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7
8 **IN THE COURT OF APPEALS**
9 **STATE OF ARIZONA**
10 **DIVISION ONE**

11 HAROLD DONALD STANDHART, a single
12 man; TOD ALAN KELTNER, a single man,

13 Petitioners,

14 v.

15 SUPERIOR COURT OF THE STATE OF
16 ARIZONA, in and for the County of
17 MARICOPA, MICHAEL K. JEANES, The
18 Clerk of the Court,

19 Respondents,

20 STATE OF ARIZONA,

21 Real Party in Interest.

No. 1 CA-SA 03-0150

**MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF
INTERVENOR-
RESPONDENT'S
MOTION TO INTERVENE**

**Assigned to the Honorable
Judges Timmer, Gemmill
and Portley**

I. Arizona Law Permits Appellate Intervention.

Rule 2(b) permits third parties to intervene in special actions pursuant to

1 the provisions of Rule 24 of the Rules of Civil Procedure. *See*
2 Ariz.R.P.Spec.Act. 2(b) (2003). In *Mountain States Telephone v. Arizona*
3 *Corporation Commission*, 160 Ariz. 350, 353 n.8, 773 P.2d 455, 458 n.8 (1989),
4 the Supreme Court of Arizona noted that, unless expressly prohibited, the Rules
5 of Civil Procedure customarily apply to special actions, therefore, “no
6 procedural impediment exists to prevent the motion for intervention.” *Id.* The
7 Arizona Appellate Handbook recognizes the right of parties to intervene in
8 appellate actions by noting that the fee schedule for the appellate courts lists a
9 fee for filing a motion to intervene. 1 Arizona Appellate Handbook, §3.3.3.3 at
10 3-34 (4th ed. 2000). The Handbook also states that, for joinder, parties need
11 not be indispensable to the action, further clarifying the rights of third parties to
12 intervene. *See id.* (citing *Murphy v. Town of Chino Valley*, 163 Ariz. 571, 574,
13 789 P.2d 1072, 1075 (App. 1989)). Furthermore, Arizona appellate filing-fee
14 statutes expressly recognize the right to intervene in special actions. *See* A.R.S.
15 § 12-120.31 (incorporating the Supreme Court filing-fee schedule in A.R.S. §
16 12-119.01(A)(“Special actions respondent - \$70.00”).

17 **II. Rule 24 Provides Two Separate Grounds Supporting The Applicant’s**
18 **Intervention.**

19 Rule 24 of Arizona’s Rules of Civil Procedure specifies two
20 categories of intervention for third parties: intervention of right and permissive
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1 intervention. *See* Ariz.R.Civ.P. 24. The Supreme Court of Arizona noted in
2 *Bechtel v. Rose*, 150 Ariz. 68, 71, 722 P.2d 236, 240 (1986), that “[i]t is well
3 settled...that Rule 24 is remedial and should be liberally construed with the
4 view of assisting parties in obtaining justice and protecting their rights.” *Id.*
5 (quoting *Mitchell v. City of Nogales*, 83 Ariz. 328, 333, 320 P.2d 955, 958
6 (1958).

7 **A. *The Applicant’s Interest is Sufficient to Intervene as a Matter of***
8 ***Right***

9 As a State Senator, applicant Anderson has an interest in seeing the duly
10 enacted laws of this State upheld and given their full presumption of
11 constitutionality. Senator Anderson objects to the attempt by Petitioners to
12 short-cut the democratic process by using the judiciary as a form of super –
13 legislature. *See* Appendix, Ex. 1 at ¶ 3 (Affidavit of Mark Anderson). This
14 interest meets the requirements of Rule 24(a)(2) to permit intervention of right.
15 Rule 24(a)(2) authorizes intervention of right “when the applicant claims an
16 interest...and...the disposition of the action may, as a practical matter, impair or
17 impede the applicant’s ability to protect that interest, unless the applicant’s
18 interest is adequately represented by existing parties.” Ariz.R.Civ.P. 24.
19 Ariz.R.P.Spec.Act. 2(a) recognizes the importance of joining parties to protect
20 interests at stake in the special action. Arizona courts have identified a
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1 “defense-of-policy” response for trial courts whose rulings are challenged in a
2 special action that “asserts the general validity of an underlying administrative
3 practice, policy or rule.” *Hurles v. Superior Court*, 174 Ariz. 331, 332, 849 P.2d
4 1, 4 (App. 1993).

5 In this case, Attorney General Goddard has ties to at least one Arizona
6 group that promotes homosexual rights, including marriage. *See* Appendix, Ex.
7 1 at ¶ 6 & attachments (media items documenting the Attorney General’s
8 connection with the Arizona Human Rights Fund). This involvement gives the
9 appearance of bias towards Petitioners in this case. *Id.* at ¶ 7. Therefore, Seantor
10 Anderson is concerned that his interests may not be adequately represented by
11 the existing parties to the lawsuit. *See* Appendix, Ex. 1 at ¶¶ 4-7. By
12 intervening in this special action, the applicant seeks to affirm the statutory
13 structure of marriage as found in A.R.S. §25-101(C) and A.R.S. §25-125(A) and
14 prevent the circumvention of the legislative process. *See* Appendix, Ex. 1 at ¶¶
15 2-3.

16 **B. *The Applicant’s Interest in Intervening Raises Common***
17 ***Questions of Law***

18 In the alternative, the applicant’s interest in the disposition of the special
19 action raises common questions of law and fact that allow the Court in its
20 discretion, to grant intervention. Rule 24(b) authorizes permissive intervention,
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1 absent statutory directive, “when an applicant’s claim or defense and the main
2 action have a question of law or fact in common.” Ariz.R.Civ.P. 24. Applicant
3 supports the duly enacted A.R.S. §25-101(C) and A.R.S. §25-125(A) which
4 prevent the issuance of marriage licenses to same sex couples. *See* Appendix,
5 Ex. 1 at ¶ 2. These are the two statutes the Petitioners challenge in the special
6 action. *See* Petition at 1, *Standhardt v. Superior Court*, No. SA-03-0150 (App.
7 2003).

8 In granting permissive intervention, the Court looks at numerous factors,
9 including (1) the nature and extent of the applicant’s interest, (2) the applicant’s
10 standing to raise the issue, (3) the legal position the applicant advances and its
11 relation to the merits of the case, (4) whether the applicant’s interests are
12 adequately represented by existing parties, (5) whether the applicant’s
13 intervention will unduly prolong or delay litigation, and (6) whether the
14 applicant will “significantly contribute to full development of the underlying
15 factual issues in the suit and to the just and equitable adjudication of the legal
16 questions presented.” *Bechtel v. Rose*, 150 Ariz. at 72, 722 P.2d at 240 (quoting
17 *Spangler v. Pasadena City Bd. Of Education*, 552 F.2d 1326, 1329 (9th Cir.
18 1974).

19 The applicant’s interest in this special action satisfies each of these
20 factors. First, the applicant has a strong interest in the disposition of this special
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1 action, as the decision will affect the validity of state marriage laws in general,
2 an issue traditionally within the province of the Legislature. Second, the direct
3 effect of the special action on the applicant's ability to enact legislation
4 governing marriage and the impact on *every* law dealing with marriage and
5 married couples gives him standing to intervene. Third, as noted above, the
6 applicant seeks to promote a legal position that is supported by Arizona law and
7 directly addresses the merits of the special action – namely the appropriateness
8 of bringing this action in the judicial branch instead of seeking to repeal or
9 amend the marriage laws through the Legislature. This point relates to the
10 fourth factor the Court considers, whether the interests of the applicant are
11 adequately represented. The applicant is concerned that the Attorney General
12 will not fully and adequately explain the policies and concerns behind the
13 prohibition against same sex marriage, thus allowing the challenge to the
14 statutes to succeed in this Court in circumvention of the Legislature. *See*
15 Appendix, Ex. 1 at ¶¶ 3-7. Finally, in the fifth and sixth factors this Court
16 considers, the applicant's intervention will not unduly prolong litigation.
17 Rather, by intervening, the applicant will contribute to the “full development” of
18 the issues surrounding the litigation by presenting the concerns of a government
19 officials whose daily duties and scope of legislative authority will be affected by
20 this special action.

1 **CONCLUSION**

2 In conclusion, to assure full considerations his interests, the interests of
3 similarly situated state legislators, and on behalf of all other state officials that
4 issue marriage licenses that will be affected by the outcome of this special
5 action, the applicant respectfully requests that the Court grant leave to intervene
6 as a respondent in this special action or in the alternative to participate as amicus
7 curiae with time at the oral argument.

8 Respectfully submitted this 21st day of July, 2003.

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