drive
Phoenix, Arizona 85027
Tel: 623.261.4239
Rachel@intellectualconservative.com
Attorney for Applicants to Intervene