



# NEWS RELEASE

Arizona House of Representatives  
Speaker Steve Montenegro (R-29)

1700 West Washington • Phoenix, Arizona • 85007

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Monday, October 20, 2025

FOR IMMEDIATE RELEASE

## House Republicans Move to Defend Arizona Birth-Certificate Law After AG Mayes Stalls on Appeal

*Speaker Montenegro: "If the Attorney General Won't Defend Arizona's Laws, We Will"*

**STATE CAPITOL, PHOENIX** – Arizona House Speaker Steve Montenegro announced that House Republicans today filed a motion in federal court to intervene as defendants to seek a stay and appeal a ruling that struck down Arizona's long-standing birth-certificate law. The filing follows Democrat Attorney General Kris Mayes' failure to state whether she will appeal on the state's behalf.

U.S. District Judge James Soto, an Obama appointee, entered a permanent injunction on September 30, 2025, barring enforcement of A.R.S. § 36-337's requirement of a "sex change operation" before the state may amend the sex marker on a birth certificate. The order directs the Arizona Department of Health Services to change its regulations within 120 days and allows amended certificates based simply on a doctor's attestation of a "sex change."

**"Arizona's laws are not optional,"** said Speaker Montenegro. **"When a federal court rewrites a statute, the Legislature has a duty to defend it. If the Attorney General won't defend Arizona's laws, we will. The ruling now opens the door for anyone to change the sex marker on a birth certificate with just a doctor's note, erasing decades of statute and undermining the integrity of vital records. House Republicans are moving to intervene, seek a stay, and take this case to the Ninth Circuit so the law as written is defended."**

Today's motion urges the court to allow Speaker Montenegro and Senate President Warren Petersen to intervene for purposes of appealing the court's summary judgment, permanent injunction, and final judgment orders. The Leaders are also seeking a stay pending appeal, so the injunction is paused during appellate review. The motion details repeated inquiries to the Attorney General's Office since October 1 regarding whether the state would appeal; no decision has been provided to date.

During the recent legislative session, the Arizona Legislature passed [HB 2438](#), sponsored by Republican Representative Rachel Keshel, to protect the accuracy of vital records and prohibit changes to sex markers on birth certificates. Democrat Governor Katie Hobbs vetoed the bill.

A copy of the filing is attached.

*Steve Montenegro is the Speaker of the Arizona House of Representatives and serves Legislative District 29 in the West Valley, Goodyear, and Surprise. Follow him on X at @SteveMontenegro.*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Helen Roe, a minor, by and through parent  
and next friend Megan Roe, *et al.*,

Plaintiffs,

v.

Sheila Sjolander, in her official capacity as  
State Registrar of Vital Records and  
Interim Director of the Arizona  
Department of Health Services,

Defendant.

Case No. 4:20-cv-00484-JAS

**Motion to Intervene Post-Judgment as  
Defendants by Arizona State Senate  
President Warren Petersen and Speaker  
of the Arizona House of Representatives  
Steve Montenegro**

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1 **INTRODUCTION**

2 The Court has permanently enjoined an Arizona law governing amendments of birth  
3 certificates. *See* Doc. 310. Under the Court’s order, anyone may obtain a new birth  
4 certificate based on a “sex change,” a dramatic departure from a state law that, for more  
5 than 50 years, required a “sex change operation.”

6 Despite diligent inquiries, the Defendant has not committed to appealing this  
7 permanent injunction. President of the Arizona State Senate Warren Petersen and Speaker  
8 of the Arizona House of Representative Steve Montenegro (the “Legislative Leaders”) thus  
9 move this Court to grant them intervention as Intervenor-Defendants for purposes of  
10 appealing the Court’s orders on summary judgment (Doc. 279), permanent injunction  
11 (Doc. 310), and judgment (Doc. 311).

12 The Legislative Leaders easily satisfy the requirements for intervention. The  
13 motion is timely because it is made within the time to appeal. The motion also is made  
14 promptly, just one business day after the date by which the Legislative Leaders asked the  
15 Defendant to make a decision on whether to appeal.

16 The Legislative Leaders have a significant protectable interest in the  
17 constitutionality of state laws. This interest is impaired by the permanent injunction, which  
18 enjoins part of a state law based on the Court’s interpretation of legislative intent.

19 The Legislative Leaders’ interests will not be adequately represented if the  
20 Defendant does not appeal. But even if the Defendant does ultimately appeal, the  
21 Legislative Leaders’ interests still will not be adequately represented because Defendant  
22 recently opposed merits and remedy arguments raised by the Legislative Leaders.

23 Finally, similar to the significant protectable interest analysis, the Legislative  
24 Leaders have standing to defend the constitutionality of a state law.

25 The Court should grant the Legislative Leaders intervention as of right. Moreover,  
26 the Court should grant permissive intervention for purposes of appeal even if the  
27 Legislative Leaders were not entitled, as they are, to intervention as of right. Plaintiffs  
28 oppose this motion. The Defendant was not able to provide its position before this filing.

## BACKGROUND

1  
2 Plaintiffs brought a facial constitutional challenge to A.R.S. § 36-337(A)(3) and its  
3 implementing regulation A.A.C. R9-19-208(O). Doc. 47; Doc. 279, at 1, 7. Defendant  
4 State Registrar of Vital Records and Director of ADHS, represented by the Attorney  
5 General, opposed Plaintiffs' claims. Doc. 56; Doc. 88; Doc. 230. The Court granted  
6 summary judgment to the Plaintiffs on their constitutional claims, Doc. 279, and ordered  
7 briefing on the remedy, Doc. 281.

8 During the remedy briefing, the Legislative Leaders sought leave from the Court to  
9 file a brief as *amici curiae*. Doc. 288. Recognizing the Legislative Leaders' interests in  
10 the issues presented by this case, the Court granted *amici curiae* status, Doc. 292, and  
11 allowed the Legislative Leaders to brief and argue the issues before the Court, Doc. 289;  
12 Doc. 307. Ultimately, the Court entered a permanent injunction in favor of Plaintiffs on  
13 September 30, 2025. Doc. 310.

14 The next day, October 1, 2025, counsel for the Legislative Leaders reached out to  
15 an attorney in the Attorney General's Office representing the Defendant to see if the  
16 Defendant and the Attorney General's Office planned to file an appeal and what issues they  
17 planned to pursue on appeal. The Legislative Leaders requested a response by October 6,  
18 2025.

19 On October 2, 2025, counsel for the Legislative Leaders spoke by phone with  
20 counsel for the Defendant in the Attorney General's Office. The Attorney General's Office  
21 reported that the Defendant had not reached a decision on whether to appeal, but the Office  
22 expected that a meeting would be held to discuss the decision by the end of the following  
23 week and expressed optimism that the decision would be made to appeal. The Attorney  
24 General's Office promised to provide a report on the results of the following week's  
25 meeting. In a follow-up email sent to counsel for the Legislative Leaders on October 6,  
26 2025, the Attorney General's Office indicated that it should be able to provide the  
27 Department's final decision by October 9 or October 10, 2025.

28 The Attorney General's Office called counsel for the Legislative Leaders as

1 promised on October 10, 2025, but counsel did not carry news of a final decision. Instead,  
2 counsel reported that the Defendant and the Attorney General's Office still had not reached  
3 a decision on whether to appeal and now expressed pessimism that an appeal would be  
4 filed. The Attorney General's Office related that another meeting to discuss the appeal  
5 decision was planned for October 16, 2025, and counsel again promised to provide a report  
6 on the results of the meeting. Counsel for the Legislative Leaders observed that the  
7 deadline to appeal was approaching, and that the Legislative Leaders would have to  
8 consider their options soon if the Defendant and the Attorney General's Office did not  
9 reach a firm decision to appeal.

10 In a follow-up message sent October 14, 2025, counsel for the Legislative Leaders  
11 reiterated that the Legislature strongly supported the Defendant and the Attorney General's  
12 Office filing an appeal, appealing all merits and remedy decisions, and seeking a stay  
13 pending appeal from the Ninth Circuit. Counsel for the Legislative Leaders noted that if  
14 the Legislature did not receive a definitive response by October 17, 2025, that the  
15 Defendant would file an appeal, then the Legislature would have no choice but to proceed  
16 as if the Defendant would not file an appeal.

17 On October 16, 2025, the Attorney General's Office notified counsel for the  
18 Legislative Leaders that Defendant still had not reached a decision on whether to appeal  
19 and would not have an answer by October 17, 2025. The Attorney General's Office gave  
20 no indication of when, or if, the Defendant would reach a decision on whether to appeal.

21 No decision on an appeal has been received to date from the Defendant or the  
22 Attorney General's Office. Counsel for the Legislative Leaders contacted counsel for all  
23 parties at approximately 6 a.m. Arizona Time on October 20, 2025, to request positions on  
24 the motions to be filed by the Legislative Leaders later the same day. Plaintiffs' counsel  
25 provided their position. The Attorney General's Office was not able to provide its position  
26 before counsel for the Legislative Leaders filed the motions.

27 The Legislative Leaders thus are proceeding on the belief that the Defendant and  
28 the Attorney General's Office will not file an appeal. Intervention by the Legislative

1 Leaders is necessary to protect their interests and to ensure that an appeal is filed. But even  
2 if the Defendant and the Attorney General’s Office ultimately file an appeal, intervention  
3 by the Legislative Leaders is still necessary to ensure that all issues are raised and a stay  
4 pending appeal is sought from the Ninth Circuit.

5 Even though this is a post-judgment proceeding and this Circuit has granted  
6 intervention motions that did not include a pleading, *see, e.g., Westchester Fire Ins. Co. v.*  
7 *Mendez*, 585 F.3d 1183, 1188 (9th Cir. 2009), the Legislative Leaders are attaching an  
8 Answer pursuant to Rule 24(c), *see* Exhibit A. The Legislative Leaders also are separately  
9 moving to extend their time to appeal. *See Evans v. Synopsys, Inc.*, 34 F.4th 762, 772 (9th  
10 Cir. 2022). Based on *Evans*, the Legislative Leaders also plan to file a protective notice of  
11 appeal on or before October 30, 2025. *Id.* at 776 n.15. The notice of appeal is attached as  
12 Exhibit B. Finally, the Legislative Leaders are separately moving for a stay pending  
13 appeal.

## 14 ARGUMENT

### 15 **I. Legal Standard**

16 Federal Rule of Civil Procedure 24 governs post-judgment intervention. *U.S. ex rel.*  
17 *McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992). A court “must  
18 permit any [applicant] to intervene,” Fed. R. Civ. P. 24(a)(2), who demonstrates that: “(1)  
19 the applicant’s motion is timely; (2) the applicant has asserted an interest relating to the  
20 property or transaction which is the subject of the action; (3) the applicant is so situated  
21 that without intervention the disposition may, as a practical matter, impair or impede its  
22 ability to protect that interest; and (4) the applicant’s interest is not adequately represented  
23 by the existing parties,” *Covington Techs.*, 967 F.2d at 1394. “[T]he requirements for  
24 intervention are broadly interpreted in favor of intervention.” *United States v. Alisal Water*  
25 *Corp.*, 370 F.3d 915, 919 (9th Cir. 2004); *see also United States v. City of Los Angeles*,  
26 288 F.3d 391, 397 (9th Cir. 2002) (“courts generally construe [Rule 24(a)] broadly in favor  
27 of proposed intervenors”). Additionally, courts grant permissive intervention when the  
28 applicant “has a claim or defense that shares with the main action a common question of

1 law or fact.” Fed. R. Civ. P. 24(b)(1)(B).

2 The “right to intervene for the purpose of appealing is well established” in this  
3 Circuit. *Alameda Newspapers, Inc. v. City of Oakland*, 95 F.3d 1406, 1412 n.8 (9th Cir.  
4 1996) (citing cases). Since the year that President Dwight D. Eisenhower took office, the  
5 Ninth Circuit has recognized that “[i]ntervention should be allowed even after a final  
6 judgment where it is necessary to preserve some right which cannot otherwise be  
7 protected,” which includes “the right to appeal from the judgments entered on the merits  
8 by the District Court.” *Pellegrino v. Nesbit*, 203 F.2d 463, 465-66 (9th Cir. 1953). Post-  
9 judgment intervention for purposes of appeal thus is allowed “if the intervenors act  
10 promptly after judgment, and meet traditional standing criteria.” *Legal Aid Soc’y of*  
11 *Alameda Cnty. v. Brennan*, 608 F.2d 1319, 1328 (9th Cir. 1979) (citations omitted).  
12 “Intervenors in suits with a governmental party can often continue an appeal after the  
13 governmental party has declined to do so, even if they would not have been proper parties  
14 at the outset.” *California Dep’t of Soc. Servs. v. Thompson*, 321 F.3d 835, 845 (9th Cir.  
15 2003) (citing cases). The Legislative Leaders do not have liability for any attorneys’ fees  
16 already accrued by Plaintiffs. *See Sable Commc’ns of Cal. Inc. v. Pac. Tel. & Tel. Co.*, 890  
17 F.2d 184, 194 (9th Cir. 1989).

## 18 **II. The Legislative Leaders Are Entitled to Intervene as of Right**

19 The Legislative Leaders easily satisfy the requirements to intervene as of right for  
20 purposes of appeal.

### 21 **A. The Legislative Leaders’ motion is timely.**

22 Courts evaluate three factors to determine timeliness: “(1) the stage of the  
23 proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and  
24 (3) the reason for and length of the delay.” *Cal. Dep’t of Toxic Subs. Control v.*  
25 *Commercial Realty Projs., Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002) (citations and  
26 quotations omitted). All three factors demonstrate that the Legislative Leaders’ motion is  
27 timely.

28 *First*, the Legislative Leaders seek to intervene at the post-judgment stage of

1 proceedings. In this Circuit, “[g]enerally, the court will consider a post-judgment motion  
2 to intervene to be timely if filed within the time limitations for filing an appeal.” *U.S. ex*  
3 *rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 719 (9th Cir. 1994). Here, the Court’s  
4 order granting the permanent injunction and its judgment were each entered on September  
5 30, 2025. Docs. 310, 311. Thus, the Legislative Leaders’ motion is comfortably within  
6 the 30-day window for filing an appeal. *See* FED. R. APP. P. 4(a)(1).

7 *Second*, there is no prejudice to the parties. “[T]he only ‘prejudice’ that is relevant  
8 under this factor is that which flows from a prospective intervenor’s failure to intervene  
9 after he knew, or reasonably should have known, that his interests were not being  
10 adequately represented—and not from the fact that including another party in the case  
11 might make resolution more ‘difficult.’” *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d  
12 843, 857 (9th Cir. 2016) (citing *United States v. State of Oregon*, 745 F.2d 550, 552-53  
13 (9th Cir. 1984)). Additional briefing and different arguments on appeal do not constitute  
14 prejudice. *See W. Watersheds Project v. Haaland*, 22 F.4th 828, 839 (9th Cir. 2022).

15 In other words, delay is the key consideration. The Legislative Leaders seek to  
16 appeal within the normal timeframe to appeal and have not delayed. No delay means no  
17 prejudice. Another judge in this district held that a party timely filed a motion to intervene  
18 when it filed “prior to the expiration of the time for seeking an appeal,” because that motion  
19 to intervene “cannot be said to prejudice either party to the litigation.” *Ctr. for Biological*  
20 *Diversity v. United States Fish & Wildlife Serv.*, No. CV-16-0527, 2018 WL 11352129, at  
21 \*2 (D. Ariz. Nov. 15, 2018). Moreover, the Legislative Leaders are filing this motion the  
22 business day after the date by which they asked the Defendant to make a decision on  
23 whether to appeal.

24 *Third*, no delay has occurred. In post-judgment intervention, courts consider  
25 whether proposed intervenors “act promptly after entry of judgment.” *Covington Techs.*,  
26 967 F.2d at 1395. Here, the Legislative Leaders have acted promptly. Counsel for the  
27 Legislative Leaders began communicating with counsel for Defendant in the Attorney  
28 General’s Office the day after the Court issued the judgment. These communications

1 continued multiple times per week since then in the attempt to learn Defendant’s intentions  
2 regarding an appeal. The Legislative Leaders asked for a decision to appeal by October  
3 17, 2025, or else the Legislature would operate as if the Defendant had decided against  
4 appealing. The Legislative Leaders are filing this motion the business day after that  
5 deadline, making this the first business day on which the Legislative Leaders “should have  
6 been aware [their] interests would no longer be protected adequately by the parties.” *Bates*  
7 *v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997).

8 The Supreme Court concluded that a post-judgment intervention motion was timely  
9 filed when it was filed “within the time period in which the named plaintiffs could have  
10 taken an appeal.” *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 396 (1977). The Ninth  
11 Circuit also has held post-judgment intervention to be timely when parties moved within  
12 two weeks of learning that an appeal would not be taken. *See Pellegrino*, 203 F.2d at 466  
13 (appeal filed 12 days after party learned that party would not appeal). The Legislative  
14 Leaders are moving for intervention within the time to appeal, and the first business day  
15 after the date by which they asked the Defendant to make a decision on whether to appeal.  
16 The Legislative Leaders’ motion is timely.

17 **B. The Legislative Leaders have significant protectable interests relating to**  
18 **the statute that is the subject of the action.**

19 Courts “do not require” proposed intervenors to show “a specific legal or equitable  
20 interest”; instead, “it is generally enough that the interest is protectable under some law,  
21 and that there is a relationship between the legally protected interest and the claims at  
22 issue.” *Wilderness Soc’y v. United States Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011)  
23 (en banc) (cleaned up). Accordingly, “the ‘interest’ test is primarily a practical guide to  
24 disposing of lawsuits by involving as many apparently concerned persons as is compatible  
25 with efficiency and due process.” *Id.* (quoting *Fresno Cnty. v. Andrus*, 622 F.2d 436, 438  
26 (9th Cir. 1980)). This is consistent with the Ninth Circuit’s “traditionally liberal policy in  
27 favor of intervention.” *Id.*

28 The Legislative Leaders have demonstrated significant protectable interests for

1 purposes of intervention. The people of Arizona “have authorized the leaders of their  
2 legislature to defend duly enacted state statutes against constitutional challenge.” *Berger v.*  
3 *N.C. State Conference of the NAACP*, 597 U.S. 179, 200 (2022). Under Arizona law, when  
4 an Arizona statute’s constitutionality is challenged, the President or the Speaker, “in the  
5 party’s discretion, may intervene as a party ... in a proceeding that is subject to the notice  
6 requirements of this section.” A.R.S. § 12-1841(D). Plaintiffs have confirmed that this  
7 proceeding is subject to the notice requirements of this section. *See* Doc. 188.

8 Thus, when a state statute is challenged as unconstitutional, the Legislative Leaders  
9 “shall be entitled to be heard.” A.R.S. § 12-1841(A). Accordingly, the Legislative Leaders  
10 have a crucial interest—bestowed by the people of Arizona through their elected  
11 representatives in the Legislature—in defending the constitutionality of state statutes.  
12 Courts have previously permitted the Legislative Leaders to intervene to defend the  
13 constitutionality of state statutes. *See* Doc. 142, *Doe v. Horne*, 4:23-cv-00185-JGZ (D.  
14 Ariz. Aug. 22, 2023); Doc. 363, *Mi Familia Vota v. Fontes*, 2:22-cv-00509-SRB (D. Ariz.  
15 Apr. 26, 2023); *Isaacson v. Mayes*, 2:21-cv-01417-DLR, 2023 WL 2403519, at \*2 (D.  
16 Ariz. Mar. 8, 2023).

17 The senators and representatives of Arizona also have authorized their legislative  
18 leaders to defend duly enacted state statutes against constitutional challenge. The Arizona  
19 Constitution expressly provides that the Arizona Senate and House of Representatives shall  
20 each “determine its own rules of procedure.” Ariz. Const. art. IV, Pt. 2 § 8. Pursuant to  
21 this constitutional authority, the Arizona State Senate and the Arizona House of  
22 Representatives passed virtually identical rules that authorize the President of the Senate  
23 and the Speaker of the House “to bring or assert in any forum on behalf of the  
24 [Senate/House] any claim or right arising out of any injury to the [Senate’s/House’s]  
25 powers or duties under the constitution or laws of this state.”<sup>1</sup> Ariz. State Senate Rule  
26

27 <sup>1</sup> The Arizona Constitution charges the State Senate and House of Representatives to each  
28 “choose its own officers.” Ariz. Const. art. IV, Pt. 2 § 8. In January 2025, the Arizona  
State Senate elected Warren Petersen as President, and the Arizona House of  
Representatives elected Steve Montenegro as Speaker.

1 2(N); Ariz. House of Representatives Rule 4(K). Chamber rules thus empower President  
2 Petersen and Speaker Montenegro to seek intervention.

3 The Legislative Leaders also have a significant protectable interest in the remedy  
4 that enjoined part of a state statute, which the Court ordered based on a view of legislative  
5 intent that differed dramatically from the Legislative Leaders' understanding of legislative  
6 intent. Combined with their statutory right to defend the constitutionality of state statutes,  
7 the Legislative Leaders are "apparently concerned [parties]" in this matter, *Wilderness*  
8 *Soc'y*, 630 F.3d at 1179, and satisfy this factor in favor of intervention.

9 **C. The Legislative Leaders' significant protectable interests will be**  
10 **impaired absent intervention.**

11 When a proposed intervenor demonstrates a significant protectable interest, courts  
12 often "have little difficulty concluding that the disposition of this case may, as a practical  
13 matter, affect it." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir.  
14 2006); *see also* Fed. R. Civ. P. 24 advisory committee's note to 1966 amendment ("If [a  
15 proposed intervenor] would be substantially affected in a practical sense by the  
16 determination made in an action, he should, as a general rule, be entitled to intervene ....");  
17 *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001).

18 The Supreme Court has held that statutes like A.R.S. § 12-1841 endow legislative  
19 leaders with a protectable interest that would be impaired absent intervention. *See Berger*  
20 *v. N.C. State Conf. of the NAACP*, 597 U.S. 179 (2022). Like Arizona, North Carolina has  
21 a law that allows the leaders of its legislature to participate in proceedings challenging the  
22 constitutionality of state statutes. *Id.* at 186 (citing N.C. GEN. STAT. ANN. § 1-72.2). The  
23 Court reaffirmed that "a State ... may authorize its legislature to litigate on the State's  
24 behalf," for example, by "provid[ing] for other officials, besides an attorney general, to  
25 speak for the State in federal court, as some States have done for their presiding legislative  
26 officers." *Id.* at 192-93 (cleaned up). The Court reaffirmed that "state legislative leaders  
27 authorized under state law to represent the State's interests in federal court could defend  
28 state laws there as parties." *Id.* at 193 (citing *Karcher v. May*, 484 U.S. 72, 75, 81-82

1 (1987)) (cleaned up). As such, the Court held, “courts should rarely question that a State’s  
2 interests will be practically impaired or impeded if its duly authorized representatives are  
3 excluded from participating in federal litigation challenging state law.” *Id.* at 191.

4 Here, the Legislative Leaders have identified significant protectable interests. *See*  
5 *supra*. The Court’s permanent injunction directly impairs those interests. *See, e.g.,*  
6 *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011)  
7 (finding that proposed intervenor-defendant, in an action for injunction of a government  
8 order, would suffer impairment of its interests, as a practical matter, should the plaintiffs  
9 prevail). Other courts have found that the interests of state legislatures are impaired by  
10 injunctions and judgments against state statutes. *See, e.g., Isaacson*, 2023 WL 2403519,  
11 at \*2; *Priorities USA v. Benson*, 448 F. Supp. 3d 755, 764–65 (E.D. Mich. 2020) (“If  
12 Plaintiff prevails in obtaining an injunction against the enforcement of the signature  
13 matching laws or in a judgment that the laws are unconstitutional, the laws that the  
14 Legislature enacted, that the Legislature is tasked with designing, and that impact the  
15 manner in which members the Legislature are chosen will be essentially declared void,  
16 whether temporarily or permanently.”). Therefore, the Legislative Leaders have significant  
17 protectable interests that would be impaired absent intervention.

18 **D. The existing parties do not adequately represent the Legislative Leaders.**

19 Courts consider three factors when evaluating adequacy of representation: “(1)  
20 whether the interest of a present party is such that it will undoubtedly make all of a  
21 proposed intervenor’s arguments; (2) whether the present party is capable and willing to  
22 make such arguments; and (3) whether a proposed intervenor would offer any necessary  
23 elements to the proceeding that other parties would neglect.” *Citizens for Balanced Use*,  
24 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). When  
25 a proposed intervenor and an existing party share the same “ultimate objective,” a  
26 presumption of adequacy arises which can be rebutted by a compelling showing of  
27 inadequacy. *Id.* (citations omitted). However, “intervention of right does not require an  
28 absolute certainty ... that existing parties will not adequately represent [the proposed

1 intervenor’s] interests.” *Id.* at 900. Rather, the proposed intervenor need simply show that  
2 representation of its interests “may be” inadequate. *Trbovich v. United Mine Workers of*  
3 *Am.*, 404 U.S. 528, 538 n.10 (1972). Indeed, “the burden of showing inadequacy is  
4 ‘minimal’ ....” *Berg*, 268 F.3d at 823 (citing *Trbovich*, 404 U.S. at 538 n.10). Accordingly,  
5 “[a]ny doubt as to whether the existing parties will adequately represent the intervenor  
6 should be resolved in favor of intervention.” *Issa v. Newsom*, No. 2:20-cv-1044, 2020 WL  
7 3074351, at \*3 (E.D. Cal. June 10, 2020) (citation omitted).

8 The Legislative Leaders satisfy these requirements. If the Defendant does not  
9 appeal, the Defendant will not adequately represent the Legislative Leaders’ interests  
10 because there will be no appeal. The Ninth Circuit and sister circuits agree that an original  
11 party’s failure to pursue an appeal alone is enough to establish the inadequacy of  
12 representation factor. *See, e.g., Peruta v. Cnty. of San Diego*, 824 F.3d 919, 941 (9th Cir.  
13 2016) (“California then appropriately sought to intervene in order to fill the void created  
14 by the late and unexpected departure of Sheriff Gore from the litigation.”); *see also Ross*  
15 *v. Marshall*, 426 F.3d 745, 761 (5th Cir. 2005); *Chiglo v. City of Preston*, 104 F.3d 185,  
16 188 (8th Cir. 1997) (“Admittedly, failure to appeal, combined with diverging interests  
17 between the representative and the proposed intervenor, is surely enough to warrant  
18 intervention.”); *Americans United for Separation of Church & State v. City of Grand*  
19 *Rapids*, 922 F.2d 303, 306 (6th Cir. 1990) (“We agree with the District of Columbia Circuit  
20 that a decision not to appeal by an original party to the action can constitute inadequate  
21 representation of another party’s interest.”).

22 But even if the Defendant does ultimately appeal, it already is clear that the  
23 Defendant will not “undoubtedly make all of a proposed intervenor’s arguments” on  
24 appeal. *See Citizens for Balanced Use*, 647 F.3d at 898. The permanent injunction briefing  
25 and hearing before the Court highlighted this fact. The Legislative Leaders raised  
26 numerous arguments before the Court as *amici curiae* which, as became apparent during  
27 the course of the permanent injunction proceedings, Defendants never sought nor intended  
28 to raise. Some examples include: (a) the appropriate remedy in this action; (b) legislative

1 intent, as presented by the Legislative Leaders themselves; and (c) the impact of *United*  
2 *States v. Skrmetti* on Plaintiffs’ Equal Protection challenge.<sup>2</sup> *See generally* Doc. 289; Doc.  
3 307. In fact, not only did Defendant initially limit its arguments to disputes over the  
4 proposed injunctive language, *see* Doc. 287, at 2-6, following the hearing, but the  
5 Defendant also actively opposed the Legislative Leaders’ requested remedy in its  
6 supplemental briefing. *See* Doc. 308, at 7 (“The Legislature’s proposed injunction is not  
7 the right remedy here.”). The Defendant also disagreed with the Legislative Leaders’  
8 interpretation of key Supreme Court cases that govern the remedy analysis. *See id.*

9 In addition, the Legislative Leaders intend to argue on appeal that the Court’s Equal  
10 Protection analysis is incorrect under *Skrmetti* and related authorities. This is a  
11 substantively divergent (and likely case dispositive) defense of the statute as compared to  
12 the defense mounted by Defendant. In fact, Defendant disagrees that *Skrmetti* even applies  
13 to this case. *See* Doc. 308, at 9-10. Thus, the Legislative Leaders will bring “necessary  
14 elements to the proceeding that other parties would neglect.” *Citizens for Balanced Use*,  
15 647 F.3d at 898.

16 Therefore, the Legislative Leaders have met their “minimal” burden demonstrating  
17 that the existing parties do not adequately represent their interests, *see Berg*, 268 F.3d at  
18 823, whether or not Defendant ultimately appeals.

19 **D. The Legislative Leaders have standing to appeal.**

20 The Legislative Leaders have standing to appeal in the event that no party appeals.  
21 *See Legal Aid Soc’y of Alameda Cnty.*, 608 F.2d at 1328 (requiring showing of “traditional  
22 standing criteria” for post-judgment intervention where no party appeals). Under Article  
23 III, “a plaintiff has standing if the plaintiff can show (1) an ‘injury in fact’ that is concrete  
24 and particularized and actual or imminent, not hypothetical; (2) that the injury is fairly  
25 traceable to the challenged action of the defendant; and (3) that it is likely, as opposed to

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27 <sup>2</sup> The Legislative Leaders do not raise every issue they wish to assert on appeal, and  
28 expressly preserve the right to raise issues and arguments on appeal in addition to those  
mentioned here.

1 merely speculative, that the injury will be redressed by a favorable decision.” *Mi Familia*  
2 *Vota v. Fontes*, 129 F.4th 691, 707 (9th Cir. 2025).

3 The Supreme Court has “recognized that state legislators have standing to contest a  
4 decision holding a state statute unconstitutional if state law authorizes legislators to  
5 represent the State’s interests.” *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 65 (1997)  
6 (citing *Karcher v. May*, 484 U.S. 72, 82 (1987)); *see also Yniguez v. Arizona*, 939 F.2d  
7 727, 733 (9th Cir. 1991), *vacated on other grounds sub nom. Arizonans for Off. English*,  
8 520 U.S. 43 (1997) (“It is therefore clear that were Article XXVIII a statute rather than a  
9 ballot initiative, the Arizona legislature would have standing to defend its  
10 constitutionality.”). Here, the Legislative Leaders enjoy standing to bring an appeal  
11 because A.R.S. § 12-1841 “authorizes the Legislative [Leaders] to defend Arizona’s state  
12 laws on behalf of the State.” *Mi Familia Vota*, 129 F.4th at 707. The Ninth Circuit recently  
13 reaffirmed the well-established principle that a “permanent injunction of parts of [State]  
14 Laws causes a clear and obvious injury to the State.” *Id.* Because the injunction causes  
15 “injury to the State,” and the Legislative Leaders are authorized by the State to seek redress  
16 from that injury by taking action to defend the constitutionality of state statutes, “the  
17 Legislative [Leaders] have standing to bring their appeal.” *Id.* at 707-08.

## 18 **II. In the Alternative, the Court Should Grant Permissive Intervention**

19 Alternatively, the Legislative Leaders request that the Court grant permissive  
20 intervention under Rule 24(b). Courts grant permissive intervention when the applicant  
21 “has a claim or defense that shares with the main action a common question of law or fact.”  
22 FED. R. CIV. P. 24(b)(1)(B). “An applicant who seeks permissive intervention must prove  
23 that it meets three threshold requirements: (1) it shares a common question of law or fact  
24 with the main action; (2) its motion is timely; and (3) the court has an independent basis  
25 for jurisdiction over the applicant’s claims.” *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th  
26 Cir. 1998). “[T]he independent jurisdictional grounds requirement does not apply to  
27 proposed intervenors in federal-question cases when the proposed intervenor is not raising  
28 new claims.” *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836 844 (9th Cir.

1 2011). “In exercising its discretion, the court must consider whether the intervention will  
2 unduly delay or prejudice the adjudication of the original parties’ rights.” FED. R. CIV. P.  
3 24(b)(3).

4 Here, the Legislative Leaders’ motion is timely, and the independent jurisdictional  
5 grounds requirement is inapplicable to this federal constitutional challenge to a state  
6 statute. Moreover, the Legislative Leaders satisfy the “common question of law or fact”  
7 requirement, as they seek to appeal the injunction and judgment on the merits and otherwise  
8 uphold the constitutionality of the challenged state law. *See Jackson v. Abercrombie*, 282  
9 F.R.D. 507, 520 (D. Haw. 2012) (finding “common questions of law and fact” where  
10 proposed intervenors sought to defend constitutionality of laws); *Issa v. Newsom*, No. 2:20-  
11 cv-1044, 2020 WL 6580452, at \*1 (E.D. Cal. June 23, 2020) (same). As explained above,  
12 the Legislative Leaders have an important interest in defending the challenged law. In  
13 addition, there is no undue delay or prejudice here. The Legislative Leaders’ motion is  
14 timely, and they intend to file an appeal within the normal 30-day appeal window or as  
15 soon as allowed by the Court, an appeal to which litigants are entitled as of right. *See* FED.  
16 R. APP. P. 3, 4.

17 Therefore, in the alternative, the Court should grant permissive intervention.

18 **CONCLUSION**

19 For the reasons stated above, the Legislative Leaders respectfully ask the Court to  
20 grant intervention for purposes of appeal as of right or, alternatively, permissive  
21 intervention.

22  
23 Dated: October 20, 2025

Respectfully submitted,

24  
25 JAMES OTIS LAW GROUP, LLC

26 /s/ Justin D. Smith

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President Petersen and Speaker Montenegro*

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 20, 2025, I caused a true and correct copy of the foregoing to be filed by the Court’s electronic filing system, to be served by operation of the Court’s electronic filing system on counsel for all parties who have entered in the case.

*/s/ Justin D. Smith*

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*Attorneys for Proposed Intervenors President Petersen and Speaker Montenegro*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Helen Roe, a minor, by and through parent  
and next friend Megan Roe, *et al.*,

Plaintiffs,

v.

Sheila Sjolander, in her official capacity as  
State Registrar of Vital Records and  
Interim Director of the Arizona  
Department of Health Services,

Defendant.

Case No. 4:20-cv-00484-JAS

**Legislative Leaders’ Motion for a Stay  
Pending Appeal and Request for an  
Administrative Stay**

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**INTRODUCTION**

President of the Arizona State Senate Warren Petersen and Speaker of the Arizona House of Representatives Steve Montenegro (the “Legislative Leaders”) seek a stay pending appeal and an administrative stay in the interim. The Court previously denied the Attorney General’s Office’s single unsupported sentence requesting a stay, *see* Doc. 308, at 11, because “[t]here has been no showing that a stay pending appeal is warranted in this case,” Doc. 310, at 8. The Legislative Leaders file this motion to demonstrate that a stay is warranted and to preserve their right to appeal any denial of a stay.

The Legislative Leaders are likely to succeed on the merits. The Supreme Court’s recent decision in *United States v. Skrmetti* already requires reversal of this Court’s decision on Plaintiffs’ Equal Protection claim, as the Supreme Court itself demonstrated by vacating and remanding a judgment by the Tenth Circuit that contained reasoning similar to this Court’s order. The Supreme Court is expected to issue another important Equal Protection ruling on transgender issues this term that also could have dispositive effect on Plaintiffs’ challenge, further warranting a stay. *See W. Va. v. B. P. J.*, No. 24-43 (U.S.); *Little v. Hecox*, No. 24-38 (U.S.). Every known decision by the Courts of Appeals on similar laws, with the exception of the now-vacated Tenth Circuit decision, also shows that the Legislative Leaders are likely to prevail in their appeal of the Court’s Equal Protection and Due Process decisions. And the Court’s ruling on the remedy conflicts with Supreme Court precedent relating to legislative intent and other key issues.

The State of Arizona and the Legislative Leaders will suffer irreparable harm absent a stay. A State suffers irreparable harm whenever a statute is enjoined. That harm is exacerbated here because the permanent injunction will disrupt a stable system by imposing ambiguous rules to issue amended birth certificates, which the State may not be able to revoke even if the Legislative Leaders prevail on appeal. The equities and the public interest thus strongly favor a stay.

Plaintiffs oppose this motion. Defendant was not able to provide its position before this filing.

1  
2 **ARGUMENT**

3 **I. Legal Standard**

4 Courts analyze four factors when considering a stay: “(1) whether the stay applicant  
5 has made a strong showing that he is likely to succeed on the merits; (2) whether the  
6 applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will  
7 substantially injure the other parties interested in the proceeding; and (4) where the public  
8 interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). “The first two  
9 factors ... are the most critical.” *Immigrant Defenders Law Ctr. v. Noem*, 145 F.4th 972,  
10 983 (9th Cir. 2025) (quoting *Nken*, 556 U.S. at 434).

11 **II. The Legislative Leaders Are Likely to Succeed on the Merits**

12 The Legislative Leaders are likely to succeed on appeal.

13 **A. *United States v. Skrmetti* requires a different outcome in this case.**

14 Earlier this year, the Supreme Court vacated and remanded the Tenth Circuit’s  
15 opinion in *Fowler v. Stitt*, which upheld an Equal Protection challenge to Oklahoma’s birth  
16 certificate law. *Fowler v. Stitt*, 104 F.4th 770, 800 (10th Cir. 2024), *cert. granted, judgment*  
17 *vacated*, 145 S. Ct. 2840 (U.S. June 30, 2025). The Tenth Circuit’s Equal Protection  
18 analysis was similar to this Court’s analysis. *See id.* at 783-97. Significantly, the Supreme  
19 Court vacated and remanded “in light of *United States v. Skrmetti*.” 145 S. Ct. 2840.  
20 *Skrmetti* applies with equal force here.

21 The Court, in its order granting a permanent injunction (Doc. 310), declined to  
22 provide analysis of *Skrmetti*’s impact on this case. Instead, in a footnote, the Court stated  
23 that it had “reviewed” the opinion and found it “distinguishable” and “inapplicable.” Doc.  
24 310, at 3 n.4. That is incorrect.

25 As the Supreme Court’s remand of *Fowler* made clear, *Skrmetti* applies to this birth  
26 certificate case. In *Skrmetti*, the Court considered an Equal Protection challenge to a state  
27 law banning use of puberty-blockers and hormones to treat gender dysphoria in minors.  
28 145 S. Ct. 1816, 1824, 1829 (2025). The Court found that the state law classified based

1 on: (a) age; and (b) medical use. *Id.* at 1829. The Court rejected the argument that, because  
2 only transgender individuals are diagnosed with gender dysphoria, the state law  
3 represented a veiled sex-based classification. *Id.* The Court found that the law “does not  
4 prohibit conduct for one sex that it permits for the other,” finding instead that under the  
5 law, “no minor may be administered puberty blockers or hormones to treat gender  
6 dysphoria” while “minors of *any* sex may be administered puberty blockers or hormones  
7 for other purposes.” *Id.* at 1831. Put another way, the Court found that while “only  
8 transgender individuals seek puberty blockers and hormones for the excluded diagnoses,  
9 ... in contrast ... both transgender and nontransgender individuals” “seek puberty blockers  
10 or hormones to treat other conditions.” *Id.* at 1833. Thus, the Court held that the state law  
11 did not “exclude any individuals on the basis of transgender status.” *Id.* at 1833-34. The  
12 Court also observed that it “has not previously held that transgender individuals are a  
13 suspect or quasi-suspect class.”<sup>1</sup> *Id.* at 1832.

14 Here, in its summary judgment ruling, the Court relied upon its finding that the “sex  
15 change operation” provisions in A.R.S. § 36-337(A)(3) and A.A.C. § R9-19-208(O)  
16 (collectively, the “challenged law”), “targets” transgender individuals because only  
17 transgender individuals would seek such an operation. Doc. 310, at 9, 11. This Court thus  
18 erroneously rejected the argument that the challenged law applies to any person, whether  
19 biologically male or female, thereby failing to represent any sex-based classification at all.  
20 *See also* A.R.S. § 36-337(A)(3) (providing exception for “a person” who has undergone  
21 the operation).

22 Under *Skrmetti*’s reasoning, this was error. Just as the state law in *Skrmetti* did not  
23 classify based on sex when it did “not prohibit conduct for one sex that it permits for the

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24 <sup>1</sup> Notably, three concurring Justices separately explained their view that transgender status  
25 does *not* constitute a suspect class. *Skrmetti*, 145 S. Ct. at 1849-50, 1855 (Barrett, J., joined  
26 by Thomas, J., concurring) (opining “[t]he Equal Protection Clause does not demand  
27 heightened judicial scrutiny of laws that classify based on transgender status” and that  
28 “[r]ational-bases review applies”); *id.* at 1855, 1860 (Alito, J., concurring in part and  
concurring in the judgment) (“neither transgender status nor gender identity should be  
treated as a suspect or ‘quasi-suspect’ class”). The fact that this issue is likely to be settled  
upon the Supreme Court’s resolution of *Hecox* and *B.P.J.* further underscores the  
vulnerability of this Court’s rulings here, warranting a stay.

1 other”—*i.e.*, when it allowed individuals of “*any sex*” to receive the same benefit—here,  
2 the challenged law allows any individual of either sex to qualify for the exception.  
3 Similarly, just as in *Skrmetti*, where the Supreme Court found that the state law did not  
4 represent a veiled sex-based classification just because only transgender individuals seek  
5 puberty-blockers and hormones for gender dysphoria, here, the challenged law does not  
6 classify based on sex if, in the Court’s view, only transgender individuals would seek sex  
7 change operations. Thus, under *Skrmetti*, rational basis review applies to this case. *See*  
8 *Skrmetti*, 145 S. Ct. at 1835.

9 For this reason, the Legislative Leaders are likely to prevail on appeal.

10 **B. Recent decisions from the Courts of Appeals confirm the likelihood of**  
11 **success on appeal.**

12 In every known birth certificate and identification challenge similar to this action,  
13 with the exception of the Tenth Circuit’s Equal Protection decision that the Supreme Court  
14 has since vacated, the Courts of Appeals have rejected the arguments accepted by this  
15 Court. These decisions by the Sixth, Tenth, and Eleventh Circuits strongly indicate that  
16 the Legislative Leaders will succeed on appeal.

17 The Sixth Circuit upheld a state law similar to Arizona’s law against Equal  
18 Protection and Due Process challenges. *See Gore v. Lee*, 107 F.4th 548 (6th Cir. 2024).  
19 Like here, plaintiffs alleged that Tennessee’s law had the effect of preventing transgender  
20 individuals from changing the sex marker on their birth certificates. *Id.* at 553-54. The  
21 Sixth Circuit upheld the law under rational basis review. *Id.* at 566. The court noted that  
22 the state law’s certificate amendment process “does not attach any significance to the  
23 biological sex of the applicant ... all may seek to amend their birth certificates on the same  
24 terms.” *Id.* at 555, 557. The court also held that rational basis review applies to claims of  
25 discrimination based on transgender status, stating that “plaintiffs cannot show that they  
26 qualify as a suspect class.” *Id.* at 558. The Sixth Circuit held that “the Constitution does  
27 not create a general right of privacy, leaving most privacy-rights protection to the states or  
28 the legislative process” when finding that the state law “does not disclose [plaintiffs’]

1 transgender status.” *Id.* at 563 (quotations and citation omitted). The court also found that  
2 the state law’s “insistence on maintaining a record of a person’s biological sex does not  
3 disclose any mismatch with their gender identity.” *Id.* at 564.

4 The Eleventh Circuit also upheld a Florida identification law against Equal  
5 Protection and Due Process challenges. *See Corbitt v. Sec’y of the Ala. L. Enf’t Agency*,  
6 115 F.4th 1335 (11th Cir. 2024). Similar to this action, Plaintiffs challenged the law’s  
7 requirement that individuals seeking to change the sex marker on their driver’s licenses  
8 first undergo “gender reassignment surgery.” *Id.* at 1340. The Eleventh Circuit held that  
9 the state law did “not impose a sex-based classification” since it “imposes the same  
10 objective conditions on everyone.” *Id.* Rational basis review applied. *Id.* The Eleventh  
11 Circuit emphasized that the state law “does not distinguish between males and females in  
12 any respect. Rather, it applies to *all* individuals wishing to have their sex changed on their  
13 Alabama driver’s license.” *Id.* at 1346 (cleaned up). The court also rejected the argument  
14 that under the state law, non-transgender individuals “can access a driver’s license that  
15 accurately reflects their gender identity and the sex in which they are living ... but that  
16 transgender people cannot do the same.” *Id.* at 1347 n.9. The court found this argument  
17 to be a mere policy disagreement about the state law’s merits and rejected the plaintiffs’  
18 argument this constituted classification based on transgender status. *Id.*<sup>2</sup> Similarly, the  
19 Eleventh Circuit held that the state law “neither violates Plaintiffs’ right to informational  
20 privacy, nor infringes their right to refuse medical care like sex-change surgery.” *Id.* at  
21 1341. The Eleventh Circuit rejected the argument that the state law forced the plaintiffs  
22 into “giving up their constitutional right to refuse unwanted medical treatment” in order to  
23 obtain “a license they can actually use without sacrificing being their ‘true self’ or  
24 subjecting themselves to harassment, assault, or violence,” noting that the plaintiffs failed  
25 to show that the state identification document is “meant to confer such a benefit.” *Id.* at

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28 <sup>2</sup> Like the concurring Justices in *Skrmetti*, the Eleventh Circuit observed that it has “never  
recognized transgender persons as a suspect class and instead ha[s] expressed ‘grave doubt  
that transgender persons constitute a quasi-suspect class’ for purposes of the Equal  
Protection Clause.” *Corbitt*, 115 F.4th at 1347 n.9 (quoting *Adams by and through Kasper*  
*v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 803 n.5 (11th Cir. 2022) (en banc)).

1 1351.

2 Finally, the Tenth Circuit’s since-vacated opinion in *Fowler* also demonstrates that  
3 the Legislative Leaders will prevail on appeal of this Court’s substantive due process  
4 ruling. In *Fowler*, the Tenth Circuit affirmed the district court’s dismissal of a substantive  
5 due process challenge to Oklahoma’s law on amending birth certificates. 104 F.4th at 797-  
6 800. The Tenth Circuit held that, like Plaintiffs in this case, the plaintiffs before it failed  
7 “to allege that their involuntary disclosures amount to state action.” *Id.* at 800. The *Fowler*  
8 plaintiffs did not appeal this decision and did not file a cross-petition for a writ of certiorari,  
9 *see Stitt v. Fowler*, 24-801 (U.S.), and thus the issues before the Tenth Circuit on remand  
10 do not include substantive due process, *see* Doc. 119, *Fowler v. Stitt*, No. 23-5080 (10th  
11 Cir. Aug. 6, 2025), at 2. As previously discussed, the Supreme Court vacated the Tenth  
12 Circuit’s Equal Protection decision under *Skrmetti*.

13 **C. The Legislative Leaders are likely to succeed in an appeal of the Court’s**  
14 **decision on the remedy.**

15 In its permanent injunction, the Court enjoined the single word “operation” in  
16 A.R.S. § 36-337(A)(3) and A.A.C. § R9-19-208(O). This remedy was inconsistent with  
17 legislative intent in violation of Supreme Court precedent.

18 When the court confronts “a constitutional flaw in a statute,” “the touchstone for  
19 any decision about remedy is legislative intent, for a court cannot ‘use its remedial powers  
20 to circumvent the intent of the legislature.’” *Ayotte v. Planned Parenthood of N. New*  
21 *England*, 546 U.S. 320, 328, 330 (2006) (citation omitted). The decision whether to declare  
22 a statute null and order its benefits not extend to the class “is governed by the legislature’s  
23 intent, as revealed by the statute at hand.” *Sessions v. Morales-Santana*, 582 U.S. 47, 73  
24 (2017).

25 Without citing any evidence, the Court erroneously concluded that the “remedy to  
26 strike the word ‘operation’ aligns with legislative intent.” Doc. 310, at 7. The Court did  
27 not address the extensive legislative history provided by the Legislative Leaders. *See* Doc.  
28 307, at 3-13. Nor did the Court evaluate legislative intent or severability under state law,

1 *see* Doc. 310, as it was required to do, *see* Doc. 307, at 4-5 (citing cases). And the Court  
2 did not address issues relating to whether the injunction satisfied Rule 65, was outside the  
3 scope of Plaintiffs’ complaint, and was waived. *Id.* at 3, 13-14.

4 These are all reversible errors, and thus the Legislative Leaders are likely to succeed  
5 on appeal of the Court’s permanent injunction order.

6 **III. The Legislative Leaders and the State of Arizona Are Likely to Be Irreparably**  
7 **Injured Absent a Stay.**

8 The State of Arizona will suffer irreparable injury from a permanent injunction.  
9 “[A]ny time a State is enjoined by a court from effectuating statutes enacted by  
10 representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*,  
11 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (internal quotation omitted); *see*  
12 *also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“it is clear that a  
13 state suffers irreparable injury whenever an enactment of its people or their representatives  
14 is enjoined”). As the Sixth Circuit explained when it granted a stay pending appeal of a  
15 district court’s injunction of a state law challenged by transgender plaintiffs, “[i]f the  
16 injunction remains in place during the appeal, Tennessee will suffer irreparable harm from  
17 its inability to enforce the will of its legislature.” *L. W. by & through Williams v. Skrmetti*,  
18 73 F.4th 408, 421 (6th Cir. 2023). The same is true for Arizona here. Arizona also will  
19 suffer irreparable injury from its inability to further the considerations undergirding the  
20 law. *See id.*

21 Arizona and the Legislative Leaders also will suffer irreparable harm if a stay is not  
22 entered pending appeal. Without a stay, the Court’s order will force Defendant to issue  
23 amended birth certificates to individuals who were not eligible for amended birth  
24 certificates under the original statute. In the likely event that the Legislative Leaders  
25 prevail on appeal, the Legislative Leaders are not aware of any procedure to revoke  
26 amended birth certificates issued pursuant to a reversed court order. *Cf.* A.R.S. § 36-  
27 337(H) (describing process if adoption annulled). Nor is it clear that the Legislative  
28 Leaders could pass legislation setting forth such a procedure after amended birth

1 certificates have been issued. *See, e.g., Krol v. Indus. Comm’n of Arizona*, 565 P.3d 1013,  
2 1021 (Ariz. 2025). This is especially important given the ambiguity and other Rule 65  
3 issues that the Court did not resolve, which could result in a wide difference in how birth  
4 certificates are amended during the appeal. “Allowing the permanent injunction to remain  
5 in place before a merits panel of this court can ultimately rule on the constitutionality of  
6 the” Arizona birth certificate statute “could throw a previously stable system into chaos.”  
7 *Lair v. Bullock*, 697 F.3d 1200, 1214 (9th Cir. 2012)

#### 8 **IV. The Balance of the Equities and the Public Interest Strongly Favors a Stay.**

9 The final factor—public interest—“merge[s]” with the injury to the State and its  
10 citizens. *Nken*, 556 U.S. at 435. The Act, as a duly enacted law adopted by Arizona’s  
11 elected representatives, is itself a clear and authoritative declaration of the public interest  
12 in Arizona. *See, e.g., Virginian Ry. Co. v. Sys. Fed’n No. 40*, 300 U.S. 515, 552 (1937)  
13 (holding that a policy enacted in a statute “is in itself a declaration of public interest and  
14 policy which should be persuasive in inducing courts to give relief”). The people of  
15 Arizona also have an interest in the effectiveness of laws passed by their elected officials.  
16 And statutes and institutions that require birth certificates further an interest in the accuracy  
17 of these vital records.

18 Class members will not be prejudiced because they already have waited  
19 approximately five years since this litigation began for relief. Any individual class member  
20 with an exigent need for an amended birth certificate could have taken action to address  
21 the issue before now. Thus, class members will not be prejudiced by a stay pending appeal.

22 The equities and the public interest thus strongly favor a stay pending appeal.

#### 23 **CONCLUSION**

24 For the reasons stated above, the Legislative Leaders respectfully request that the  
25 Court issue a stay pending appeal. The Legislative Leaders further respectfully request  
26 that the Court issue an administrative stay while it decides this motion. *See Oregon v.*  
27 *Trump*, No. 25-6268, --- F.4th ---, 2025 WL 2848495, at \*1 (9th Cir. Oct. 8, 2025).

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1 Dated: October 20, 2025

Respectfully submitted,

2  
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4 /s/ Justin D. Smith

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10 *Attorneys for Proposed Intervenors*

11 *President Petersen and Speaker Montenegro*

12  
13 **CERTIFICATE OF SERVICE**

14 I hereby certify that, on October 20, 2025, I caused a true and correct copy of the  
15 foregoing to be filed by the Court's electronic filing system, to be served by operation of  
16 the Court's electronic filing system on counsel for all parties who have entered in the case.

17 /s/ Justin D. Smith

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9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Helen Roe, a minor, by and through parent  
13 and next friend Megan Roe, *et al.*,

14 Plaintiffs,

15 v.

16 Sheila Sjolander, in her official capacity as  
17 State Registrar of Vital Records and  
18 Interim Director of the Arizona  
19 Department of Health Services,

20 Defendant.

Case No. 4:20-cv-00484-JAS

**Legislative Leaders' Motion for  
Extension of Time to File a Notice of  
Appeal (FIRST REQUEST)**

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1 President of the Arizona State Senate Warren Petersen and Speaker of the Arizona  
2 House of Representatives Steve Montenegro (the “Legislative Leaders”) respectfully ask  
3 this Court to extend the time within which the Legislative Leaders must file their Notice of  
4 Appeal of the Court’s Judgment and the underlying Orders, including the Order on  
5 Permanent Injunction and the Order on Summary Judgment. *See* Docs. 279, 310, 311. In  
6 support of their Motion, the Legislative Leaders state as follows:

7 1. The Court entered final judgment on September 30, 2025. Doc. 311.

8 2. Consequently, the current deadline to file a Notice of Appeal is October 30,  
9 2025. FED. R. APP. P. 4(a)(1)(A).

10 3. However, as *amici curiae*, the Legislative Leaders are not fully “parties” to  
11 the case. Generally, only a party can file a Notice of Appeal of an adverse judgment, *Evans*  
12 *v. Synopsis, Inc.*, 34 F.4th 762, 769 (9th Cir. 2022), although the Ninth Circuit has indicated  
13 that a prospective intervenor may file a protective Notice of Appeal, *id.* at 776 n.15.

14 4. Nevertheless, the deadline for the Legislative Leaders to file a Notice of  
15 Appeal is governed by Federal Rule of Appellate Procedure 4, *i.e.*, within 30 days of entry  
16 of the Judgment. *Id.* at 769-770 (“all litigants in a given case face the same jurisdictional  
17 deadline to file a notice of appeal”).

18 5. The Legislative Leaders have contemporaneously filed herewith their  
19 Motion to Intervene for purposes of appeal. But until that Motion is granted, they do not  
20 enjoy full “party” status.

21 6. Thus, the Legislative Leaders seek to extend the time to file a Notice of  
22 Appeal, to allow the Court to consider and rule upon their Motion to Intervene without  
23 feeling constrained to do so before the rapidly approaching October 30, 2025 deadline.

24 7. The Ninth Circuit has explained that a motion to extend the time to file a  
25 notice of appeal is an appropriate course for prospective intervenors to preserve their right  
26 to appeal upon obtaining party status. *See Evans*, 34 F.4th 762.

27 8. In *Evans*, the Ninth Circuit held that “Rule 4 provides the *only* mechanism  
28 by which a litigant may request and a court may grant an extension of time to file a notice

1 of appeal.” *Id.* at 771. Thus, the Legislative Leaders must “explicitly request an extension  
2 of time” and file “a formal motion for extension” under Rule 4(a)(5). *Id.* (quoting *Malone*  
3 *v. Avenenti*, 850 F.2d 569, 572-73 (9th Cir. 1988)).

4 9. The Ninth Circuit clarified that proposed intervenors are able to file such a  
5 motion under Rule 4, notwithstanding their incomplete party status. *Id.* at 772.

6 10. Under Rule 4(a)(5), this Court may extend the time to file a Notice of Appeal  
7 if:

8 a. The Legislative Leaders so move no later than 30 days after the time  
9 prescribed by this Rule 4(a) expires; and

10 b. The Legislative Leaders show excusable neglect or good cause.

11 *See* FED. R. APP. P. 4(a)(5)(A).

12 11. “In considering a motion to extend the time to appeal,” courts consider “(1)  
13 the reason for the delay, (2) whether the moving party acted in good faith, (3) the danger  
14 of prejudice to the non-moving party, and (4) the length of delay and its potential impact  
15 on judicial proceedings.” *Facciola v. Greenberg Traurig LLP*, No. CV-10-1025, 2012 WL  
16 12827399, at \*1 (D. Ariz. Dec. 5, 2012) (citing *Pincay v. Andrews*, 389 F.3d 853, 855-56  
17 (9th Cir. 1996)).

18 12. Here, any delay is due to the Legislative Leaders’ need for formal  
19 intervention prior to appealing and not for any dilatory reason. As explained in their  
20 Motion to Intervene, the Legislative Leaders have acted promptly and proactively in these  
21 circumstances.

22 13. Moreover, the Legislative Leaders have acted in good faith. Again, as  
23 explained in their Motion to Intervene, the Legislative Leaders have been in diligent  
24 communication with Defendant to ascertain its intentions as to an appeal and have moved  
25 to intervene once it became clear that their interests would not be protected.

26 14. Further, the Legislative Leaders are pursuing an appeal as of right. Thus,  
27 there is no prejudice to the other parties, because their rights, arguments, defenses, and  
28 legal interests remain unaffected. *See Westlands Water Dist. v. United States*, 100 F.3d 94,

1 97 (9th Cir. 1996) (“Although case law does not articulate a precise definition of ‘legal  
2 prejudice,’ the cases focus on the rights and defenses available to a defendant in future  
3 litigation.”); *Bader v. Elecs. for Imaging, Inc.*, 195 F.R.D. 659, 661-62 (N.D. Cal. 2000)  
4 (defining “legal prejudice” to involve negative effects on “some legal interest, some legal  
5 claim, some legal argument” as opposed to “uncertainty because a dispute remains  
6 unresolved”).

7 15. For the same reason, there is no detrimental “impact on judicial  
8 proceedings,” *Facciola*, 2012 WL 12827399, at \*1, when an appeal is pursued as of right.

9 16. The Ninth Circuit further instructed that “it makes sense for a district court,  
10 needing time to decide a motion to intervene, to leave unresolved any motion to extend  
11 time filed by a prospective intervenor until the court is ready to rule on intervention.”  
12 *Evans*, 34 F.4th at 773. The Legislative Leaders, accordingly, request that the Court rule  
13 on their Motion to Intervene prior to ruling on this Motion to Extend Time.

14 17. Additionally, the Legislative Leaders request that the Court grant an  
15 extension that renders a new deadline to file their Notice of Appeal to 30 days after October  
16 30, 2025, or 14 days after the date the Court rules on this Motion, whichever is later. *See*  
17 FED. R. APP. P. 4(a)(5)(C).

18 18. This is the Legislative Leaders’ first request to extend the time to file a notice  
19 of appeal.

20 19. Finally, the Legislative Leaders contacted counsel for the parties regarding  
21 their positions on this Motion the morning of October 20, 2025. Plaintiffs oppose this  
22 Motion. The Defendant was not able to provide its position before this filing.

23 WHEREFORE, the Legislative Leaders respectfully ask the Court to grant their  
24 Motion to Extend the Time to File a Notice of Appeal, extending the deadline to 30 days  
25 after October 30, 2025, or 14 days after the date the Court rules on this Motion, whichever  
26 is later. Similarly, the Legislative Leaders request that the Court rule on their Motion to  
27 Intervene prior to ruling on this Motion.

28

1 Dated: October 20, 2025

Respectfully submitted,

2  
3 JAMES OTIS LAW GROUP, LLC

4 /s/ Justin D. Smith

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11 *President Petersen and Speaker Montenegro*

12  
13 **CERTIFICATE OF SERVICE**

14 I hereby certify that, on October 20, 2025, I caused a true and correct copy of the  
15 foregoing to be filed by the Court's electronic filing system, to be served by operation of  
16 the Court's electronic filing system on counsel for all parties who have entered in the case.

17 /s/ Justin D. Smith