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8
9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 Mi Familia Vota,

12 Plaintiff,

13 v.

14 Adrian Fontes, in his official capacity as
15 Arizona Secretary of State, et al.,

16 Defendant.

No. 2:22-cv-00509-SRB (Lead)

**REPLY IN SUPPORT OF SPEAKER
OF THE HOUSE BEN TOMA AND
SENATE PRESIDENT WARREN
PETERSEN'S MOTION TO
INTERVENE AS DEFENDANTS**

17 AND CONSOLIDATED CASES
18

19 Neither the Non-U.S. Plaintiffs nor the United States oppose permissive
20 intervention by the Proposed Intervenor-Defendants Ben Toma, Speaker of the Arizona
21 House of Representatives, and Warren Petersen, President of the Arizona Senate (the
22 "Speaker" and "President," respectively). *See* Doc. 354 at 2; Doc. 355 at 4.

23 Plaintiffs, however, fail to develop any argument why the Speaker and the
24 President do not meet the factors under Rule 24(a) for intervention as a matter of right.
25 The United States' Response does not address Rule 24(a) at all. *See* Doc. 355 at 5. The
26 Non-U.S. Plaintiffs' one-line conclusory statement without citation to any supporting

1 authority (much less discussion of the authority cited in the Motion) falls far short of
2 demonstrating that the Rule 24(a) factors are not met here. *See* Doc. 354 at 2:9-13.¹ By
3 failing to put forward a developed argument opposing intervention by right, Plaintiffs
4 have waived it. *See McPherson v. Kelsey*, 125 F.3d 989, 995-996 (6th Cir. 1997)
5 (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at
6 developed argumentation, are deemed waived. It is not sufficient for a party to mention a
7 possible argument in the most skeletal way, leaving the court to . . . put flesh on its
8 bones.”) (citation omitted).

9 In any event, the letter from the Arizona Attorney General’s Office attached to the
10 United States’ Response, *see* Doc. 355-1, establishes that the State will not continue to
11 assert certain arguments previously raised in defense of the constitutionality of the bills at
12 issue. As explained in the Motion, Arizona law authorizes the Speaker and the President
13 to intervene and participate in litigation challenging the constitutionality of state laws. *See*
14 A.R.S. § 12-1841. Accordingly, the Speaker and the President should be allowed to
15 intervene to protect their unique interest in defending the constitutionality of laws duly
16 enacted by the Arizona legislature. *See Berger v. N.C. State Conference of the NAACP*,
17 142 S. Ct. 2191 (2022) (holding that legislative leaders were entitled to intervene in
18 defending constitutionality of state law); *Isaacson v. Mayes*, No. CV-21-01417-PHX-
19 DLR, 2023 WL 2403519 (D. Ariz. Mar. 8, 2023) (granting motion to intervene filed by
20 the Speaker and the President in challenge to constitutionality of state statutes regarding
21 abortion).

22 Lastly, the Non-U.S. Plaintiffs’ Response asserts that intervention should be
23 “conditioned” upon two items: (1) an agreement to abide by unidentified “discovery
24 agreements already entered into by the parties” and (2) a commitment to “respond in a
25

26 ¹ The Non-U.S. Plaintiffs also reference timeliness, but do not argue that the Motion to Intervene was untimely. *See* Doc. 354 at 2 n.1.

1 timely manner to discovery requests.” Doc, 354 at 2 n.1. The Speaker and President will,
2 of course, comply with the Federal Rules of Civil Procedure as well as the Local Rules
3 and will work in good faith with all parties on any discovery issues that may arise. The
4 Speaker and President cannot commit, however, to complying with unknown informal
5 “agreements” that are not identified by the non-U.S. Plaintiffs or otherwise before the
6 Court.

7 The Speaker and President respectfully request the Court grant their Motion to
8 Intervene and allow them to participate as Defendants.

9
10 RESPECTFULLY SUBMITTED this 21st day of April 2023.

11 GALLAGHER & KENNEDY, P.A.

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13 By: /s/ Hannah H. Porter

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Defendants Speaker Toma and President

Petersen

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20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on this 21st day of April 2023, I electronically transmitted a
22 PDF version of this document to the Clerk of Court, using the CM/ECF System for filing
23 and for transmittal of a Notice of Electronic Filing.

24 /s/D. Ochoa