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24 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
25 **IN AND FOR THE COUNTY OF MARICOPA**

27 PLANNED PARENTHOOD  
28 ARIZONA, INC., an Arizona non-

No. CV 2009-029110

1 profit corporation,

2 Plaintiff,

3 v.

4 TERRY GODDARD, Attorney  
5 General of Arizona, in his official  
6 capacity; the ARIZONA MEDICAL  
7 BOARD; LISA WYNN, in her  
8 official capacity as Executive Director  
9 of the Arizona Medical Board;  
10 ARIZONA BOARD OF  
11 OSTEOPATHIC EXAMINERS IN  
12 MEDICINE AND SURGERY;  
13 ELAINE LETARTE, in her official  
14 capacity as the Executive Director of  
15 the Arizona Board of Osteopathic  
16 Examiners in Medicine and Surgery;  
17 and KEN BENNETT, Secretary of  
18 State of the State of Arizona, in his  
19 official capacity,

20 Defendants.

**MOTION TO INTERVENE AS  
DEFENDANTS AND MEMORANDUM IN  
SUPPORT OF MOTION TO INTERVENE**

(Assigned to Honorable Donald Daughton)

21 COME NOW Proposed Defendant-Intervenors CHRISTIAN MEDICAL  
22 ASSOCIATION (“Christian Medical”), AMERICAN ASSOCIATION OF PRO-LIFE  
23 OBSTETRICIANS AND GYNECOLOGISTS (“AAPLOG”), CATHOLIC MEDICAL  
24 ASSOCIATION (“Catholic Medical”), CHRISTIAN PHARMACISTS FELLOWSHIP  
25 INTERNATIONAL (“Christian Pharmacists”), ARIZONA CATHOLIC  
26 CONFERENCE, CRISIS PREGNANCY CENTERS OF GREATER PHOENIX (“CPC  
27 Phoenix”), AVE MARIA PHARMACY, SENATOR LINDA GRAY, and  
28 REPRESENTATIVE NANCY BARTO pursuant to Ariz. R. Civ. P. 24(a)(2),

1 intervention of right, and alternatively, Rule 24(b), permissive intervention, and hereby  
2 move for leave to intervene as party Defendants in the above-captioned case.

3 Applicants file this timely motion for intervention of right under Ariz. R. Civ. P.  
4 24(a)(2).  
5

6 Applicants Christian Medical, AAPLOG, Catholic Medical, Christian Pharmacists  
7 members, individual medical professionals, (collectively, “Medical Professionals”) and  
8 Applicant Ave Maria Pharmacy are among the class of beneficiaries the Legislature  
9 intended to protect by enacting Section 5, Ariz. Rev. Stat. § 36-2154, of House Bill 2564.  
10 Additionally, Applicant Medical Professionals are committed to providing safe and  
11 responsible care to all patients, including women who are facing unintended pregnancies.  
12  
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14 Applicant CPC Phoenix is an organization dedicated to ensuring that women  
15 facing unintended pregnancies are given full and accurate information and counsel about  
16 their options. CPC Phoenix also offers services to assist women during their pregnancies  
17 and after the birth of their children if they choose not to have an abortion, whether they  
18 choose to keep the child or place the child for adoption.  
19

20 Applicant Arizona Catholic Conference is the public policy agency for the  
21 Catholic Dioceses of Gallup, Phoenix, and Tucson. Arizona Catholic Conference  
22 expended resources to advocate for the passage of HB 2564 and SB 1175 in the Arizona  
23 Legislature.  
24

25 Applicants Representative Nancy Barto and Senator Linda Gray are taxpayers of  
26 the State of Arizona and duly elected members of the Arizona Legislature.  
27 Representative Barto is the primary sponsor of HB 2564 and also sponsored the  
28

1 amendments to SB 1175, which are now the subject of the underlying action. Senator  
2 Linda Gray sponsored the Senate version of HB 2564. Representative Barto and Senator  
3 Gray both voted for HB 2564 and SB 1175.

4  
5 All applicants consider themselves real parties in interest in the underlying  
6 litigation. Specifically, the challenged laws protect the conscience rights of healthcare  
7 professionals in the state of Arizona, such as Applicants Medical Professionals and Ave  
8 Maria Pharmacy. Applicant CPC Phoenix plays a direct role in providing full and  
9 accurate information to women and teenage girls considering abortion and offering  
10 resources and support for those who choose not to have an abortion. Applicant Arizona  
11 Catholic Conference was instrumental in advocating in favor of this law. Applicants  
12 Representative Nancy Barto and Senator Linda Gray have a legislative interest in seeing  
13 the bills that they sponsored and voted for come into effect.

14  
15 To grant the relief the Plaintiffs seek, that of enjoining enforcement of HB 2564  
16 and SB 1175, could nullify or impede Applicants' ability to protect these interests. Thus,  
17 Applicants have a strong interest in defending the law against Plaintiffs' facial attack.

18  
19 Moreover, Defendants' interests potentially diverge from those of Applicants, and  
20 thus Applicants' interests may not be adequately represented by existing parties to the  
21 case.

22  
23 Furthermore, applicants bring to the court their own unique perspective on the  
24 importance of this law to preserving important federal and state constitutional rights and  
25 their participation enables a full development of the factual and legal issues presented in  
26 this case.  
27  
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1 This motion is timely and will not prejudice the interests of the parties.

2 In the alternative, Applicants seek permissive intervention pursuant to Ariz. R.  
3 Civ. P. 24(b)(2). Applicants’ defenses and the present action share common questions of  
4 law and fact; their participation will not delay or prejudice the adjudication of the rights  
5 of the parties; and this motion to intervene is timely.  
6

7 Applicants request that the Court expedite this motion because of the pending  
8 motion for temporary restraining order.  
9

10 In support of this motion, Applicants rely on the accompanying Memorandum of  
11 Points and Authorities in Support of Motion to Intervene and attached declarations.  
12 Pursuant to Ariz. R. Civ. P. 24(c), Applicants also submit herewith the accompanying  
13 proposed Answer to Complaint.  
14

15 **MEMORANDUM OF POINTS AND AUTHORITIES**  
16 **IN SUPPORT OF MOTION TO INTERVENE**

17 This action presents a constitutional challenge to two bills regulating abortion  
18 signed into law by Governor Jan Brewer on July 13, 2009. These bills create new  
19 safeguards for women considering abortions, parents whose minor daughters wish to  
20 have an abortion, and healthcare workers who choose not to participate in or facilitate  
21 abortion based on their moral or religious convictions.

22 House Bill 2564, the “Abortion Consent Act,” requires abortion providers to  
23 obtain voluntary and informed consent before performing an abortion, except in the case  
24 of medical emergency. The woman must be given information about the risks and  
25 alternatives of the procedure at least twenty-four hours in advance.

26 Additionally, the Abortion Consent Act requires that a parent’s signature on a  
27 consent form for a minor’s abortion be notarized. The Act also updates and clarifies the  
28 existing statutory protection for healthcare professionals’ rights of conscience.

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## INTERVENORS' INTERESTS

### REPRESENTATIVE NANCY BARTO AND SENATOR LINDA GRAY

Representative Nancy Barto and Senator Linda Gray are elected members of the Arizona Legislature. Decl. of Nancy Barto, ¶ 2 (“Barto Decl.”); Decl. of Linda Gray, ¶ 2 (“Gray Decl.”). Representative Barto was the primary sponsor of HB 2564, and Senator Gray was the primary sponsor of the Senate version of HB 2564. Barto Decl. at ¶ 3; Gray Decl. at ¶ 3. Representative Barto is the Chairwoman of the House Health and Human Services Committee and presided over the House committee hearing for HB 2564. Barto Decl. at ¶¶ 2, 4. Senator Gray is the Chairwoman of the Senate Public Safety and Human Services Committee and presided over the Senate committee hearing for the Senate version of HB 2564. Gray Decl. at ¶¶ 2, 4. Both Representative Barto and Senator Gray voted in favor of HB 2564.

Representative Barto and Senator Gray have a legislative interest in protecting the effectiveness of their efforts in sponsoring and their votes for HB 2564. Both Representative Barto and Senator Gray believe HB 2564 is important for protecting the health and safety of Arizonans, especially women facing unplanned pregnancies. Barto Decl. at ¶ 5; Gray Decl. at ¶ 5.

#### THE AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS AND GYNECOLOGISTS

The American Association of Pro-Life Obstetricians and Gynecologists (“AAPLOG”) is one of the largest special interest groups within the American College of Obstetricians and Gynecologists, Decl. of Donna Harrison, ¶ 3, with at least five hundred sixty (560) dues-paying members and over fifteen hundred (1,500) doctors associated with the organization. *Id.* at ¶ 5. AAPLOG has 36 physician members licensed in Arizona. AAPLOG members affirm the following Mission Statement:

- a. That we, as physicians, are responsible for the care and well being of both our pregnant woman patient and her unborn child.
- b. That the unborn child is a human being from the time of fertilization.
- c. That elective disruption/abortion of human life at any time from fertilization onward constitutes the willful destruction of an innocent

1 human being, and that this procedure will have no place in our  
2 practice of the healing arts.

3 d. That we are committed to educate abortion-vulnerable patients, the  
4 general public, pregnancy center counselors, and our medical  
5 colleagues regarding the medical and psychological complications  
6 associated with induced abortion, as evidenced in the scientific  
7 literature.

8 e. That we are deeply concerned about the profound, adverse effects  
9 that elective abortion imposes, not just on the women, but also on  
10 the entire involved family, and on our society at large.

11 *Id.* at ¶ 4.

12 AAPLOG and its members oppose the practice of abortion for a variety of reasons,  
13 including religious and moral beliefs and the belief that the practice of abortion is  
14 inconsistent with professional medical ethics. *Id.* at ¶ 5. One of AAPLOG's primary  
15 purposes is to reaffirm the unique value and dignity of individual human life in all states  
16 of its development and subsequent course from the moment of conception. *Id.* at ¶ 6. To  
17 this end, AAPLOG sponsors and conducts research and educational programs consistent  
18 with this purpose. *Id.* AAPLOG is also deeply committed to defending the right of  
19 conscience of doctors, including its members, not to perform, refer for or to otherwise  
20 assist in the practice of abortion. *Id.* at 7. AAPLOG's members are committed to the  
21 sanctity of human life and it would violate their consciences to participate in or refer for  
22 abortions. *Id.* at ¶ 9. It is likely that if AAPLOG members are forced or coerced to  
23 perform or assist in abortions in violation of their consciences, they would leave the  
24 profession or relocate from those jurisdictions compelling them to do so instead of  
25 performing or referring for abortions. *Id.* at ¶ 9. Many AAPLOG members are providers  
26 in rural or remote areas. Forcing such persons from those areas or out of the medical  
27 profession altogether would leave these populations unserved or underserved. *Id.* at ¶ 9.  
28 AAPLOG has actively sought conscience protections for its members and other  
healthcare professionals who might otherwise be forced by their employers to provide or  
refer for abortions. *Id.* at ¶ 10.

1 THE CHRISTIAN MEDICAL AND DENTAL ASSOCIATIONS

2 CMDA is a nonprofit national organization of Christian physicians and allied  
3 healthcare professionals with over 16,340 members. Decl. of Gene Rudd, ¶ 3. CMDA  
4 has 225 physician members licensed in Arizona. In addition to CMDA’s physician  
5 members, it also has associate members from a number of allied healthcare professions,  
6 including nurses and physician assistants, including a number who practice in Arizona.

7 *Id.*

8 CMDA is opposed to the practice of abortion as contrary to Scripture, a respect for  
9 the sanctity of human life, and traditional, historical and Judeo-Christian medical ethics.  
10 *Id.* at ¶ 5. CMDA’s members are committed to the sanctity of human life, and it would  
11 violate their consciences to participate in or refer for abortions. *Id.* at ¶ 6. Based on  
12 CMDA’s own polling data, CMDA is aware that if CMDA’s members are forced or  
13 coerced to perform or assist in abortions in violation of their consciences, the  
14 overwhelming majority of them state they would leave the profession or relocate from  
15 those jurisdictions compelling them to do so instead of performing or referring for  
16 abortions. *Id.* Many CMDA members are providers in rural or remote areas. *Id.*  
17 Forcing such persons from those areas or out of the medical profession altogether would  
18 leave these populations unserved or underserved. *Id.* CMDA has actively sought  
19 conscience protections for its members and other healthcare professionals who might  
20 otherwise be forced by their employers to provide or refer for abortions. *Id.* at 7.

21 Both CMDA and AAPLOG have previously been granted intervention as of right  
22 in federal court to defend laws protecting rights of conscience for healthcare  
23 professionals. *See California ex. rel. Lockyer v. United States*, 450 F.3d 436, 445 (9th  
24 Cir. 2006) (reversing on expedited appeal district court’s order denying intervention);  
25 *Nat’l Family Planning & Reproductive Health Ass’n v. Gonzales*, 468 F.3d 826, 827  
26 (D.C. Cir. 2006) (listing CMDA and AAPLOG as appellees); *Nat’l Family Planning &*  
27 *Reproductive Health Ass’n*, No. 04-02148 (D. D.C. Sept. 28, 2005) (order granting  
28 motion of CMDA and AAPLOG to intervene as of right).

THE CATHOLIC MEDICAL ASSOCIATION



1 The Catholic Medical Association is a nonprofit national organization of Catholic  
2 physicians and allied healthcare professionals with over 1,000 members. Decl. of Louis  
3 Breschi, ¶ 3. Catholic Medical has 19 physician members licensed in Arizona. In  
4 addition to Catholic Medical's physician members, it also has associate members from a  
5 number of allied healthcare professions, including nurses and physician assistants, a  
6 number of whom practice within the State of Arizona. *Id.* at ¶ 3. The purposes of  
7 Catholic Medical Association are:

- 8 a. To uphold the principles of the Catholic faith in the science and  
9 practice of medicine.
- 10 b. To assist the Church in the work of communicating Catholic medical  
11 ethics to the medical profession and society at large.
- 12 c. To support Catholic hospitals in faithfully applying Catholic moral  
13 principles in health care delivery.
- 14 d. To enable Catholic physicians to know one another better and to  
15 work together with deeper mutual support and understanding.

16 Breschi Dec., ¶ 4.

17 5. As physicians, all CMA members solemnly pledge, among other  
18 commitments:

- 19 a. To respect my patients as human persons, putting their interests  
20 ahead of political and economic considerations, and to treat them without  
21 prejudice arising from religion, racial, ethnic, socio-economic or sexual  
22 differences.
- 23 b. To defend and protect human life from conception to its natural end,  
24 believing that human life, transmitted by parents, is created by God and has  
25 an eternal destiny that belongs to Him.
- 26 c. To refuse to become an instrument of violent or oppressive  
27 applications of medicine.
- 28 d. To serve the public health, promoting healthful policies respectful of  
life and the dignity and nature of the human person.

1 e. To cooperate with the applications of just law, except on the grounds  
2 of conscientious objection when the civil law does not respect human  
rights, especially the right to life.

3 f. To work with openness toward every person, independently of their  
4 religious beliefs.

5 Breschi Dec., ¶ 5.

6 6. As Catholic physicians, all CMA members solemnly pledge, among other  
7 commitments:

8 a. To recognize the Word of God as the inspiration of all my actions, to  
9 be faithful to the teachings of the Church and to form my professional  
10 conscience in accord with them.

11 b. To practice Catholic moral principles, in particular those related to  
12 bio-medical ethics.

13 Breschi Dec., ¶ 6.

14 Catholic Medical is opposed to the practice of abortion as contrary to the teaching  
15 and tradition of the Catholic Church, to respect for the sanctity of human life, to  
16 traditional Judeo-Christian medical ethics, and to the good of patients. *Id.* at ¶ 8.  
17 Catholic Medical's members are committed to the sanctity of human life, and it would  
18 violate their consciences to participate in or refer for abortions. *Id.* at ¶ 9.

19 It is likely that if Catholic Medical's members are forced or coerced to perform or  
20 assist in abortions or other unethical actions in violation of their consciences, they would  
21 leave the profession or relocate from those jurisdictions compelling them to do so instead  
22 of performing or referring for abortions. *Id.* at ¶ 6. Many Catholic Medical members are  
23 providers in rural or remote areas. *Id.* Forcing such persons from those areas or out of  
24 the medical profession altogether would leave these populations unserved or underserved.  
25 *Id.* Catholic Medical has actively sought conscience protections for its members and  
26 other healthcare professionals who might otherwise be forced by their employers to  
27 provide or refer for abortions. Catholic Medical will continue to be an advocate for rights

28

1 of conscience for its own members and all medical professionals in courts and  
2 legislatures both at the state and federal levels. *Id.*

### 3 CHRISTIAN PHARMACISTS FELLOWSHIP INTERNATIONAL

4 Christian Pharmacists Fellowship International is a nonprofit national organization  
5 of Christian pharmacists with over 1,000 members, including numerous members who  
6 are licensed in the State of Arizona. Decl. of Fred Eckel, ¶ 5.

7 Christian Pharmacists is opposed to the practice of abortion as contrary to  
8 Scripture, to respect for the sanctity of human life, to traditional Judeo-Christian medical  
9 ethics, and to the good of patients. *Id.* at ¶ 8. Christian Pharmacists' members are  
10 committed to the sanctity of human life, and it would violate their consciences to  
11 participate in or refer for abortions. *Id.* at ¶ 9. It is likely that if Christian Pharmacists'  
12 members are forced or coerced to dispense drugs the primary indication for which is to  
13 terminate pregnancy or prevent implantation of a fertilized ovum in violation of their  
14 consciences, they would leave the profession or relocate from those jurisdictions  
15 compelling them to do so instead of dispensing abortifacient drugs. *Id.* at ¶ 9. Many  
16 Christian Pharmacists members are providers in rural or remote areas. *Id.* Forcing such  
17 persons from those areas or out of the medical profession altogether would leave these  
18 populations unserved or underserved. *Id.* Christian Pharmacists has actively sought  
19 conscience protections for its members and other healthcare professionals who might  
20 otherwise be forced by their employers to provide or refer for abortions. Christian  
21 Pharmacists will continue to be an advocate for rights of conscience for its own members  
22 and all medical professionals in courts and legislatures both at the state and federal levels.  
23 *Id.* at ¶ 8.

### 24 AVE MARIA PHARMACY

25 Ave Maria Pharmacy is a state-licensed pharmacy located in Prescott Valley,  
26 Arizona. Decl. of Pat McNerny, ¶ 2. The mission of Ave Maria Pharmacy is to provide  
27 individual patient care through the dispensing of medication in a manner consistent with  
28 the teaching of the Holy Catholic Church. *Id.* at ¶ 5. Because Catholic teaching  
emphasizes the sanctity of human life from conception until natural death, dispensing

1 medications that can act as abortifacients, including by preventing implantation of a  
2 fertilized ovum in the womb, is inconsistent with Catholic doctrine. *Id.* at ¶ 5. If Ave  
3 Maria Pharmacy were forced or coerced to dispense drugs the primary indication for  
4 which is to terminate pregnancy or prevent implantation of a fertilized ovum, the  
5 pharmacy would close instead of dispensing abortifacient drugs. *Id.* at ¶ 8. As a result,  
6 the already underserved area of Prescott Valley would be even more critically short of  
7 licensed pharmacists and pharmacies. *Id.*

#### 8 THE CRISIS PREGNANCY CENTERS OF GREATER PHOENIX

9 The Crisis Pregnancy Centers of Greater Phoenix (“CPC Phoenix”) is a nonprofit  
10 organization that operates six pregnancy resource centers in the Phoenix area. Decl. of  
11 Barbara Willis, ¶ 2. CPC Phoenix is dedicated to providing women and men with  
12 medically accurate and up-to-date information to empower them to make informed,  
13 healthy choices that will serve to save lives and protect futures. *Id.* at ¶ 5. Additionally,  
14 CPC Phoenix offers resources and services to women who choose not to have an  
15 abortion, including parenting education and information relating to adoption. HB 2564  
16 requires that women be informed of the availability of these benefits at least twenty-four  
17 hours before receiving an abortion. HB 2564, Section 4, Ariz. Rev. Stat. § 36-  
18 2153(A)(2)(c). CPC Phoenix desires for all women considering abortion to be aware of  
19 the resources and services provided by CPC Phoenix and other pregnancy resource  
20 centers so that they are empowered to make informed choices about their healthcare. *Id.*  
21 at ¶ 7.

#### 22 ARIZONA CATHOLIC CONFERENCE

23 Arizona Catholic Conference (“ACC”) is the public policy agency of the Catholic  
24 Dioceses of Gallup, Phoenix, and Tucson. Decl. of Ronald Johnson, ¶ 2. ACC advocates  
25 for legislation on issues that are addressed by Church doctrine, including freedom of  
26 conscience for healthcare workers, the health and safety of women facing unplanned  
27 pregnancy, and the sanctity of human life from conception until natural death. *Id.* at ¶ 6.  
28 ACC expended resources to advocate in the Legislature on behalf of HB 2564 through  
committee testimony and communication with individual legislators. *Id.* at ¶ 7.

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**ARGUMENT**

I. APPLICANTS ARE ENTITLED TO INTERVENE OF RIGHT UNDER ARIZ. R. CIV. P. 24(A).

Arizona Rule of Civil Procedure 24(a) provides,

Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

Ariz. R. Civ. P. 24(a). *See also Dowling v. Stapley*, 221 Ariz. 211, ¶ 58, 211 P.3d 1235, 1254 (Ct. App. 2009). Rule 24(a) is construed broadly in favor of potential intervenors. *Bechtel v. Rose*, 150 Ariz. 68, 72, 722 P.2d 236, 240 (1986); *Mitchell v. City of Nogales*, 83 Ariz. 328, 333, 320 P.2d 955, 958 (1958). Applicants here readily satisfy the four elements for intervention as of right under Rule 24(a).

A. Applicants’ Motion is Timely Because It Was Promptly Filed Before Any Substantive Motions Were Granted or Responsive Pleadings Were Due.

Applicants’ motion is timely under Ariz. R. Civ. P. 24(a). *See State ex. rel. Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, 384, 998 P.2d 1055, 1057 (2000) (describing timeliness considerations). Applicants have promptly filed their motion to intervene a few days after Plaintiffs filed their complaint, before any ruling on substantive motions, and before any responsive pleading has been submitted by or is even due from Defendants. Applicants do not intend to seek any delay in the case. Thus, this motion will cause neither prejudice to the existing parties or any delay in these proceedings. Under these circumstances, this motion is clearly timely.

B. Applicants Have Sufficient Interests Relating to the Subject Matter of this Action.

1 Each of the Applicants has a direct interest in the challenged law and stands to  
2 lose by the direct legal operation and effect of the judgment. *See Hill v. Alfalfa Seed &*  
3 *Lumber Co.*, 38 Ariz. 70, 72, 297 P. 868, 869 (1931). An applicant for intervention must  
4 have a practical interest in the outcome of the lawsuit. *Saunders v. Superior Court*, 109  
5 Ariz. 424, 435-36, 510 P.2d 740, 741-42 (1973). Applicants' practical interests in the  
6 outcome of this action are described below.

7 1. Applicants Medical Professionals and Ave Maria Pharmacy  
8 Have a Direct, Practical Interest Because They Are Among  
9 the Class of Beneficiaries HB 2564 Was Intended to Protect.

9 Applicants Medical Professionals and Ave Maria Pharmacy have a sufficient  
10 interest in this action because they are among the class of individuals the Arizona  
11 Legislature sought to protect with HB 2564. *See Saunders*, 109 Ariz. at 425-26, 510 P.2d  
12 at 742-43 (“As a practical matter if the Public Safety Personnel Retirement System is  
13 declared unconstitutional in the proceeding below, the beneficiaries under the act would  
14 have no chance in future proceedings to have its constitutionality upheld.”); *Lockyer*, 450  
15 F.3d at 441 (“If the Weldon Amendment is declared unconstitutional or substantially  
16 narrowed as a consequence of this litigation, they will be more likely to be forced to  
17 choose between adhering to their beliefs and losing their professional licenses. Such an  
18 interest is sufficiently direct, non-contingent, and substantial.”) (internal quotations  
19 omitted).

20 In *Saunders*, the court found the applicant's interest to be readily apparent because  
21 they possessed a valuable right under the challenged statute and desired for the act to be  
22 upheld. 109 Ariz. at 425, 510 P.2d at 742. Here Applicants Medical Professionals and  
23 Ave Maria Pharmacy have a valuable right to protection for their moral and religious  
24 beliefs under HB 2564 and desire for the act to be upheld.

25 In a federal case addressing similar issues to the present action, the court found it  
26 clear that the proposed intervenors, *i.e.*, the Applicants Medical Professionals in the  
27 instant case, had a sufficient interest in statutory protections for rights of conscience to  
28 warrant intervention because it “seem[ed] beyond dispute[]that Congress passed the

1 Weldon Amendment to protect health care providers like those represented by the  
2 proposed intervenors.” *Lockyer*, 450 F.3d at 441. Applicants’ individual members,  
3 physicians (including obstetricians and gynecologists), physician-assistants, nurses, and  
4 other health care professionals, are specifically protected by HB 2564 from  
5 discrimination because they refuse to provide abortion, refer for abortion, assist in  
6 abortion, train for abortion, or prescribe or dispense abortifacients. HB 2564, Section 5,  
7 Ariz Rev. Stat. § 36-2154. It is self-evident that the Applicants’ members’ interests in the  
8 conscience protections provided by HB 2564 would be eliminated should this Court grant  
9 Plaintiffs the relief they seek.

10 Applicants Medical Professionals and Ave Maria Pharmacy also satisfy the  
11 interest test because the order sought by Plaintiffs could compromise their members’ First  
12 Amendment free exercise and free speech and state and federal statutory rights, possibly  
13 even leaving them subject to regulatory and/or criminal penalties should they refuse to  
14 perform, participate in, or refer for abortions. Applicants have a direct and practical  
15 interest in protecting themselves from employment discrimination because of adherence  
16 to their consciences, since if Arizona’s state law that protects conscience is declared  
17 unconstitutional or substantially narrowed as a consequence of this litigation, then  
18 medical professionals “will be more likely to be forced to choose between adhering to  
19 their beliefs and losing their professional licenses.” *Lockyer*, 450 F.3d at 441.

20 2. Applicant Arizona Catholic Conference Has a Direct,  
21 Practical Interest in HB 2564 as an Organization that  
22 Advocated for its Passage.

23 Applicant Arizona Catholic Conference is a public interest organization that has  
24 consistently advocated for and continues to advocate for statutory protection for freedom  
25 of conscience for healthcare workers, the health and safety of women facing unplanned  
26 pregnancy, and the sanctity of human life from conception until natural death. Decl. of  
27 Ronald Johnson, ¶¶ 6-7. To that end, Arizona Catholic Conference advocated in the  
28 Arizona Legislature specifically for HB 2564 and SB 1175 that are at issue in this action.  
*Id.* at ¶ 7.

1 Arizona case law does not elaborate on the right for organizations that have  
2 advocated for a particular measure to intervene in litigation challenging the  
3 constitutionality of that matter. However, in many cases, advocates for a particular  
4 measure have been permitted to intervene. *See, e.g., Ruiz v. Hull*, 191 Ariz. 441, 446, 957  
5 P.2d 984, 989 (1998) (noting that sponsors of a ballot measure successfully intervened);  
6 *Transamerica Title Ins. Co. Trust Nos. 8295, 8297, 8298, 8299, 8300, and 8301 v. City of*  
7 *Tucson*, 157 Ariz. 346, 347, 757 P.2d 1055, 1057 (1988) (noting that nonprofit Arizona  
8 corporation whose members, officers, and board of directors supported the initiative at  
9 issue successfully intervened). *But see Gonzalez v. Arizona*, Nos. 06-1268, 06-1362, and  
10 06-1575, 2006 WL 2246365 (D. Ariz. Aug. 2, 2006) (denying intervention for ballot  
11 measure committee in support of a proposition because interests adequately represented  
12 by the state).

13 Additionally, the Ninth Circuit has held that “a public interest group is entitled as  
14 a matter of right to intervene in an action challenging the legality of a measure it has  
15 supported.” *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995)  
16 (granting intervention as of right to environmental group that supported adding spring  
17 snails to endangered species list); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 526-  
18 27 (9th Cir. 1983) (finding protectable interest by Audobon Society in suit against the  
19 Department of Interior challenging the creation of a wildlife habitat area for which  
20 Audobon Society advocated).

21 Because Arizona Catholic Conference actively advocated and expended resources  
22 in support of HB 2564, it has a legal and practical interest in the bill being upheld so its  
23 efforts are not nullified, and consequently it may intervene as of right.

24 3. Applicants Representative Barto and Senator Gray Have a  
25 Direct, Practical Interest as Legislators Whose Votes Are in  
26 Jeopardy of Being Invalidated.

27 Applicants Representative Barto and Senator Gray have a right to intervene  
28 because their efforts in sponsoring HB 2564 and SB 1175 and their legislative votes in  
favor of HB 2564 and SB 1175 are in jeopardy of being invalidated by Plaintiffs’ suit.



1 This interest is substantial and immediate, as the fruits of the each legislator’s hard work  
2 are at risk of being nullified. This interest cannot fully and vigorously be defended unless  
3 Applicants, as individuals, are admitted as parties.

4 Each legislator who sponsors a bill, or campaigns for a bill, or ultimately votes for  
5 a bill, has a valid legal interest in seeing that bill come into effect. The Supreme Court  
6 has said as much: “[L]egislators whose votes would have been sufficient to defeat (or  
7 enact) a specific legislative act have standing to sue if that legislative action goes into  
8 effect (or does not go into effect), on the ground that their votes have been completely  
9 nullified.” *Raines v. Byrd*, 521 U.S. 811, 823 (1997) (internal citation to footnote  
10 omitted). *See also Kennedy v. Sampson*. *See* 511 F.2d 430, 435 (D.C. Cir. 1974) (“an  
11 individual legislator has standing to protect the effectiveness of his vote”). Additionally,  
12 in *Coleman v. Miller*, the Supreme Court held that members of the Kansas Senate had a  
13 “plain, direct and adequate interest in maintaining the effectiveness of their votes.” 307  
14 U.S. 433, 438 (1939). There, the legislators’ votes on a specific bill would likewise have  
15 been nullified.

16 Thus, Applicants Representative Barto and Senator Gray have a direct and  
17 practical interest in protecting their efforts to pass HB 2564 and SB 1175 and  
18 consequently they may intervene as of right.

19 4. Applicant CPC Phoenix has a Direct, Practical Interest as an  
20 Organization that Provides the Services Required by HB  
21 2564.

22 Applicant CPC Phoenix offers the services contemplated by HB 2564. Decl. of  
23 Barbara Willis, ¶ 5. HB 2564 requires that a woman seeking an abortion be informed of  
24 the availability of services from public and private agencies that can assist the woman  
25 during her pregnancy and after the birth of her child if she chooses not to have an  
26 abortion. HB 2564, Section 4, Ariz. Rev. Stat. § 36-2153(A)(2)(c). CPC Phoenix is one  
27 such private agency. CPC Phoenix has an interest in ensuring that women receive full  
28 information about the availability of services from CPC Phoenix and other pregnancy  
resource centers that could be jeopardized if the court grants Plaintiffs the relief

1 requested. CPC Phoenix has at least as strong of an interest in protecting the interests of  
2 future women considering abortion in receiving full and accurate information as abortion  
3 doctors do in them having unlimited access to abortion. Should this court enjoin HB  
4 2564, Plaintiffs could withhold information from women seeking abortions about the  
5 availability of these services, reducing CPC Phoenix's ability to fulfill its purpose and  
6 serve women who are facing unplanned pregnancies.

7 Each of the Applicants have cognizable interests in upholding HB 2564 and SB  
8 1175, which would be harmed by this Court's grant of the full measure of relief requested  
9 by Plaintiffs, sufficient to satisfy the requirements of Rule 24(a)(2).

10 C. The Applicants' Interests May Be Impaired By this Litigation  
11 Because Their Ability to Protect Their Rights Will Be Impeded.

12 An intervenor need merely show that the disposition of the action "may as a  
13 practical matter impair or impede the applicant's ability to protect [its] interest." Ariz. R.  
14 Civ. P. 24(a)(2). "Whether a party is in fact so situated that the disposition of the action  
15 may as a practical matter impair or impede his ability to protect his interests is a question  
16 to be determined by the court..." Ariz. R. Civ. P. 24(a)(2), State Bar Committee Note;  
17 *Weaver v. Syntheses, Ltd.*, 162 Ariz. 442, 447, 784 P.2d 268, 273 (Ct. App. 1973)  
18 (quoting *Miller v. City of Phoenix*, 51 Ariz. 254, 263, 75 P.2d 1033, 1037 (1938)) ("[T]he  
19 interest which an intervenor must have is a direct and immediate interest in the case, so  
20 that the judgment to be rendered would have a direct and legal effect upon his rights, and  
21 not merely a possible and contingent equitable effect.").

22 In light of the clear interest that each of the Applicants has in this action  
23 challenging the validity of HB 2564, the Applicants' interests will certainly be affected  
24 by the disposition of this case. Applicants stand to directly gain or lose by the effect of  
25 the judgment.

26 In *Saunders*, the court ruled that the potential intervenors would never have a  
27 chance in future proceedings to argue the constitutionality of the statute at issue. 189  
28 Ariz. at 425, 510 P.2d at 741. Such a practical disadvantage to the protection of their  
interest under the statute warranted intervention as of right. *Id.* The interests of all

1 Applicants here are the same as those of the potential intervenors in *Saunders*. As in  
2 *Saunders*, should the statute be ruled unconstitutional, the Applicants here will never  
3 again have the opportunity to protect their interests.

4 Applicants Medical Professionals and Ave Maria Pharmacy easily satisfy the  
5 impairment of interests test because their members' interests in their rights of conscience  
6 under HB 2564 might be impaired, and their First Amendment and Title VII and state  
7 statutory rights could be impeded by the Court's disposition of this action. Applicants  
8 Medical Professionals and Ave Maria Pharmacy are the very persons that the conscience  
9 provisions of HB 2564 were intended to protect. Should the Court order the relief sought  
10 by Plaintiffs in this action, Applicants' protection from discrimination would be  
11 diminished because they would be deprived of the protections provided by HB 2564.  
12 Plaintiffs ultimately seek a declaratory judgment that HB 2564 is unconstitutional and  
13 injunctive relief prohibiting its enforcement. Compl., p. 28-29. Such relief, if granted  
14 by this Court, would eliminate the statutory conscience protections for Applicants  
15 Medical Professionals' members and Applicant Ave Maria Pharmacy, subjecting them to  
16 the imminent threat of being forced to perform abortions, assist in abortions, train for  
17 abortions, refer individuals for abortions, and prescribe or dispense abortifacients despite  
18 their religious, moral, and ethical objections to the practice of abortion. The imminent  
19 threat of having their rights of conscience infringed is certainly sufficient to show that the  
20 disposition of this case in favor of Plaintiffs will practically affect Applicants Medical  
21 Professionals and Ave Maria Pharmacy. *See Lockyer*, 450 F.3d at 442.

22 Such relief enjoining enforcement of HB 2564 and SB 1175 would also wipe out  
23 the efforts of Applicants Arizona Catholic Conference, Representative Barto, and Senator  
24 Gray to pass important legislation and would impair the ability of Applicant CPC  
25 Phoenix to provide services to women facing unplanned pregnancies.

26 Therefore, because Applicants will lose the opportunity to protect their interests if  
27 HB 2564 and SB 1175 are ruled unconstitutional, Applicants satisfy the impairment of  
28 interest requirement of Rule 24(a)(2).

1 D. Applicants Satisfy the Requirement of Showing Inadequate  
2 Representation by Defendants Because Their Unique Legal  
3 Arguments and Contribution to the Factual Record Warrant  
4 Intervention.

4 Defendants do not adequately represent Applicants' interests. Although  
5 Applicants share some interests with the existing defendants, the divergence in their  
6 interests is more than sufficient to satisfy Rule 24(a)(2)'s requirement that the  
7 intervenors' interests might not be adequately represented in this litigation. The  
8 government defendants in this case are charged with protecting a broader public interest  
9 that might not be consistent with Applicants' interests. *See Saunders*, 109 Ariz. at 426,  
10 510 P.2d at 742 (noting that the interest of petitioners who were beneficiaries under the  
11 challenged statute was not common to other citizens of the state and thus the Attorney  
12 General would not adequately represent their interest). As those whom the Legislature  
13 intended as beneficiaries of the statute and as legislators and advocacy groups whose  
14 efforts led to the passage of HB 2564 and SB 1175, Applicants have an interest in  
15 upholding these laws that is not common to other citizens in the state.

16 For the reasons below, Applicants lack adequate representation and intervention as  
17 of right is warranted because it will allow Applicants to assert their unique legal  
18 arguments and to ensure full factual development of the record.

19 In interpreting the same requirement of inadequate representation in the federal  
20 intervention rule, the Supreme Court has stated, "[t]he requirement of the Rule [providing  
21 for intervention as of right] is satisfied if the applicant shows that representation of his  
22 interest 'may be' inadequate; and the burden of making that showing should be treated as  
23 minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972).

24 In *Lockyer*, the Ninth Circuit specifically held that the government defendants  
25 would not adequately represent proposed intervenor medical associations (two of the  
26 Applicants in this case), because the government defended a narrow reading of the  
27 challenged regulation, while the medical associations advanced a broad reading of the  
28 regulation, revealing the divergent interests of the avoidance of constitutional infirmity

1 and the protection of conscience. *Lockyer*, 450 F.3d at 444 (citing *Prete v. Bradbury*, 438  
2 F.3d 949, 958 (9th Cir.2006)) (“We have recognized that willingness to suggest a limiting  
3 construction in defense of a statute is an important consideration in determining whether  
4 the government will adequately represent its constituents' interests.”). Additionally, the  
5 *Lockyer* court found that the proposed intervenors brought “a point of view to the  
6 litigation not presented by either the plaintiffs or the defendants.” *Id.* at 445.

7 In this case, Applicants are likely to advance arguments that are illuminative of the  
8 private sector health care professional perspective, the perspective of organizations that  
9 provide information and services through pregnancy resource centers, and the perspective  
10 of legislators and groups whose advocacy efforts resulted in successful passage of the  
11 statute at issue – in contrast to Defendants, which represent governmental interests in  
12 enforcing this statute. Applicants are uniquely suited to give primacy to arguments that  
13 emphasize the concerns regarding health and safety of women and protection for rights of  
14 conscience that make state statutory protections necessary. Furthermore, in support of  
15 these arguments, Applicants have and will introduce significant factual evidence that  
16 government defendants are likely unable to produce attesting to their members’ medical  
17 practice and exercise of professional conscience and the impact of granting relief to  
18 Plaintiffs.

19 The potential that Applicants’ interests will not be adequately represented is  
20 heightened by public statements and activities of the Arizona Attorney General who is  
21 charged with defending the statute. 6 MOORE'S FEDERAL PRACTICE, § 24.07 (Matthew  
22 Bender 3d ed.) (“Inadequacy of representation is shown if there is proof of collusion  
23 between the representative and an opposing party, if the representative has or represents  
24 some interest adverse to that of the applicant for intervention, or fails because of  
25 nonfeasance in his duty of representation.”). There is substantial reason to believe that  
26 Applicants’ interests will be inadequately represented because of Attorney General  
27 Goddard’s consistent and vocal stance against government regulation of abortion and  
28 protection for healthcare workers’ rights of conscience. Recently, Attorney General  
Goddard joined twelve other attorneys general in calling for the U.S. Department of

1 Health and Human Services to withdraw a proposed rule protecting healthcare workers'  
2 rights of conscience. Press Release, Office of Arizona Attorney General Terry Goddard,  
3 Terry Goddard Urges Proposed Abortion Rule Be Withdrawn (Sept. 24, 2008), *available*  
4 *at* [http://www.azag.gov/press\\_releases/sept/2008/Provider\\_Conscience\\_Release.pdf](http://www.azag.gov/press_releases/sept/2008/Provider_Conscience_Release.pdf).  
5 Attorney General Goddard also delivered the keynote address at “Progressive Lobby Day”  
6 sponsored, in part, by Planned Parenthood and other abortion advocates. Progressive  
7 Lobby Day 2009, [http://www.ppaction.org/ppaz/events/lobby\\_day\\_09/details.tcl](http://www.ppaction.org/ppaz/events/lobby_day_09/details.tcl) (last  
8 visited Sept. 21, 2009). Attorney General Goddard also attended the Planned Parenthood  
9 Gala in 2005. Entry for April 2, 2005, Attorney General Terry Goddard Public Calendar,  
10 [http://www.azag.gov/Calendars/TG\\_PublicCalendar2005.pdf](http://www.azag.gov/Calendars/TG_PublicCalendar2005.pdf) (last visited Sept. 21,  
11 2009). Planned Parenthood of Arizona’s president Bryan Howard donated to Attorney  
12 General Goddard’s election campaign in 2002, and Attorney General Goddard also  
13 purchased Planned Parenthood’s mailing list for that campaign. Terry Goddard for  
14 Attorney General Committee, Campaign Finance Report, 2002 June 30th Report (filed  
15 June 28, 2002) *available at* [http://www.azsos.gov/cfs/PublicReports/2002/8B4C0532-](http://www.azsos.gov/cfs/PublicReports/2002/8B4C0532-2E46-4779-8664-6ACD2F37D6A0.pdf)  
16 [2E46-4779-8664-6ACD2F37D6A0.pdf](http://www.azsos.gov/cfs/PublicReports/2002/8B4C0532-2E46-4779-8664-6ACD2F37D6A0.pdf). Because of these connections and open  
17 association between Attorney General Goddard and Planned Parenthood, there is a strong  
18 likelihood that Applicants’ interest will not be adequately represented. Therefore,  
19 Applicants meet the final criteria for intervention of right under Rule 24(a).

20 II. IN THE ALTERNATIVE, APPLICANTS SHOULD BE GRANTED PERMISSION TO  
21 INTERVENE UNDER FED. R. CIV. P. 24(B).

22 Arizona Rule of Civil Procedure 24(b) provides, “Upon timely application, anyone  
23 may be permitted to intervene in an action:...(2) When an applicant’s claim or defense  
24 and the main action have a question of law or fact in common.” Furthermore, “[i]n  
25 exercising its discretion, the court shall consider whether the intervention will unduly  
26 delay or prejudice the adjudication of the rights of the original parties.” Ariz. Civ. R. P.  
27 24(b). The permissive intervention rule is to be construed very liberally, such that “the  
28 intervenor-by-permission does not even have to be a person who would have been a

1 proper party at the beginning of the suit.” *Bechtel*, 150 Ariz. at 72, 722 P.2d at 240  
2 (internal quotations omitted).

3 Applicants satisfy the requirements for permissive intervention. As demonstrated  
4 above, the application for intervention is timely, filed only a few days after the initiation  
5 of this action and well in advance of any decisions on the merits. The Applicants will also  
6 raise common questions of law and fact with those asserted by the original parties.

7 Specifically, as members of the class of persons the legislative and executive  
8 branches intended to protect from discrimination, Applicants Medical Professionals and  
9 Ave Maria Pharmacy will seek to defend HB 2564’s constitutionality against Plaintiff’s  
10 claims, arguing that it is necessary to preserve constitutional rights of religious freedom  
11 and consistent with existing statutory rights and responsibilities. Furthermore, the  
12 Applicants’ knowledge of their own religious and ethical views concerning abortion  
13 would provide this Court a perspective it might not otherwise hear, and might aid the  
14 Court in the disposition of this case.

15 Additionally, Applicants Medical Professionals have an interest in defending HB  
16 2564 in light of Plaintiffs’ baseless allegations that medical professionals exercising their  
17 conscience place women at risk of serious injury and even death by failing to render  
18 necessary services during medical emergencies. Pl.’s Mot. for TRO/Prelim. Inj. p. 18.  
19 These allegations are directed towards medical professionals including Applicants’  
20 members. Applicants should be permitted to intervene to respond to these allegations and  
21 fully develop the factual record concerning the exercise of conscience by medical  
22 professionals.

23 Finally, Applicants Arizona Catholic Conference, Representative Nancy Barto,  
24 and Senator Linda Gray, as those whose hard work went into passing HB 2564 and SB  
25 1175, and CPC Phoenix, as an organization that provides information and resources for  
26 women considering abortion, seek to defend the constitutionality of HB 2564 and SB  
27 1175, arguing that the provisions do not place any undue burden on obtaining an abortion  
28 and that every women deserves the opportunity to be fully informed about the risks and  
alternatives to abortion before undergoing the procedure. The Applicants knowledge of

1 the bases for the legislation and the real-world practice of providing this information to  
2 women facing unplanned pregnancies would also provide a unique perspective to the  
3 Court and assist in the disposition of this case.

4 Thus, should the Court not grant Applicants' motion for intervention as of right,  
5 Applicants respectfully request that the Court exercise its discretion to grant them  
6 permissive intervention pursuant to Ariz. R. Civ. P. 24(b).

7 **CONCLUSION**

8 For the foregoing reasons, the Court should grant the Applicants' motion to  
9 intervene as of right, or in the alternative grant the Applicants' motion for permissive  
10 intervention.

11 DATED: This 22nd day of September, 2009.

12  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2009, a copy of foregoing Motion to Intervene, and all attachments thereto, was filed electronically and served by United States mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

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