

1 **CANTELME & BROWN, P.L.C.**

2 A Professional Liability Company
3 2020 S. McClintock Drive, Suite 109
4 Tempe, Arizona 85282
5 Tel (602) 200-0104 Fax (602) 200-0106

6 E-mail: david@cb-attorneys.com/aaron@cb-attorneys.com

7 David J. Cantelme, Bar No. 006313
8 D. Aaron Brown, Bar No. 022133
9 *Attorneys for Proposed Intervenors*

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 Arizonans for Fair Elections (AZAN), an
13 Arizona nonprofit corporation; *et al.*,

14 Plaintiffs,

15 v.

16 Katie Hobbs, Arizona Secretary of State;
17 *et al.*, all in their official capacities,

18 Defendants.

Case No. 2:20-cv-00658-DWL

**REPLY IN SUPPORT OF THE
SPEAKER OF THE ARIZONA
HOUSE OF REPRESENTATIVES
AND PRESIDENT OF THE
ARIZONA SENATE'S
MOTION TO INTERVENE**

19 Rusty Bowers, Speaker of the Arizona House of Representatives, and Karen Fann,
20 President of the Arizona State Senate, respectfully submit this reply memorandum in
21 support of their motion to intervene (Doc. 60).

22 1. Plaintiffs Arizonans for Fair Elections, et al., admit that, under Arizona Revised
23 Statutes § 12-1841, the Speaker and President "have a right to be heard" in a case like
24 this, where the constitutionality of a statute is challenged. (Doc. 63 at 2.) Plaintiffs point
25 out that the Speaker and President nonetheless must satisfy the requirements of Rule 24
26 (*id.*); the Speaker and President agree, and they do (*see* Doc. 60 at 3–4).

2. Regarding intervention of right, Plaintiffs agree that the Speaker and President's

1 motion was timely. (Doc. 63 at 3.) Plaintiffs also acknowledge that the Speaker and
2 President's interest in defending the constitutionality of Arizona laws must count as a
3 significantly protectable interest. (*See id.*) Plaintiffs dispute that "the legislature's
4 institutional power is . . . at issue," because the Speaker and President's "interest lies in
5 the power to make laws, and this interest is not challenged in this matter." (*Id.*) But the
6 Legislature's constitutional power to *make* laws means little if the Legislature's presiding
7 officers cannot *defend* those laws against efforts (like the Plaintiffs') to suspend them.
8 That is why § 12-1841(A) gives the presiding officers the same right as the attorney
9 general to intervene in lawsuits like this, different though their constitutional roles may
10 be. And assuming this interest is protectable, resolving this case in Plaintiffs' favor clearly
11 would impair it. (*See* Doc. 61 at 5–6; *see also* Doc. 63 (arguing only that "[b]ecause
12 Proposed Intervenors do not have a significant protectable interest in this matter,
13 resolution of this case does not impair any interest they may have."))

14 Plaintiffs contend that the attorney general—whose intervention they opposed
15 (Doc. 59)—will mount an adequate defense. (Doc. 63 at 5.) But state law recognizes that
16 the attorney general's intervention in a case has no bearing on the Speaker and President's
17 intervention: Section 12-1841(A) "entitle[s]" both the attorney general *and* the
18 Legislature's presiding officers to intervene when the constitutionality of a law is
19 challenged, at least partly in recognition that their substantive positions may be different.

20 3. Regarding permissive intervention, Plaintiffs argue that they "do not seek to
21 permanently invalidate a State statute, or the State Constitution for that matter."
22 (Doc. 63.) But the fact that Plaintiffs seek to run roughshod over Arizona's laws and
23 constitution only temporarily is no reason to deny the Speaker and President intervention.

24 And that intervention will cause no delay. The Speaker and President can (and, if
25 allowed, will) file their opposition to Plaintiffs' motion for a temporary restraining order
26 and preliminary injunction (Doc. 2) by today's deadline. The Speaker and President will

1 be prepared to appear and participate in the TRO hearing on April 14.¹ And the filing
2 and briefing of their anticipated motion to dismiss should be expedited, it will draw on
3 the legal analysis made in the opposition to the TRO, and it will cause no undue delay.

4 The Speaker and President's intervention motion should be granted.

5 RESPECTFULLY SUBMITTED on April 10, 2020.

6 **CANTELME & BROWN, P.L.C.**

7
8 /s/ David J. Cantelme, SBN 006313
2020 S. McClintock Drive, Suite 109
9 Tempe, Arizona 85282
10 *Attorneys for Proposed Intervenor Defendants*
Speaker of the Arizona House of Representatives and
President of the Arizona Senate

11
12
13
14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on April 10, 2020, I caused the foregoing document to be
16 electronically transmitted to the Clerk's Office using the CM/ECF System for Filing,
which 2020, which will send notice of such filing to all registered CM/ECF users.

17 /s/ Megan Bilek
18
19
20
21
22

23
24 ¹ Of course, an evidentiary hearing ordinarily is required before a preliminary injunction
25 is issued. *See Charlton v. Estate of Charlton*, 841 F.2d 988, 989 (9th Cir. 1988)
26 ("Generally 'the entry or continuation of an injunction requires a hearing. Only when the
facts are not in dispute, or when the adverse party has waived its right to a hearing, can
that significant procedural step be eliminated.'" (quoting *Prof'l Plan Examiners of N.J.,
Inc. v. Lefante*, 750 F.2d 282, 288 (3d Cir. 1984)).