

No. 13-56203

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES NICHOLS,

Plaintiff-Appellant,

v.

EDMOND G. BROWN, Jr., in his official capacity as
Governor of California; et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
(CV 11-09916 SJO (SS))

**PROPOSED AMICUS CURIAE'S MOTION FOR EXTENSION OF TIME
TO FILE BRIEF; DECLARATION OF C.D. MICHEL AND
DECLARATION OF SEAN A. BRADY IN SUPPORT THEREOF**

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Counsel for Proposed Amicus Curiae

To the Clerk of the United States Court of Appeals for the Ninth Circuit:

Pursuant to Federal Rule of Appellate Procedure 29(e), the Proposed Amicus Curiae, CRPA Foundation, respectfully submits this motion, requesting a thirty (30) day extension, through and including September 21, 2013, to file its amicus brief pursuant to Federal Rule of Appellate Procedure 29(a). Alternatively, Proposed Amicus requests an extension until August 20, 2013, or any other such date that the Court deems proper.

This case primarily concerns the right to publicly carry a firearm, and Appellant has challenged various state penal codes alleged to have infringed upon that right. The CRPA Foundation is a 501(c)(3) non-profit entity incorporated under California law with significant expertise in the area of Second Amendment jurisprudence. For instance, the CRPA Foundation is currently a plaintiff-appellant in two pending Ninth Circuit appeals concerning the Second Amendment right to carry arms publicly, *McKay v. Hutchens*, No. 12-57049, and *Peruta v. County of San Diego*, No. 10-56971. It was also an amicus curiae in two additional such appeals, *Mehl v. Blanas*, No. 08-15773 (where its counsel participated at oral argument on its behalf), and *Richards v. Prieto*, No. 11-1625. As such, the CRPA Foundation has extensive knowledge of the issues involved in the instant appeal, and its amicus brief will assist the Court in deciding the issues presented therein.

Although confirmation of such has not yet appeared on the docket, CRPA Foundation believes Appellant's opening brief is considered to have been filed on August 5, 2013, which renders briefs of amici curiae currently due on or before August 12, 2013, i.e., within 7 days (Fed. Rule App. Proc. 29(e)). Having just learned this, CRPA Foundation is already behind two days with the process of filing an otherwise timely amicus brief, and still does not even have a copy of the opening brief to consider the exact arguments it intends to weigh in on. Brady Decl. ¶ 6. Regardless, some extension of the current deadline is necessary because the two attorneys primarily responsible for the drafting and preparation of the CRPA Foundation's brief, C.D Michel and Sean A. Brady, are unavailable prior to and including the current due date for amicus curiae briefs in this matter. Michel Decl. ¶¶ 1, 2, 4; Brady Decl. ¶¶ 1, 2, 4.

The CRPA Foundation would prefer a thirty (30) day extension, as its counsel believes a decision from this Court in *Peruta v. County of San Diego*, No. 10-56971, which has been submitted since December 6, 2012, is likely to be rendered within this time frame, and which would likely have a fundamental impact on the appropriate analysis of the instant case. But, an extension until August 20, 2013, would provide Proposed Amicus Curiae sufficient time to diligently complete its briefing.

Appellees do not oppose Proposed Amicus Curiae's motion for an extension of the deadline to file its brief, if it is made due on or before August 20, 2013, but do oppose any extension beyond that date. Brady Decl. ¶ 5. Pro Se Appellant opposes this motion to the extent it may affect the current scheduling order. Brady Decl. ¶ 5.

The CRPA Foundation hereby requests, therefore, that this Court grant a thirty (30) day extension to file its amicus brief and accompanying motion for leave to file, through and including September 11, 2013. Alternatively, the CRPA Foundation requests this Court extend the deadline to August 20, 2013, or such other date the Court deems appropriate.

Date: August 7, 2013

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for Proposed Amicus Curiae

DECLARATION OF C.D. MICHEL

I, C.D. Michel, declare as follows:

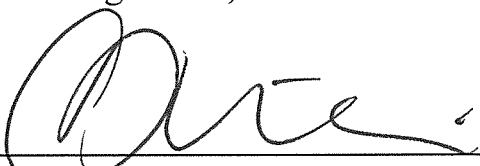
1. I am an attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am Senior Counsel at Michel & Associates, P.C., counsel for proposed amicus applicant, the California Rifle and Pistol Association Foundation (“CRPA Foundation”). I am one of two attorneys primarily responsible for drafting and preparing the proposed amicus brief in this case. The following is within my personal knowledge, and if called and sworn as a witness, I could and would competently testify thereto.
2. I have prior obligations and will be out of town from August 9-14, 2013, which coincides with the same time frame as the due date of the proposed amicus brief. Because my travels affiliated with prior obligations will remove me from the office and consume the majority of my time, I will be unable to devote the time required to adequately prepare the proposed amicus brief and therefore request a thirty (30) day extension, up to and including September 11, 2013.
3. The CRPA Foundation has not previously asked for an extension of time to file their amicus brief and accompanying motion for leave to file.
4. The requested extension of time will enable me to provide diligent and professional briefing on this case, while at the same time fulfilling my obligations

in other courts and other matters.

5. This motion is made in good faith for the reasons of actual need set forth herein and not for the purpose of delay.

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

Executed this 7th day of August 2013 at Long Beach, California.


C.D. Michel

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 proposed amicus applicant, the California Rifle and Pistol Association Foundation (“CRPA Foundation”). I am one of two attorneys primarily responsible for drafting and preparing the proposed amicus brief in this case. The following is within my personal knowledge, and if called and sworn as a witness, I could and would competently testify thereto.
2. I have prior obligations to prepare and file a lawsuit within the same time frame as the due date of the proposed amicus brief. Because this other matter will consume much of my time during the next week, I will be unable to devote the time required to adequately prepare the proposed amicus brief by its current due date.
3. The CRPA Foundation has not previously asked for an extension of time to file their amicus brief and accompanying motion for leave to file.
4. The requested extension of time will enable me to provide diligent and professional briefing on this case, while at the same time fulfilling my obligations in other courts and other matters.

5. In light of my and Mr. Michel's commitments, I contacted both Appellant and Appellees regarding any objection to the CRPA Foundation's request for a 30-day extension of time to file its brief. I contacted Charles Nichols, pro se Appellant on August 7, 2013, via electronic mail, and he responded that he opposes any extension that will affect the current scheduling order. I also contacted John Eisenberg, counsel for Appellees, on August 7, 2013, via telephone, and he responded that he would not oppose an extension on or before August 20, 2013, but would oppose an extension for any greater amount of time.
6. Our office has not yet procured a copy of Pro Se Appellant's opening brief because it is not available on the docket yet.
7. This motion is made in good faith for the reasons of actual need set forth herein and not for the purpose of delay.

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

Executed this 7th day of August 2013 at Long Beach, California.


Sean A. Brady

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2013, an electronic PDF of **PROPOSED AMICUS CURIAE'S MOTION FOR EXTENSION OF TIME TO FILE BRIEF; DECLARATION OF C.D. MICHEL AND DECLARATION OF SEAN A. BRADY IN SUPPORT THEREOF** 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 7, 2013

MICHEL & ASSOCIATES, P.C.

/s/ C. D. Michel

C. D. Michel

Attorney for Proposed Amicus Curiae