

No. 08-15773 [DC# 2:03-CV-02682-MCE-KJM]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID K. MEHL, et al.,
Plaintiffs-Appellants,

vs.

LOU BLANAS, et al.,
Defendants-Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

**MOTION FOR LEAVE OF COURT TO FILE AMICUS CURIAE BRIEF
OF 10 PAGES AND TO PARTICIPATE IN ANY ADDITIONALLY
SCHEDULED ORAL ARGUMENTS**

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INTRODUCTION

On March 4, 2008, a Notice of Appeal was filed, which commenced the proceedings in the instant appeal. On June 11, 2009, oral arguments were heard and the case was submitted for decision. On September 11, 2009, this appeal was withdrawn pending decision in *Nordyke v. King*, Case No. 07-15763. On July 20, 2012, the Court requested supplemental briefing from the parties as to the impact upon this appeal, if any, with respect to the decisions recently rendered in *Nordyke v. King*, 681 F.3d 1041 (9th Cir. 2012) and *McDonald v. City of Chicago*, ___ U.S. ___, 130 S. Ct. 3020 (2010).

On August 16, 2012, counsel for amicus curiae, the California Rifle and Pistol Association Foundation (“CRPA Foundation”), unsuccessfully attempted to obtain the consent of all parties to this instant appeal to file an amicus brief. (Brady Decl. ¶ 1-2). The CRPA Foundation thus brings this motion, requesting leave of court to file a 10 page amicus curiae brief and to participate in any additionally scheduled oral arguments.¹

¹ Because an amicus brief is generally limited to half the length of the principle briefs, Fed. R. App. Proc. 29(d), and principle briefs are limited to 30 pages, Fed. R. App. P. 32(7)(A), it follows that an amicus brief is generally limited to 15 pages. However, given the unique situation that the CRPA Foundation seeks to file subsequent to a request for supplemental briefing by the court, the CRPA Foundation is uncertain as to the permissible length of the amicus brief. As such, the CRPA Foundation requests leave to file a brief of 10 pages.

STATEMENT OF LAW

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, a party may file an amicus curiae brief upon the consent of the parties to the appeal or, if consent cannot be had, upon motion for leave of court. Fed. R. App. P. 29(a). A motion for leave of court must be accompanied by the proposed brief, identify the moving party's interest, and state the reason the amicus brief is desirable and why the matters asserted are relevant to the case. Fed. R. App. P. 29(b). An amicus curiae desiring to participate in oral arguments must also obtain the court's permission. Fed. R. App. P. 29(g).

BASIS FOR MOTION

I. MOVING PARTY'S INTEREST

The CRPA Foundation is a 501(c)(3) non-profit entity incorporated under California law, with headquarters in Fullerton, California. Contributions to the CRPA Foundation are used for the direct benefit of Californians. Funds contributed to and granted by the CRPA Foundation benefit a wide variety of constituencies throughout California, including gun collectors, hunters, target shooters, law enforcement, and those who choose to own a firearm to defend themselves and their families.

The CRPA Foundation seeks to: raise awareness about unconstitutional laws, defend and expand the legal recognition of the rights protected by the Second Amendment, promote firearms and hunting safety, protect hunting rights, enhance marksmanship skills of those participating in shooting sports, and educate the general public about firearms.

The CRPA Foundation has an interest in this case because the outcome will directly affect the right of its supporters who reside in Sacramento County, and potentially all of California, to exercise their fundamental right to bear arms. By participating in the instant appeal, the CRPA Foundation also seeks to promote and advance its organizational purposes, which are discussed in the attached amicus brief.

Further, the CRPA Foundation is a plaintiff-appellant in the pending Ninth Circuit appeal *Peruta v. County of San Diego*, No.10-56971, challenging aspects of San Diego County's policy for issuing handgun carry licenses on Second Amendment and Equal Protection grounds.

It is important to note that the CRPA Foundation did not previously seek to file an amicus brief because this appeal initially encompassed only equal protection claims specific to the Appellants, the Second Amendment issues having been abandoned by Appellants at the trial court. And, since the Second

Amendment issue was revived only after the U.S. Supreme Court's landmark decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and before *McDonald* CRPA Foundation did not believe the Second Amendment claims to be justiciable during initial briefing. Since then the issues implicated here have evolved into ones that directly impact the interests of the CRPA Foundation's supporting constituency. CRPA Foundation now seeks amicus participation.

II. DESIRABILITY OF AN AMICUS BRIEF

Amicus curiae, the CRPA Foundation, has significant expertise in the area of the Second Amendment law. Thus, an amicus brief is desirable in the instant appeal because the brief will assist the Court in deciding the issues presented.

The CRPA Foundation has extensive knowledge of the issues involved in the instant appeal, having participated in numerous cases and proceedings regarding the constitutional and statutory rights of gun owners. The CRPA Foundation has participated as plaintiff or amicus in a myriad of challenges to regulations involving conduct protected by the Second Amendment, including the use of firearms in self-defense, firearm purchase, ownership, possession, and transportation, and ammunition transfers. More specifically, the CRPA Foundation is presently a plaintiff/appellant in *Peruta v. County of San Diego*, Case No. 10-56971, a Ninth Circuit appeal challenging aspects of San Diego County's policy

for issuing permits to carry concealed firearms under California law. It also recently submitted an amicus brief in *Richards v. Prieto*, Case No. 11-16255, yet another Ninth Circuit appeal challenging California's concealed carry laws.

Accordingly, the CRPA Foundation is particularly and uniquely well-versed in the issues of this case.

As an amicus, the CRPA Foundation intends to submit briefing to assist the Court in resolving this matter, and further intends to supplement and complement the parties' presentation of this case, rather than duplicate their efforts. The CRPA Foundation expects that its briefing will specifically address those claims that directly impact its members' interests in California law governing the right to carry firearms for self defense.

This motion should be granted because the CRPA Foundation will offer its unique experience, knowledge, and perspective to aid the Court in the proper resolution of this case. And it has at its service preeminent Second Amendment scholars, firearms, ammunition, and self-defense experts, and lawyers with decades of experience in firearms litigation.

CONCLUSION

For the foregoing reasons, the CRPA Foundation requests leave of court to file an amicus brief of 10 pages, which – pursuant to Rule 29(b) – is attached

hereto. Finally, the CRPA Foundation requests permission to participate in any additional oral arguments that the Court may schedule in the instant appeal.

Dated: August 17, 2012

MICHEL & ASSOCIATES, PC

/s/C. D. Michel

C. D. MICHEL

Attorney for Amicus Curiae

DECLARATION OF SEAN A. BRADY

I, Sean A. Brady, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am an Associate attorney at Michel & Associates, P.C., counsel for amicus applicant, the California Rifle and Pistol Association Foundation (“CRPA Foundation”). The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. On August 16, 2012, I contacted Mr. Gary Gorski, attorney of record for Plaintiffs-Appellants, via electronic mail (e-mail) to obtain Plaintiffs-Appellants’ consent to the CRPA Foundation’s filing of an amicus brief in support of neither party. As of the date of filing, Mr. Gorski had not responded.

3. On August 16, 2012, I contacted Mr. Daniel Karalash, attorney of record for Plaintiffs-Appellants, via electronic mail (e-mail) to obtain Plaintiffs-Appellants’ consent to the CRPA Foundation’s filing of an amicus brief in support of neither party. As of the date of filing, Mr. Karalash had not responded.

4. On August 16, 2012, I contacted Ms. Jeri Lynn Pappone, attorney of record for Defendants-Appellees, via electronic mail (e-mail) to obtain Defendants-Appellees’ consent to the CRPA Foundation’s filing of an amicus

brief is support of neither party. Ms. Pappone indicated that Defendants-Appellees would take no position on the participation of CRPA Foundation as amicus curiae.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of August 2012 at Long Beach, California.



Sean A. Brady

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2012, an electronic PDF of MOTION FOR LEAVE OF COURT TO FILE AMICUS CURIAE BRIEF OF 10 PAGES AND TO PARTICIPATE IN ANY ADDITIONALLY SCHEDULED ORAL ARGUMENTS was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: August 17, 2012

/s/ C. D. Michel
C. D. Michel
Attorney for Amicus Curiae