APPEAL NO. 23-15234

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL A. ISAACSON, M.D., on behalf of himself and his patients; ERIC M. REUSS, M.D., M.P.H,; on behalf of himself and his patients; NATIONAL COUNCIL OF JEWISH WOMEN, INC., Arizona Section; ARIZONA NATIONAL ORGANIZATION FOR WOMEN; ARIZONA MEDICAL ASSOCIATION, on behalf of itself, its members and its members patients,

Plaintiffs-Appellants,

v.

KRISTIN K. MAYES, in her official capacity as Arizona Attorney General; ARIZONA DEPARTMENT OF HEALTH SERVICES; JENNIFER CUNICO, in her official capacity as Interim Director of the Arizona Department of Health Services; ARIZONA MEDICAL BOARD; PATRICIA MCSORLEY, Executive Director of the Arizona Medical Board, in her official capacity,

Defendants-Appellees,

and

MICHAEL B. WHITING, County Attorney for Apache County, in his official capacity; BRIAN M. MCINTYRE, County Attorney for Cochise County, in his official capacity; WILLIAM PATRICK RING, County Attorney for Coconino County, in his official capacity; BRADLEY D. BEAUCHAMP, County Attorney for Gila County, in his official capacity; SCOTT BENNETT, County Attorney for Graham County, in his official capacity; JEREMY FORD, County Attorney for Greenlee County, in his official capacity; TONY ROGERS, County Attorney for La Paz County, in his official capacity; ALLISTER ADEL, County Attorney for Maricopa County, in her official capacity; MATTHEW SMITH, County Attorney for Mohave County, in his official capacity; BRAD CARLYON, County Attorney for Navajo County, in his official capacity; LAURA CONOVER, County Attorney for Pima County, in her official capacity; KENT VOLKMER, County Attorney for Pinal County, in

his official capacity; GEORGE SILVA, County Attorney for Santa Cruz County, in his official capacity; SHEILA POLK, County Attorney for Yavapai County, in her official capacity; JON RODNEY SMITH, County Attorney for Yuma County, in his official capacity,

Defendants,

and

WARREN PETERSEN, Arizona Senate President, and BEN TOMA, Speaker of the Arizona House of Representatives,

Intervenors-Defendants/Proposed Appellees.

On Appeal from the United States District Court
for the District of Arizona
Case No. 2:21-cv-01417-DLR / Hon. Douglas L. Rayes

MOTION OF INTERVENORS-DEFENDANTS ARIZONA SENATE PRESIDENT PETERSEN AND SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES TOMA TO PARTICIPATE AS APPELLEES ON APPEAL

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INTRODUCTION

The district court properly granted intervention in this case to President Peterson and Speaker Toma (the "Legislative Leaders"). No party appealed that order, nor could they. But 15 days before the district court granted the Legislative Leaders' motion to intervene, Plaintiffs filed a notice of appeal in this Court.[1] Accordingly, though already parties to the underlying case, the Legislative Leaders seek this Court's formal approval of their status as Appellees in this appeal. All parties but Petitioners would stipulate to the Legislative Leaders' participation to defend their interests, which include exercising statutory rights to defend the constitutionality of state statutes, and advocating for the life and equal dignity of vulnerable unborn children. As the district court concluded, the President and Speaker are entitled to intervene as a matter of statutory right, and no other party will represent their interests or adequately defend the challenged laws.

Arizona law expressly authorizes the Legislative Leaders to intervene in cases challenging the constitutionality of state statutes. *See* A.R.S. § 12-1841 (2010). *Accord Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191 (2022). Here, Plaintiffs challenge the constitutionality of two state statutes. The first prohibits the

[1] Plaintiffs included Arizona Medical Association, Arizona National Organization for Women, Paul A. Isaacson, National Council of Jewish Women, and Eric M Reuss.

discriminatory killing of an unborn child because of his or her race, sex, or genetic abnormality ("Reason Regulations"). A.R.S. § 13-3603.02(A) (2021). The second requires that state laws be interpreted to acknowledge that unborn children share all rights and privileges available to other persons ("Interpretation Policy"). A.R.S. § 1-219(A) (2021).

Arizona Attorney General Kris Mayes has vowed she will *not* defend the constitutionality of these two statutes. It is therefore certain that the existing parties do not adequately represent the Legislative Leaders' unique interest in defending the constitutionality of laws duly enacted by the Arizona Legislature, and the Court should grant their motion to participate as Appellees in this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Since 2011, Arizona has protected the most vulnerable members of society from discrimination by prohibiting any person from "perform[ing] an abortion knowing that the abortion is sought based on the sex or race of the child or the race of a parent of that child." A.R.S. § 13-3603.02 (A)(1). In 2021, Arizona extended the Reason Regulations' safeguards by promulgating S.B. 1457 to "protect[] the disability community from discriminatory abortions, including for example Down-syndrome-selective abortions." S.B. 1457 § 15. The law prohibits any person from "perform[ing] an abortion knowing that the abortion is

sought solely because of a genetic abnormality of that child." S.B. 1457 § 2. "Genetic abnormality" is defined as "the presence or presumed presence of an abnormal gene expression in an unborn child, including a chromosomal disorder or morphological malformation occurring as the result of abnormal gene expression." A.R.S. § 13-3603.02 (G)(2).

The Act contains two exceptions. First, a "[g]enetic abnormality . . . [d]oes not include a lethal fetal condition." *Id*. Second, a "medical emergency" exception allows abortions necessary, in "the physician's good faith clinical judgment," to prevent the death or "substantial and irreversible impairment of a major bodily function" of the pregnant woman. A.R.S. § 13-3603.02 (A), (G)(3); § 36-2151 (6). Moreover, the Act exempts from all criminal or civil liability a woman who aborts her child because of the child's genetic abnormality. A.R.S. § 13-3603.02 (F).

In passing the law, Arizona noted that "prohibiting persons from performing abortions knowing that the abortion is sought because of a genetic abnormality of the child advances at least three compelling state interests." S.B. 1457 § 15. The Act: (1) "protects the disability community from discriminatory abortions, including for example Down-syndrome-selective abortions," (2) protects Arizona citizens from coercive medical practices "that encourage selective abortions of persons with genetic abnormalities," and (3) "protects the integrity and ethics of the medical profession by preventing doctors from becoming witting participants in genetic-abnormality-selective abortion." *Id*.

The legislature also enacted a statute—the Interpretation Policy—which provides that "[t]he laws of this state shall be interpreted and construed to acknowledge, on behalf of an unborn child at every stage of development, all rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the Constitution of the United States and decisional interpretations thereof by the United States Supreme Court." A.R.S. § 1-219 (A).

President Petersen was a co-sponsor of S.B. 1457, and personally advocated and voted for the Interpretation Policy and non-discrimination protections for unborn children with genetic abnormalities. He consistently advocated for pro-life legislation during his time as a representative (2012 to 2016) and as a senator (2016 to present). Speaker Toma also personally advocated and voted for S.B. 1457, and he has promoted pro-life legislation since his election to the Arizona House of Representatives in 2017.

Kris Mayes was sworn in as the new Arizona Attorney General on January 2, 2023. Consistent with her campaign promise not to defend S.B. 1457 if elected, she has refused to do so in this litigation.[2]

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[2] *See* ECF No. 160; Kris Mayes, *12 Point Plan*, https://bit.ly/3DEiEHf; Associated Press, *U.S. Supreme Court: Arizona Can Enforce Genetic Issue Abortion Ban*, KTAR NEWS (June 30, 2022), http://bit.ly/3RvhRy5. Attorney General Mayes has also refused to appeal the Arizona Court of Appeals' ruling invalidating Arizona's pre-*Roe* pro-life law. Greg Hahne, *Arizona Attorney General Kris Mayes Will Not Challenge Appellate*

PROCEDURAL HISTORY

Plaintiffs filed a complaint in district court seeking injunctive and declaratory relief and filed a motion for preliminary injunction on August 18, 2021. ECF No. 10; *see also* ECF Nos. 125, 146.[3] They alleged that the Reason Ban and Interpretation Policy violate various provisions of the U.S. Constitution. ECF No. 1 at 29–32.

After *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), made clear that the U.S. Constitution contains no right to abortion, Plaintiffs filed another motion for preliminary injunction. *See* ECF Nos. 121, 125. The district court denied the motion on January 19, 2023, ECF No. 152; and on February 3, 2023, the Legislative Leaders moved to intervene in the district court proceedings pursuant to Federal Rule of Civil Procedure 24, ECF No. 155.[4]

Ruling on Territorial Abortion Law, KJZZ (Jan. 3, 2023), https://bit.ly/40u4ORO.

[3] Plaintiffs included Arizona Medical Association, Arizona National Organization for Women, Paul A. Isaacson, National Council of Jewish Women, and Eric M Reuss.

Sharing Down Syndrome, a public interest group that advocates for people with Down Syndrome, moved to intervene in November 2021, while the previous Attorney General, Mark Brnovich, was still in office. ECF No. 62. The court denied that motion, finding that, at that time, the Attorney General was adequately defending the shared interests of the state and Sharing Down Syndrome. ECF No. 83 at 3.

Attorney General Mayes took no position on the intervention motion and told the court she "[would] not defend the constitutionality of those laws going forward." ECF No. 160. The Arizona Medical Board and Arizona Department of Health Services also took no position on the motion. ECF Nos. 158, 161. Plaintiffs opposed intervention. ECF No. 159.

Before the district court could rule on the intervention motion, Plaintiffs appealed the court's denial of the preliminary injunction and moved to stay district-court proceedings pending appeal. ECF Nos. 162–163. The next day, the court granted the stay except as to the pending motion to intervene. ECF No. 164. Fourteen days later, it granted the Legislative Leaders' motion to intervene. ECF No. 167.

In its order granting intervention, the district court reviewed applicable federal and state law and concluded, "If Putative Intervenors are not permitted to intervene, the challenged laws will go undefended, which 'risk[s] turning a deaf ear to the voices the State has deemed crucial to understanding the full range of its interests.'" ECF No. 167 at 2 (quoting *Berger*, 142 S. Ct. at 2201).

President and Speaker now seek to participate as Intervenors-Appellees in this appeal. Attorney General Mayes, Arizona Medical Board, and the Arizona Department of Health Services do not oppose the motion. Plaintiffs oppose the motion.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 24, a court must allow intervention when (1) the application is timely; (2) the applicant has a significant protectable interest in 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. See FED. R. CIV. P. 24(a)(2); *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006); *see also Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998); *see generally Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1010–11 (2022) (analyzing, pursuant to Rule 24, an attorney general's motion to intervene on appeal).

Courts may also grant permissive intervention when an applicant has a claim or defense that shares common questions of law or fact with the main action. FED. R. CIV. P. 24(b)(1)(B).

ARGUMENT

I. The Legislative Leaders are entitled to intervention as of right.

"[T]he requirements for intervention are broadly interpreted in favor of intervention." *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004). This is because a "liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995) (cleaned up) (abrogated by further broadening of intervention under a specific statute in *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011)). Intervention is favored, at both the district and appellate levels, where, as here, a state official "asserts a substantial legal interest that sounds in deeper, constitutional considerations" that implicate its "power to enact and enforce any laws that do not conflict with federal law." *Cameron*, 142 S. Ct. at 1010–11 (2022) (citing U.S. Const., Art. VI, § 2).

A. The motion is timely.

The Legislative Leaders' motion to intervene on appeal is timely. For months, Plaintiffs have been aware of the Legislative Leaders' desire to represent the state's interest. Plaintiffs did not dispute timeliness below. The Legislative Leaders file this motion before merits briefing has begun and timely respond to Plaintiffs' brief and all deadlines on appeal in this Court.

The timeliness of a motion to intervene must be "determined from all the circumstances." *Cameron*, 142 S. Ct. at 1012 (discussing timeliness in the context of states' sovereignty interests in litigation). Relevant considerations include how long the movant waited to intervene, and the degree to which intervention may cause a disruption. *Id.* at 1013.

The timeliness factor favors the Legislative Leaders because the parties briefed the issue before Plaintiffs even filed their notice of appeal. *See* ECF Nos. 155, 158–162. Plaintiffs did not object to timeliness then and did not even brief the issue. *See* ECF No. 159. If timeliness was not an issue in the district court, it is not an issue now—particularly considering that Plaintiffs have yet to file their merits brief. *Cf. Berger*, 142 S. Ct. at 2200–01 (only considering remaining factors in intervention analysis where there was no dispute over timeliness).

B. The Legislative Leaders have a significant protectable interest in this matter that will be impaired without their participation.

The Legislative Leaders have a significant protectable interest in the outcome of this litigation: a law they passed as representatives of the people of Arizona may be struck down if Plaintiffs succeed on appeal. And when a proposed intervenor has a protectable interest, courts often "have little difficulty concluding that the disposition of a case may, as a practical matter, affect" their interest. *Cal. Ex rel.*

Lockyer v. United States, 450 F.3d 436, 442 (9th Cir. 2006). No current Defendant will defend S.B. 1457 on appeal, leaving the legislation without any defender on appeal. Legislative Leaders' participation is therefore crucial.

Under the Constitution, a state retains "the sovereign power[] . . . to enact and enforce any laws that do not conflict with federal law," because it "clearly has a legitimate interest in the continued enforceability of its own statutes, and a federal court must respect the place of the States in our federal system." *Cameron*, 142 S. Ct. at 1011. "This means that a State's opportunity to defend its laws in federal court should not be lightly cut off." *Id.* Respecting a state's sovereignty requires an appellate court to consider the state's authority to structure its system in a way that "empowers multiple officials to defend its sovereign interests in federal court." *Id* (considering a statute that enabled two members of a state's executive branch to represent the state's interests in court).

The State of Arizona has expressly authorized the President of the State Senate and the Speaker of the House of Representatives to intervene and file briefs in any case challenging the constitutionality of a state statute. A.R.S. § 12-1841 (D). When a state statute is challenged as unconstitutional, the Legislative Leaders "shall be entitled to be heard." *Id.* § 12-1841(A). For this reason, Arizona law requires plaintiffs challenging state statutes to notify the Speaker and President and

provide information to facilitate their participation. *See* § 12-1841(A) & (B). Accordingly, the Legislative Leaders have a crucial interest—bestowed by the people of Arizona through their elected representatives—in defending the constitutionality of state statutes.

Consistent with the Legislative Leaders' rights under § 12-1841, the Arizona State Senate Rules authorize the President "to bring or assert in any forum on behalf of the Senate any claim or right arising out of any injury to the Senate's powers or duties under the constitution or laws of this state." State of Arizona, *Senate Rules, 56th Legislature 2023-2024*, Rule 2(N), available at https://bit.ly/3WXFLDv. Likewise, the Arizona House of Representatives Rules authorize the Speaker "to bring or assert in any forum on behalf of the House any claim or right arising out of any injury to the House's powers or duties under the Constitution or Laws of this state." State of Arizona, *Rules of the Ariz. House of Representatives, 56th Legislature 2023-2024*, Rule 4(K), available at https://bit.ly/3HuL9bz. The Legislative Leaders do not merely speak for themselves; they speak on behalf of their respective chambers as a whole.

The U.S. Supreme Court recently held that statutes like § 12-1841 endow legislative leaders with a protectable interest that would be impaired absent intervention. *Berger*, 142 S. Ct. at 2194. Like § 12-1841, the North Carolina statute in *Berger* allowed the leaders of that state's legislature to participate in proceedings challenging the

constitutionality of state statutes. *Id.* at 2198 (citing N.C. GEN. STAT. ANN. § 1–72.2). The district court and Fourth Circuit concluded that the president of the state senate and speaker of the house of representatives were not entitled to intervene in a lawsuit implicating state election law. *Id.* at 2199–2200. The Supreme Court reversed.

The *Berger* Court stated that its instructions on this issue have been "many, clear, and recent." *Id.* at 2202. A state is "free to empower multiple officials to defend its sovereign interests in federal court." *Id* (quoting *Cameron*, 142 S. Ct. at 1011) (cleaned up). A state "must be able to designate agents to represent it in federal court" and may authorize its legislature "to litigate on the State's behalf, either generally or in a defined class of cases." *Id.* (quoting *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951–52 (2019)) (cleaned up). "The choice belongs to [the sovereign State]." *Id.* (cleaned up).

The Supreme Court reiterated that "States possess a legitimate interest in the continued enforcement of their own statutes," and that they "may organize themselves in a variety of ways." *Id.* at 2201 (cleaned up). For example, when faced with a constitutional challenge, some states have organized themselves to mount a defense through the single voice of an attorney general. *Id.* at 2197. On the other hand, "[s]ome have chosen to authorize multiple officials to defend their practical interests in cases like these." *Id.* Like Arizona, North Carolina "empowered the leaders of its two legislative houses to participate in

litigation on the State's behalf under certain circumstances and with counsel of their own choosing." *Id.* Such an approach is "understandable," because a partisan attorney general may "oppose[] laws enacted by the [Legislature] and decline[ ] to defend them fully in federal litigation." *Id.* Indeed.

The *Berger* Court reaffirmed that "state legislative leaders authorized under state law to represent the State's interests in federal court could defend state laws there as parties." *Id.* (citing *Karcher v. May*, 484 U.S. 72, 81–82 (1987)) (cleaned up). And intervention by legislative officials is commonplace. *E.g.*, *Yniguez v. State of Ariz.*, 939 F.2d 727, 732 (9th Cir. 1991) (noting that in *Karcher*, the Supreme Court clearly indicated that jurisdiction had been proper in the district court and the court of appeals so long as the legislators held office).[5] The Court cautioned that "[a]ppropriate respect for these realities suggests that federal courts should rarely question that a State's interests will be practically impaired or impeded if its duly authorized representatives are excluded from participating in federal litigation challenging state law." 142 S. Ct. at 2201.

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[5] *See also Horne v. Flores*, 557 U.S. 433, 443 (2009) (noting that the President of Arizona State Senate and Speaker of the Arizona House of Representatives were allowed to intervene); *Powell v. Ridge*, 247 F.3d 520, 522 (3rd Cir. 2001) (granting legislative leaders' motion to intervene as defendants to "articulate to the Court the unique perspective of the legislative branch").

Excluding authorized representatives would (1) "evince disrespect for a State's chosen means of diffusing its sovereign powers among various branches and officials,"(2) "risk turning a deaf federal ear to voices the State has deemed crucial to understanding the full range of its interests," (3) "encourage plaintiffs to make strategic choices to control which state agents they will face across the aisle in federal court," and (4) "tempt litigants to select as their defendants those individual officials they consider most sympathetic to their cause or most inclined to settle favorably and quickly." *Id.* Taken together, this would "risk a hobbled litigation rather than a full and fair adversarial testing of the State's interests and arguments." *Id.*

Like North Carolina, Arizona has expressly authorized the Legislative Leaders to intervene, participate, and file briefs to defend the constitutionality of state statutes. A.R.S. § 12-1841 (D). The wisdom of this provision is evident when considering how it provides for instances like this one—in which a state attorney general refuses to defend a state law. ECF No. 160. But to her credit, the Attorney General has consented to the Legislative Leaders' intervention rather than question the authority of the President and Speaker to defend the statute. Even so, the Attorney General could still reach an agreement with Plaintiffs to "settle favorably and quickly" absent the Legislative Leaders' formal participation on appeal. *Berger*, 142 S. Ct. at 2201.

If the Legislative Leaders are not allowed to participate as Appellees on appeal, they will be deprived of their statutory right to mount a defense, and the duly enacted laws challenged here may receive no defense at all.

C. The existing parties do not adequately represent the Legislative Leaders.

The Legislative Leaders are designated by Arizona law to represent the state's interest in defending a duly enacted law. The Attorney General has assured a federal court that she will not defend the statute; other Defendants will not do so; and the Legislative Leaders are best suited to make the arguments that will otherwise be entirely neglected. Plaintiffs desire to shut the Legislative Leaders out of the process would result in litigation without true adversity, risk a potential settlement, block the voice of the people of Arizona, and deprive this Court of a full and fair consideration of the arguments.

Courts consider three factors when determining whether existing parties adequately represent the interests of the proposed intervenor:

> (1) whether the interest of a present party is such that it will *undoubtedly* make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003) (emphasis added). The Legislative Leaders must only show "that representation of [their] interest[s] '*may be*' inadequate" to satisfy this element for intervention. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (citation omitted) (emphasis added). And "the burden of making that showing should be treated as minimal." *Id.* Intervention of right is warranted where, as here, a proposed intervenor has raised "sufficient doubt about the adequacy of representation." *Id.* at 538.

The question whether Attorney Mayes and other Defendants will "undoubtedly make all of [Legislative Leaders'] arguments," *Arakaki*, 324 F.3d at 1086, is settled. They "undoubtedly" *will not* make those arguments. In her response to the Legislative Leaders' motion to intervene, the Attorney General told the district court that she "[would] not defend the constitutionality of those laws going forward." ECF No. 160.

Other Defendants are not defending S.B. 1457 before this Court. And Plaintiffs' desire to cut the Legislative Leaders out of the process "evince[s] disrespect" for Arizona law and encourages this Court to "turn[ ] a deaf federal ear to voices the State has deemed crucial to understanding the full range of its interests." *See Berger*, 142 S. Ct. at 2201. Some might even say that it appears to be a "strategic choice[] to control which state agents they will face across the aisle in federal court." *Id.* And if Plaintiffs have it their way, they will face no meaningful

adversary at all. The appeal would be reduced to a "hobbled litigation rather than a full and fair adversarial testing of the State's interests and arguments." *Id.*

Appellate litigation is not about gamesmanship, and if Plaintiffs successfully bar the Legislative Leaders from participating as Appellees on appeal—even though the Legislative Leaders have already successfully intervened in the district court and are parties to the underlying litigation—justice will be substantially undermined. Left emptyhanded will be the people of Arizona—not to mention this Court, which will be unable to consider fully each parties' arguments in this controversial matter.

The Legislative Leaders' motion to intervene is timely, and as representatives of the people of Arizona, they have a significant protectable interest in the outcome of this case. Without the Attorney General to protect the state's interest in defending its duly enacted statues, the task necessarily falls to the Legislative Leaders, who are statutorily authorized and should be permitted to do so.

II. In the alternative, the Court should grant permissive intervention.

In the alternative, and at a minimum, this Court should exercise its discretion to grant permissive intervention. Under Rule 24(b), courts may grant permissive intervention to anyone who "has a claim or defense that shares with the main action a common question of law or

fact." A court's discretion in determining whether permissive intervention is appropriate may be guided by factors such as "the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case." *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). A court may also consider other factors: whether changed circumstances justify intervention that was once denied; whether other parties adequately represent the intervenors' interests; whether intervention will delay litigation; and whether parties seeking intervention will significantly contribute to the court's understanding of the factual issues and the best resolution of the legal questions. *Id.*

The Legislative Leaders' anticipated defense—that the challenged laws are constitutional—shares common questions of law and fact with Plaintiffs' appeal. Both concern the constitutionality of the same statute and require the Court to consider whether the legislation chills abortionists' efforts to run their businesses, which enjoy no constitutional protections. *Planned Parenthood of Greater Ohio v. Hodges*, 917 F.3d 908, 912 (6th Cir. 2019) (holding that abortionists have no "freestanding right to perform abortions"). Further, the Legislative Leaders have an important interest in defending the constitutionality of the challenged legislation, which was passed in part because of their votes and leadership.

Given these weighty interests and the obvious need for a party who is willing to defend the challenged laws—and given the Legislative Leaders' status as Intervenors-Defendants in the district court litigation—permissive intervention is appropriate.

CONCLUSION

The Legislative Leaders have unique interests in defending legislation that the Attorney General will not. They have a statutory right, too. Their participation as Appellees in this appeal is proper and consistent with Arizona law. Accordingly, the Legislative Leaders respectfully request that this Court grant intervention as of right, or in the alternative, permissive intervention.

Respectfully submitted this 20th day of April, 2023.

s/Kevin H. Theriot
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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2023, I electronically filed the foregoing Motion to Participate as Appellees with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

s/Kevin H. Theriot
Kevin H. Theriot

Dated: April 20, 2023.