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UNITED STATES DISTRICT COURT
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.	CV-10-01413-PHX-SRB **MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* WASHINGTON LEGAL FOUNDATION, *ET AL.***

The Washington Legal Foundation; Arizona State Representative John Kavanagh; U.S. Representatives Lynn Jenkins (KS), Tom McClintock (CA), Gary Miller (CA), and Lamar Smith (TX); Allied Educational Foundation; and the National Border Patrol Council hereby move for leave to file the concurrently lodged brief as *amici curiae* in opposition to Plaintiffs' Motion for Preliminary Injunction (Dkt. 27). In support of their motion, *amici* state as follows:

(1) The Washington Legal Foundation (WLF) is a nonprofit, public interest law and policy center with supporters in all fifty states, including many in Arizona. WLF

devotes a substantial portion of its resources to promoting the robust enforcement of state and federal laws designed to curb illegal immigration. WLF has appeared in courts across the country to ensure that governments at all levels possess the legal resources necessary to combat illegal immigration. *See, e.g., Kucana v. Holder*, 130 S. Ct. 827 (2010); *Nken v. Holder*, 129 S. Ct. 1749 (2009); *Gonzalez v. State of Arizona,* 486 F.3d 1041 (9th Cir. 2007); *Friendly House v. Napolitano,* 419 F.3d 930 (9th Cir. 2005). WLF has also opposed efforts by federal courts to exercise jurisdiction over immigration matters that are properly the prerogative of the elected branches of government. *See, e.g., Clark v. Martinez,* 543 U.S. 371 (2005); *Demore v. Kim*, 538 U.S. 510 (2003); *INS v. St. Cyr,* 533 U.S. 289 (2001); *Reno v. American-Arab Anti-Discrimination Comm.* ("*AAADC*"), 525 U.S. 471 (1999).

(2) Arizona State Representative John Kavanagh, who represents Arizona's 8th State House district, was the principal sponsor of SB 1070 in the Arizona State House.

(3) U.S. Rep. Lynn Jenkins represents Kansas's 2nd congressional district and serves on the Financial Services Committee. U.S. Rep. Tom McClintock represents California's 4th congressional district and serves on both the Education and Labor Committee and the Natural Resources Committee. U.S. Rep. Gary Miller represents California's 42nd congressional district and serves on the Financial Services and Transportation and Infrastructure Committee. U.S. Rep. Lamar Smith (Texas) is the former Chairman of the Immigration and Claims Subcommittee and currently the ranking

member of the Judiciary Committee. All believe that Congress has never sought to bar State and local governments from adopting immigration-related enforcement legislation.

(4) The Allied Educational Foundation (AEF) is a non-profit charitable foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, such as law and public policy, and has appeared as *amicus curiae* in this Court on a number of occasions.

(5) The National Border Patrol Council (NBPC) is a professional labor union representing more than 17,000 front-line Border Patrol Agents and support staff. Since its founding in 1967, the NBPC has demonstrated an unwavering commitment to protecting America's borders.

(6) While *amici* agree with Defendants that the United States has failed to demonstrate any likelihood of success on the merits, *amici* seek to file separately to focus on the United States's claim that SB 1070's employment provision, the first portion of § 5 of SB 1070, conflicts with – and thus is impliedly preempted by – federal immigration policy. Contrary to Plaintiff's claim, § 5 of SB 1070 is designed to assist with implementation of the immigration policies established by Congress, and nothing in the legislation stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

(7) *Amici* are particularly concerned that the United States's preemption claim ignores the fact that it is the clear policy of the United States that those who are not

authorized to be present in the United States should not seek or undertake employment in this country. Section 5 of SB 1070, by criminalizing the solicitation and/or performance of employment by such individuals, directly advances that policy. Moreover, the United States's motion is deficient in that it fails to bring t the Court's attention binding precedent that directly contradicts the position it asserts. Indeed, the federal government's position regarding the preemption of state law is contrary to the position it has espoused in other settings.

(8) *Amici* seek to file their brief because of their demonstrated interest in curbing illegal immigration; they have no direct financial interest in the outcome of this lawsuit. Because of their lack of direct interests, *amici* believe that they can assist the Court by providing a perspective that is distinct from that of any party.

(9) Counsel for *amici* contacted counsel for the United States and counsel for the Defendants in an effort to obtain consent for leave to file the concurrently lodged *amicus curiae* brief. Counsel for Defendants consented to the proposed filing by *amici*. Counsel for the United States stated that the United States takes "no position" on the proposed filing by *amici*.

WHEREFORE, *amici* respectfully request that this motion for leave to file the concurrently lodged *amicus curiae* brief be granted. A proposed order is attached.

Respectfully submitted,

/s/ David T. Hardy

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Dated: July 20, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 2010, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court for the District of Arizona by using CM/ECF system. I certify that all participants in the case are represented by counsel of record who are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ David T. Hardy

David T. Hardy