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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Isaacson, et al.,

Plaintiffs,

v.

State of Arizona,

Defendant,

and

Warren Petersen, et al.,

Intervenor-Defendants.

No. CV2025-017995

**PLAINTIFFS' OPPOSITION TO  
INTERVENOR-DEFENDANTS' MOTION  
FOR LEAVE TO FILE MOTION TO  
DISMISS OUT OF TIME OR, IN THE  
ALTERNATIVE, REQUEST TO STAY  
MOTION TO DISMISS PENDING RULING  
ON PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

(Assigned to the Hon. Greg Como)

1     **I.   INTRODUCTION**

2             Intervenors’ Motion for Leave to File Motion to Dismiss Out of Time (“Motion”) fails to  
3 provide a sufficient basis for excusing their untimely Motion to Dismiss, particularly when  
4 considered against the backdrop of their repeated non-compliance with applicable rules and  
5 deadlines in this case and the prejudice it causes Plaintiffs. For these reasons, Intervenors’  
6 Motion should be denied. In the alternative, Plaintiffs respectfully request a stay of their deadline  
7 to respond to the Motion to Dismiss pending a decision on the Motion for Preliminary Injunction  
8 (“PI Motion”).

9     **II.   BACKGROUND**

10            Plaintiffs commenced the instant suit on May 22, 2025, filing their Complaint, Notice of  
11 Claim of Unconstitutionality (“Notice”), and PI Motion. Also on that day, and pursuant to A.R.S.  
12 § 12-1841, Plaintiffs sent the Notice and Complaint to the Arizona Speaker of the House and the  
13 Arizona Senate President.

14            On Sunday, June 8, the day before the PI Motion response deadline (*see* 6/4/2025 Status  
15 Conference Minute Entry at 1), the Arizona Speaker of the House and the Arizona Senate  
16 President (“Intervenors”) first notified Plaintiffs and the State of Arizona (“State”) that they  
17 would be intervening in the case and seeking a two-week extension of the PI Motion response  
18 deadline. Plaintiffs agreed as a matter of professional courtesy. On June 9, Intervenors filed a  
19 Notice of Intervention. The following day, *i.e.*, the day *after* their PI Motion response was due,  
20 Intervenors filed their First Motion for Extensions of Time (Unopposed) (“First Extension  
21 Motion”) seeking to extend the briefing schedule to require, *inter alia*, a response deadline of  
22 June 23. *See* Ariz. R. Civ. P. 7.1(g)(3).

23            Around 11:00 pm MST on June 18, on the eve of a federal holiday and just two business  
24 days before Intervenors’ requested June 23 deadline, Intervenors emailed Plaintiffs and the State

1 requesting a second extension of their PI Motion response deadline. Before the Parties completed  
2 the meet-and-confer process, Intervenor filed their Second Motion for Extension of Time  
3 (“Second Extension Motion”). *See* Pls.’ Resp. to Second Extension Mot. at 3. Despite not  
4 obtaining the consent of the Parties or a Court order granting an extension of their briefing  
5 deadline prior to its expiry, Intervenor failed to file their response to the PI Motion on June 23.

6 Following briefing on that Second Extension Motion, the Court set Intervenor’s  
7 PI Motion response deadline as July 7. *See* 7/7/2025 Minute Entry at 1. On the July 7 deadline,  
8 counsel for Intervenor emailed Plaintiffs’ counsel, seeking to meet and confer on a Motion to  
9 Dismiss that they planned to file that day. This was the first time Intervenor raised the prospect  
10 of filing a Motion to Dismiss. Plaintiffs accommodated their request for a same-day meet-and-  
11 confer and stated that they would oppose a motion to dismiss.

### 12 **III. ARGUMENT**

#### 13 **A. Intervenor Should Not Be Permitted to File an Out-of-Time Brief**

14 As Intervenor admit in the Motion (at 1), their Motion to Dismiss is untimely. *See* Ariz.  
15 R. Civ. P. 12(a)(1)(A) (“A defendant or third-party defendant must file and serve an answer or  
16 other responsive pleading: (i) within 20 days after being served with the summons and  
17 complaint[.]”). Even accepting Intervenor’s claim in their Second Extension Motion that they  
18 only received service as of June 10, *but see* Pls.’ Resp. to Second Extension Motion at 2–4, that  
19 would have made their deadline—at latest—June 30. Yet they have not even cited the standard  
20 for, let alone demonstrated, excusable neglect sufficient to justify their belated filing. *See* Ariz.  
21 R. Civ. P. 6(b)(1)(B). Intervenor have the burden of showing that “the neglect or inadvertence  
22 is such as might be the act of a reasonably prudent person under the same circumstances.” *Smith*  
23 *& Wesson Corp. v. The Wuster*, 243 Ariz. 355, 357 (Ct. App. 2017) (citations omitted).

Intervenors' sole argument for failing to file a timely motion to dismiss is that they "erroneously omitted a request to also extend the deadline for the filing of their response to Plaintiffs' Complaint" when they "sought and obtained an extension until July 7, 2025 to file their opposition to Plaintiffs' [PI Motion]." Mot. at 1. But "[c]arelessness does not equate with excusable neglect." *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 163 (Ct. App. 1993). Intervenors also never raised the prospect of seeking to extend their answer deadline when requesting Plaintiffs' position on their Second Extension Motion; the first time Intervenors raised the issue was during the July 7 meet-and-confer. Additionally, Intervenors provide no explanation as to why they waited to file the instant Motion until their Motion to Dismiss was fully drafted instead of seeking an extension or otherwise raising the erroneous omission with the Court and Plaintiffs immediately upon discovery.

Moreover, and contrary to Intervenors' claim, *see* Mot. at 1, granting their Motion would prejudice Plaintiffs. Because Intervenors filed their Motion to Dismiss belatedly, and at the same time as their PI Motion response, the schedule would likely require Plaintiffs to simultaneously brief their Motion to Dismiss response and PI Motion reply, detracting from the time they can dedicate to each.<sup>1</sup> Intervenors should not be permitted to benefit from their non-compliance by forcing Plaintiffs into a disadvantageous briefing schedule.

**B. If the Court Is Inclined to Grant Intervenors' Motion, Plaintiffs Request that Briefing on the Motion to Dismiss Be Stayed Pending Resolution of the PI Motion**

Given the above, the Court should deny Intervenors' Motion. However, if the Court is inclined to grant the requested relief, Plaintiffs respectfully request that the Court stay Plaintiffs'

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<sup>1</sup> Plaintiffs' understanding is that because Intervenors' Motion to Dismiss was improperly filed out of time, the time to respond to the Motion to Dismiss does not begin to run unless and until the Court grants them leave to file such motion. If the Court were to promptly grant the instant Motion, Plaintiffs would be tasked with responding to Intervenors' Motion to Dismiss and replying to their PI Motion response at the same time.

1 deadline to respond to the Motion to Dismiss until after the Court has ruled on Plaintiffs'  
2 PI Motion. As described, Plaintiffs face prejudice from the prospect of having to respond to the  
3 Motion to Dismiss while simultaneously briefing their reply to the PI Motion—a motion that has  
4 already been significantly delayed by Intervenor's repeated extension motions. Nor would  
5 staying the Motion to Dismiss cause prejudice to Intervenor; to the extent they raise  
6 justiciability arguments, those arguments are also presented in their PI Motion response. *See*  
7 Mot. at 1 (recognizing that the Motion to Dismiss relies on arguments also presented in  
8 Intervenor's response to the PI Motion). Indeed, because of the overlap between Intervenor's  
9 two filings, staying the Motion to Dismiss is likely to serve judicial economy by narrowing the  
10 issues to be considered on the Motion to Dismiss if and when it is adjudicated.

#### 11 **IV. CONCLUSION**

12 Intervenor has twice asked for extensions of time at the eleventh hour, which Plaintiffs  
13 did not oppose out of professional courtesy. However, their latest request to file an out-of-time  
14 Motion to Dismiss is both improper and prejudicial and should be denied. In the alternative,  
15 Plaintiffs respectfully request that the Court stay the Motion to Dismiss pending resolution of  
16 Plaintiffs' PI Motion.

17 Dated: July 11, 2025

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