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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

NATIONAL LABOR RELATIONS BOARD, Plaintiff, v. STATE OF ARIZONA, Defendant.	)	Case No. 2:11-cv-00913 **NLRB OPPOSITION TO MOTION TO DISMISS**

INTRODUCTION

The National Labor Relations Board ("NLRB" or "Board") is an independent agency of the United States charged with exclusive administration of the National Labor Relations Act, 29 U.S.C. § 151 *et seq*. ("NLRA" or "the Act"). Congress' objective was to ensure "uniform application" of the NLRA and to avoid the "diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner v. Teamsters Chauffeurs and Helpers Local 776,* 346 U.S. 485, 490 (1953). Under the Supremacy Clause of the United States Constitution, Art. VI, Cl. 2—which by its express terms applies equally to state statutes and state constitutional provisions—state action is preempted if it "either frustrates the purpose of the national

legislation or impairs the efficiency of those agencies of the Federal government to discharge the duties, for the performance of which they were created," or stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Nash v. Fla. Indus. Comm'n*, 389 U.S. 235, 240 (1967) (internal quotation marks and citations omitted).

Since its enactment in 1935, Section 7 of the NLRA, 29 U.S.C. § 157—a "fundamental right" (*NLRB v. Jones & Laughlin Steel Corp*. 301 U.S. 1, 33 (1937))—has afforded employees two different paths to vindicate their right to choose a bargaining representative: certification based on a Board-conducted secret ballot election, or voluntary recognition based on other convincing evidence of majority support. *See Linden Lumber Div., Summer & Co. v. NLRB*, 419 U.S. 301, 306-307 (1974); *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 597, 598-99 n.14 (1969). If employees can persuade their employer to recognize their choice of a representative on the basis of evidence of majority status, the employees' Section 7 right to "representatives of their own choosing" is enforceable under 29 U.S.C. §§ 158 (a)(5) and (a)(1). *See, e.g., NLRB v. Creative Food Design Ltd.*, 852 F.2d 1295, 1297-1298 (D.C. Cir. 1988); *NLRB v. Cam Indus., Inc*., 666 F.2d 411, 414 (9th Cir. 1982).

Under Section 8(f) of the NLRA, 29 U.S.C. § 158(f), enacted in 1959, employers and unions in the construction industry are permitted to enter into pre-hire agreements before a majority of employees has approved the union as its bargaining representative, subject to the right of employees to vote out the union

thereafter by secret ballot if they so desire. Such agreements also give rise to employee rights enforceable under 29 U.S.C. §§ 158 (a)(5) and (a)(1). *See Mesa Verde Constr. Co. v. Northern California Dist. Council of Laborers*, 861 F.2d 1124, 1131 (9th Cir. 1988) (*en banc*) (explaining that Congress enacted Section 8(f) to serve the interest of employers in knowing labor costs before beginning a project and of employees in having the opportunity for union representation despite obstacles created by the irregular pattern of employment in that industry).

This case arises because effective December 14, 2010, the Arizona Constitution has been amended to provide in Article 2 § 37 ("Article 2 § 37" or "the Amendment") that

> The right to vote by secret ballot for employee representation is fundamental and shall be guaranteed where local, state, or federal law *permits or requires* elections, designations or authorizations for employee representation. [emphasis supplied]

On May 6, 2011, the NLRB filed a Complaint seeking a declaratory judgment that Article 2 § 37 is preempted as it applies to private sector employees, employers and/or labor organizations (Compl. p.5). The Complaint asserts that Article 2 § 37 conflicts with federal law because, by making a secret ballot election "guaranteed" whenever an election is permitted under federal law, Article 2 § 37 requires elections where federal law does not and thereby deprives private sector employees of their NLRA right to secure their employer's voluntary

recognition of their chosen representative (Compl. ¶¶ I, II, XII-XIV).[1] Further, even assuming, *arguendo*, that Article 2 § 37 could be construed as supporting NLRA's guarantee of a secret ballot election only where a union is not voluntarily recognized, Article 2 § 37 is preempted because it would then create a parallel state enforcement mechanism that Congress assigned exclusively to the NLRB (Compl. ¶ XV).

On May 31, 2011, the State filed a motion to dismiss ("Motion") under Fed. R. Civ. P. 12(b)(1) on the ground that the allegations contained in the Complaint are insufficient on their face to invoke federal jurisdiction. In a facial attack case of this sort, the Court must "assume plaintiff's factual allegations to be true and draw all reasonable inferences in his favor." *Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009). The Board agrees with the State's contention (Motion at 4) that the Court may also take judicial notice of matters of public record (such as information posted on government websites). We show below that under the controlling standard of review, the Motion should be denied.

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[1] That understanding of the Amendment's meaning is supported not only by its plain language but also by published accounts of its purpose and effect before and after the popular referendum on November 2, 2010. See Dianna M. Náñez, Arizona Prop. 113: Secret Vote Required To Form Union, The Arizona Republic Oct. 1, 2010 ("If Prop. 113 passes, an election would be required even when a majority of workers sign in favor of a union and their employer wants to skip an election."), *available at* http://www.azcentral.com/arizonarepublic/local/articles/2010/10/01/20101001arizona-prop-113-union-vote.html (last visited July 26, 2011), 2010 WLNR 19581971; Clint Bolick, Goldwater Institute Daily Email, March 3, 2011 (stating that the Amendment "prohibits union formation without secret-ballot elections by the affected workers"), *available at* http://www.goldwaterinstitute.org/article/5756 (last visited July 26, 2011).

ARGUMENT

I. The Court Has Jurisdiction Under 28 U.S.C. §§1331 and 1337

Where, as here, a complaint (Compl. ¶ III) seeks recovery under a preemptive federal statute and the Supremacy Clause of the United States Constitution, Art. VI, Cl. 2, the Court has jurisdiction under 28 U.S.C. § 1331, which provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." *United States v. Morros*, 268 F.3d 695, 699-700 (9th Cir. 2001). *Accord United States v. City of Arcata*, 629 F.3d 986, 990 (9th Cir. 2010).

Jurisdiction is also proper under 28 U.S.C. § 1337(a), which provides, *inter alia*, "[t]he district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce . . . ." *Capital Serv. Inc. v. NLRB*, 347 U.S. 501, 504 (1954). That section supplies federal court jurisdiction to hear complaints that preempted state action interferes with arguably protected employee activity that Congress assigned the Board to regulate. *NLRB v. Nash-Finch Co.*, 404 U.S. 138, 140-41 (1971).

II. The Complaint Satisfies Article III Case or Controversy Requirements

Contrary to the State's argument (Motion at 4-5), the Complaint satisfies the three-prong standard for standing set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). As the State recognizes (Motion at 5-6), "in many cases, ripeness coincides squarely with standing's injury in fact prong." *Thomas*

v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (*en banc*). Accordingly, both standing and ripeness are discussed together below.

A. Injury in Fact. The core of the State's argument is that the complaint should be dismissed because "the Board cannot demonstrate that the operation of the Amendment poses any danger of direct injury to its legal interests." Motion at 6. That argument lacks merit. The Complaint (Compl. ¶¶ XII-XV) sufficiently alleges an immediate and concrete injury-in-fact to the Board's legal interests.

First, settled law establishes that the Board's legal interests include protecting NLRA rights against encroachment by preempted state law. *NLRB v. Nash-Finch Co.*, 404 U.S. 138 (1971). In holding that the NLRA impliedly authorizes the Board to seek federal court remedies for preempted state action, *Nash-Finch*'s "starting point" was that "'[t]he Board is a public agency acting in the public interest,'" *id*. at 144 (quoting *Amalgamated Utility Workers v. Consolidated Edison Co. of New York*, 309 U.S. 261, 265 (1940)), and on that basis the Supreme Court approved the Board's resort to federal courts to prevent a state court's interference with employee rights to engage in picketing and other concerted activity protected by the NLRA. *Accord NLRB v. State of New York*, 436 F. Supp. 335 (E.D.N.Y. 1977) (same), *aff'd* 591 F.2d 1331 (2d Cir. 1978)(unreported); *NLRB v. State of Ill. Dep't of Employment Sec.*, 988 F.2d 735 (7th Cir. 1993) (upholding district court assertion of jurisdiction and finding preempted a state law that interfered with the Board's remedying unfair labor practices against employees). In view of this well-settled law, the State's

argument (Motion at 6-7) rests on an untenable distinction between injury to employee rights under the NLRA and an injury to the Board charged with administering that statute.[2]

Contrary to the State's assumption, injury to the public rights that the Board is charged with enforcing occurs not only when ongoing state court or administrative proceedings impair federal rights but also where a state promulgates laws, enforced by private parties, that conflict with the rights established under federal law. In *NLRB v. State of North Dakota*, 504 F.Supp.2d 750 (D.N.D. 2007), the Board secured a declaratory judgment that the NLRA preempted the portion of a North Dakota "right to work" statute that required non-union members who invoke the union contract's grievance arbitration provisions to pay the union the actual cost of union representation.

Examining the North Dakota statute on its face, the court found that the state law conflicted with Board decisions holding that, in right-to-work states, a union's charging a non-member employee a fee for grievance processing coerces employees in the exercise of their Section 7 freedom to refrain from joining a labor organization. The court reasoned that an employee in North Dakota weighing the costs and benefits of not joining "will need to consider that if he/she

[2] Under the doctrine of *parens patriae* standing, some other statutory schemes similarly authorize federal governmental bodies to protect federal statutory rights of members of the public against state interference. *See, e.g., Arizona State Dep't of Public Welfare v. Dep't of Health, Educ. and Welfare*, 449 F.2d 456, 478-79 (9th Cir. 1971) ("the federal government, through the Department of HEW, is itself acting as *parens patriae* in seeking to vindicate individual rights created by federal statute and jeopardized by Arizona").

does not join the union, a fee will still have to be paid to the union for grievance processing." In these circumstances, the court found "that an actual justiciable controversy is presented and that the jurisdictional requirements for a declaratory judgment action have been met under 28 U.S.C. § 2201." *Id*. at 753-754.

Article 2 § 37 similarly operates to alter the ground rules of the NLRA's comprehensive federal regulatory scheme and causes a concrete injury to federal rights. The Amendment impedes private sector employees, their unions, and employers from exercising their NLRA rights to establish bargaining relationships without a secret ballot election, since doing so would bring them into conflict with the requirements of Arizona law. In particular, Article 2 § 37 places Arizona employers under direct state law pressure to refuse to recognize—or to withdraw recognition from—any labor organization lacking an election victory on the ground that exercising their right to resolve representation disputes in accordance with federal law without an election would violate Article 2 § 37. The new amendment thus stands as an obstacle to the full and free exercise of the federal rights that the Board is charged with enforcing.

A finding that the conflict between the Amendment and the NLRA constitutes a concrete injury-in-fact is supported not only by *NLRB v. North Dakota* but also by numerous other federal cases finding justiciable claims that preempted laws, on their face, are an impediment to the free exercise of federal rights. For example, in *Super Tire Eng'r Co. v. McCorkle*, 416 U.S. 115 (1974), the employer plaintiffs whose plants were struck sought a declaratory judgment

that state regulations enabling certain striking workers to receive public assistance were preempted under the NLRA. Even though the strike at plaintiffs' plants had ended before the case was tried, the Court held that the dispute was ripe because "the availability of state welfare assistance for striking workers in New Jersey[,] pervades every work stoppage, affects every existing collective-bargaining agreement, and is a factor lurking in the background of every incipient labor contract." *Id.* at 124.[3]

Similarly, in *Employers Ass'n, Inc. v. United Steelworkers of Am.*, 32 F.3d 1297 (8th Cir. 1994), the court held that a suit concerning whether the Minnesota Strikebreaker Replacement Law was preempted by the NLRA was ripe despite that the union did not take any action to enforce the law and no strike materialized because "the change wrought by the Striker Replacement Law in the ground rules of collective bargaining in Minnesota represents an injury sufficiently concrete to render the dispute ripe for judicial action." *Id.* at 1300. Observing that under the state law "[t]he economic weapon of hiring permanent-replacement workers would no longer form the backdrop to labor-management discussions," the Eighth Circuit held "we need not await an actual attempt on the part of the union to enforce the statute." *Id.* at 1300. *See also Chamber of Commerce v. Reich*, 57

[3] Although the precise issue before the *Super Tire* Court was whether the case was moot or whether a "collateral consequences" exception applied, such concepts overlap with ripeness and standing. *See, e.g., Mid-Ohio Food Bank v. Lyng*, 670 F. Supp. 403, 408 (D.D.C. 1987); *Jackson v. Cal. Dep't of Mental Health*, 299 F.3d 1069, 1073 (9th Cir. 2005), *amended on reh'g by* 417 F.3d 1029 (9th Cir. 2005).

F.3d 1099, 1100 (D.C. Cir. 1995) (finding ripe a facial challenge to an Executive Order permitting disqualification of federal contractors who hire certain striker replacements despite that there was no evidence that it would be enforced since "the mere existence of the Order alters the balance of bargaining power between employers and employees" established by the NLRA).

The State here unpersuasively contends (Motion at 6, 7) that injury and ripeness criteria cannot be satisfied because enforcement of the rights created by the Amendment is left to individuals rather than the State itself. The State nowhere explains why a state action that unleashes a host of private attorneys general to enforce in state courts a law impeding the free exercise of federal rights is not a concrete obstacle to the free exercise of those rights. Already, in pleadings before this Court, 34 individual Arizona citizens have asserted their intention "to invoke the protections of the secret ballot guarantee in Art. 2 Section 37 of the Arizona Constitution to insure that they may vote their conscience" if an effort is made to organize a union in their workplace (Motion to Intervene at 3). Until Article 2 § 37 is effectively invalidated, parties who exercise their federal rights to establish a bargaining relationship without a secret ballot election do so under the threat of a state court lawsuit.

In short, the State's argument fails adequately to acknowledge that the Amendment is law. *See* Article 2 § 32 ("The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise"). As law, the Amendment's guarantee of secret ballot elections -- in every instance where

federal law would permit such elections for selecting a union representative -- has altered the rights of Arizonans and created a coercive pressure to alter their behavior. The Board, with court approval, has long recognized that the mere promulgation of authoritative rules inconsistent with the federal right to engage in concerted activity for the purpose of union organizing constitutes an interference with Section 7 rights. *See, e.g., NLRB v. Northeastern Land Services, Ltd.*, -- F.3d--, 2011 WL 2465457, 5 (1st Cir. 2011); *Cintas Corp. v. NLRB*, 482 F.2d 463, 467 (D.C.Cir. 2007) (citing Board law holding that a rule was unlawful "even where no employee testified that it inhibited him from engaging in section 7 activity"). The courts similarly have found sufficient injury-in-fact to hear suits to invalidate laws prior to their actual enforcement, where a danger exists that widespread knowledge of the law may result either in self-censorship or other alterations of behavior that will deprive plaintiffs of their rights. *See, e.g., Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 392-393 (1988) *Am. Soc'y of Composers, Authors, and Publishers v. Pataki*, 1997 WL 438849, at *1, 6 (S.D.N.Y. 1997).

Article 2 § 37 has such a chilling effect. Arizona workers who would exercise the full measure of their federal rights must now do so in the face of a realistic threat of private enforcement of an Amendment declaring that their permissible choice under the NLRA is contrary to the state law. A state law that thus renders illegitimate and subject to state-authorized litigation the exercise of federal rights is properly declared invalid to limit interference with the free

exercise of workers' federally protected right to representatives of their own choosing.[4]

Contrary to the State's contention (Motion at 5), the Complaint (Compl. ¶¶ II, XII, XIV) also sufficiently alleges that the Amendment interferes with the Board's own activities or operations. In part, that harm flows directly from the fact that Article 2 § 37 conflicts with the NLRA. By establishing conflicting state rules for the resolution of the same representation issues that Congress assigned the Board to resolve, the Amendment, at a minimum, creates uncertainty which will predictably generate litigation and prolong disputes that otherwise would be settled more promptly. Settlements are the "lifeblood of the NLRA administrative process." *NLRB v. United Food and Commercial Workers Union Local 23*, 484 U.S. 112, 132 (1987). More disputes will diminish the NLRB's ability to meet its performance goals to timely and effectively resolve pending cases.[5] Indeed, Article 2 § 37 has already been raised as a defense in a Board proceeding. In November 2010, a respondent in a Board proceeding proposed adding the affirmative defense of the existence of Article 2 § 37 to support its

[4] Nor does it defeat standing or ripeness that the State denies any conflict between Article 2 § 37 and the NLRA (Motion at 7). The State's assertion that the NLRB's interpretation is wrong is precisely the issue that should be decided by this Court on the merits.

[5] *See* NLRB FY 2010 Performance and Accountability Report at 39, *available at* http://www.nlrb.gov/sites/default/files/documents/189/par2010.pdf ("Every one percent drop in the settlement rate costs the Agency more than $2 million. Therefore, maintaining high settlement rates promotes performance, efficiency, and cost savings") (last visited July 26, 2011).

withdrawal of recognition from a union. *See* Exhibit A, attached. Although that case settled, the fact that this defense was raised is an example of how, contrary to settled principles of conflict preemption, the Amendment "impairs the efficiency" of the Board in carrying out its mission. *See Nash v. Fla. Indus. Comm'n*, 389 U.S. 235, 240 (1967).

In addition, the Complaint (Compl. ¶ XV) alleges that "even if it were fairly possible to construe Arizona State Constitution Article 2 § 37 as only supporting the NLRA's guarantee of a secret ballot election if the voluntary recognition option is not chosen, Article 2 § 37 is preempted insofar as it creates a parallel state enforcement mechanism for protecting employee representation rights that Congress assigned to the National Labor Relations Board." Fairly read, that complaint paragraph alleges that the Amendment is a direct injury to the Board's legal interests. Under well-settled preemption principles, "States may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits." *Wis. Dep't of Indus. v. Gould Inc*., 475 U.S. 282, 286-89 (1986). But that is exactly what the Amendment does in authorizing state court litigation over such questions as whether a secret ballot election is "permitted" notwithstanding voluntary recognition. Congress assigned the Board to answer such questions. *See Dana Corp*., 351 NLRB 434 (2007), cited by the State (Motion at 3), where the Board addressed that very issue.

B. Causal Connection. Contrary to the State's claim (Motion at 5), the Complaint sufficiently alleges "a causal connection between the injury and the

conduct complained of. . . ." *Lujan*, 504 U.S. at 560. As discussed above, the injuries at issue are: the impeding of rights of private sector employees, unions, and employers to establish federally authorized bargaining relationship based on reliable evidence other than a secret ballot election, the impairment of the Board's ability efficiently to carry out its mission, and the grant of jurisdiction to state courts to resolve issues that Congress assigned to the Board. Because these injuries are the direct result of Article 2 § 37, causation is satisfied.

C. Redressability. "A plaintiff meets the redressability requirement if it is likely, although not certain, that his injury can be redressed by a favorable decision." *Wolfson v. Brammer*, 616 F.3d 1045, 1056 (9th Cir. 2010). Since this case involves a facial Constitutional challenge, securing an order that Article 2 § 37 is preempted would redress the NLRB's injury by rendering the offending law invalid and unenforceable. *See NLRB v. North Dakota, supra*.

III. Prudential Ripeness

The State (Motion at 8-9) argues that the Complaint is not "fit" for judicial resolution because, while the challenged action is final, resolution of the Board's preemption claim assertedly requires further factual development and does not present purely legal issues. That assertion rests on the State's claim that the Amendment can be construed as consistent with NLRA and that, so construed, the conflict alleged by the Board is purely hypothetical. Putting aside that the State's proposed construction is inconsistent with the Amendment's plain language and published accounts of its purpose and effect (*see* p. 4 n.1, *supra*), the State's

argument fails on its own terms. In the cases relied on by the State, the issue of law would disappear if the legal provision at issue were construed one way rather than another.[6] Here, as shown, p. 13, *supra*, even if the Amendment were construed as the State urges, the Amendment is still preempted because under the State's construction, the Amendment impermissibly creates a parallel state enforcement mechanism for deciding voluntary recognition and election issues that Congress assigned to the National Labor Relations Board. *See Gould*, 475 U.S. at 286.

Equally without merit is the State's argument (Motion at 10) that direct and immediate hardship would not result if the Court withheld review. As discussed above, pp. 10-13, the Amendment, coupled with the realistic danger of privately-initiated litigation, chills the free exercise of NLRA rights by private employees, employers and unions and impairs the Board's performance of its assigned duties. These concrete and particularized injuries will continue to fester if not remedied.

IV. The Court Should Not Abstain from Deciding the Case

The Court's decision whether to maintain jurisdiction is discretionary, but must have a "sound basis." *Cal. v. Oroville-Wyandotte Irrigation Dist*., 409 F.2d

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[6] *See Alaska Right to Life Political Action Comm'n v. Feldman*, 504 F.3d 840, 849-50 (9th Cir. 2007) (ethics cannons could be construed in a way that did not violate first amendment rights); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 79 (1997) (same potential for lawful interpretation); *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1132 (9th Cir. 1996) ("issues in the instant pre-enforcement challenge are not purely legal. A concrete factual situation is necessary to delineate the boundaries of what conduct the government may or may not regulate without running afoul of the Commerce Clause").

532, 535 (9th Cir. 1969). Factors to consider include whether hearing the case would:

> (1) involve the needless determination of state law issues; (2) encourage the filing of declaratory actions as a means of forum shopping; (3) risk duplicative litigation; (4) resolve all aspects of the controversy in a single proceeding; (5) serve a useful purpose in clarifying the legal relations at issue; (6) permit one party to obtain an unjust *res judicata* advantage; (7) risk entangling federal and state court systems; or (8) jeopardize the convenience of the parties.

Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1107 (9th Cir. 2011). Other than to claim that the need for declaratory relief is "remote and speculative—a claim that we have demonstrated above is baseless—the State (Motion at 13) does not attempt to demonstrate how these factors weigh in its favor. Here, as in *NLRB v. North Dakota*, 504 F.Supp.2d at 753-754, granting declaratory relief would serve to resolve an actual controversy and limit the harm that flows from state law that creates a coercive pressure on employees and employers to forego the exercise of NLRA rights. This Court should therefore exercise its discretion to entertain the Complaint seeking a declaratory judgment

Finally, there is no merit to the State's argument (Motion at 13) that the Court should decline jurisdiction based on "issues of comity and federalism." There is no pending state proceeding. Moreover, in analogous circumstances, it has aptly been observed that where a federal agency is alleging that state law is preempted "it makes little sense to hew to the principles of comity and federalism that animate *Younger* [*v. Harris*, 401 U.S. 37 (1971) concerning abstention from enjoining state proceedings] because 'the state and federal governments are in

direct conflict before they arrive at the federal courthouse,' rendering futile 'any attempt to avoid a federal-state conflict.'" *In re Nat'l Sec. Agency Telecomm. Records Litig.*, 633 F.Supp.2d 892, 902 (N.D.Cal. 2007) (quoting *U.S. v. Morros*, 268 F.3d 695, 707-708 (9th Cir. 2001)).

CONCLUSION

For all the reasons set forth above, the NLRB respectfully requests that the Court deny the Defendant's Motion to Dismiss.

Respectfully submitted,

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Dated: July 26, 2011

CERTIFICATE OF SERVICE

I am an attorney and hereby certify that on July 26, 2011, I electronically filed the attached document with the Clerk of the Court for the United States Court – District of Arizona by using the CM/ECF system. The Defendant State of Arizona and the Applicant Intervenors are registered CM/ECF users and service will be accomplished by the District Court's CM/ECF system. I certify that I also accomplished service by email to Michael Goodwin, Office of the Attorney General, 1275 W. Washington Street, Phoenix, AZ 85007, michael.goodwin@azag.gov, on behalf of the Defendant State of Arizona, and to the Clint Bolick, Scharf-Norton Center for Constitutional Litigation at the Goldwater Institute, 500 E. Coronado Road, Phoenix, AZ 85004, litigation@goldwaterinstitute.org, on behalf of the Applicant Intervenors.

Dated: July 26, 2011

/s/ Laura Bandini
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