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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 VIRGINIA DUNCAN, RICHARD
13 LEWIS, PATRICK LOVETTE,
14 DAVID MARGUGLIO,
15 CHRISTOPHER WADDELL,
16 CALIFORNIA RIFLE & PISTOL
ASS'N, INC., a California corporation,

17 Plaintiffs,

18 vs.

19 XAVIER BECERRA, in his official
20 capacity as Attorney General of the
State of California; and DOES 1-10,

21 Defendants.
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Case No. 17-CV-10017 -BEN-JLB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR LEAVE TO
PARTICIPATE AS *AMICUS
CURIAE***

Date: June 13, 2017

Time: 10:00 A.M.

Place: 5A

The Hon. Roger T. Benitez

1 **I. INTRODUCTION**

2 The Law Center to Prevent Gun Violence (“Law Center”) moves this Court
 3 for leave to participate as an *amicus curiae* in support of Defendant Attorney
 4 General Xavier Becerra’s Opposition to Plaintiffs’ Motion for a Preliminary
 5 Injunction. As a national, nonprofit organization dedicating to reducing firearm
 6 violence, the Law Center has for over two decades provided legal expertise in
 7 support of effective gun safety laws and other violence prevention policies.

8 In addition to its expertise in the general areas of gun legislation and policy,
 9 the Law Center was the primary drafter and a key proponent of California’s
 10 Proposition 63, the ballot initiative approved by voters and enacted into state law
 11 that contains a provision generally prohibiting civilian possession of large-capacity
 12 ammunition magazines (LCMs). This is the provision that Plaintiffs seek to enjoin
 13 before it takes effect on July 1, 2017. The core issue presented by Plaintiffs’
 14 Motion—whether to enjoin California’s law prohibiting possession of high-powered
 15 ammunition magazines on Second Amendment or other constitutional grounds—is a
 16 matter of significant public interest, with the potential to directly impact the Law
 17 Center’s California members, the voters who approved Proposition 63, and the
 18 people of the state as a whole. Under these circumstances, an *amicus curiae* brief is
 19 particularly appropriate, and the Law Center respectfully requests that the Court
 20 grant its motion for leave to submit its proposed brief.

21 **II. FACTUAL BACKGROUND**

22 As explained in greater detail in its proposed brief (filed concurrently with
 23 this motion), the Law Center is a national, nonprofit organization dedicated to
 24 reducing gun violence. It was formed in 1993 by lawyers who survived a mass
 25 shooting at 101 California Street in San Francisco, during which a gunman armed
 26 with semiautomatic weapons and LCMs killed eight people in the office of law firm
 27 Pettit & Martin. In the nearly 25 years since, the Law Center has strived to reduce
 28 the number of gun deaths in America by supporting effective gun safety laws. In

1 addition to tracking, analyzing, and advising on proposed firearm legislation and
 2 policies, the Law Center also monitors and analyzes Second Amendment litigation
 3 and jurisprudence. The Law Center has submitted *amicus* briefs in numerous
 4 firearm-related and Second Amendment cases, including: *District of Columbia v.*
 5 *Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010),
 6 *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015), *Peruta v. San Diego*, 824
 7 F.3d 919 (9th Cir. 2016) (en banc), and *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir.
 8 2017) (en banc).

9 As a drafter and proponent of Proposition 63, the Law Center has a
 10 particularly important interest in participating in this constitutional challenge to part
 11 of the initiative. The Law Center's involvement with Proposition 63 began in 2015
 12 when the Law Center partnered with California Lieutenant Governor Gavin
 13 Newsom to draft language for a statewide ballot initiative that would close certain
 14 loopholes and substantially strengthen California's firearm laws. The result was
 15 Proposition 63, a comprehensive package of gun safety reforms. Voters decisively
 16 passed Proposition 63 (with 63% of the vote) in November 2016, including its
 17 provision generally prohibiting private possession of LCMs—the part of the law
 18 Plaintiffs currently are challenging. The Law Center therefore not only has
 19 significant expertise about firearm legislation broadly, but also has important
 20 knowledge and experience directly relevant to the legislation at the core of this case.

21 **III. ARGUMENT**

22 A “district court has broad discretion to appoint amici curiae.” *Hoptowit v.*
 23 *Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v.*
 24 *Conner*, 515 U.S. 472 (1995). The “classic role” of amici curiae is “assisting in a
 25 case of general public interest, supplementing the efforts of counsel, and drawing
 26 the court's attention to law that escaped consideration.” *Miller-Wohl Co., Inc. v.*
 27 *Commissioner of Labor and Industry*, 694 F.2d 203, 204 (9th Cir. 1982). “District
 28 courts frequently welcome amicus briefs from nonparties concerning legal issues

1 that have potential ramifications beyond the parties directly involved or if the
 2 amicus has ‘unique information or perspective that can help the court beyond the
 3 help that the lawyers for the parties are able to provide.’” *Safari Club Intern. v.*
 4 *Harris*, No. 2:14-cv-01856-GEB-AC, 2015 WL 1255491 at *1 (E.D. Cal. Jan. 14,
 5 2015), citing *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F.Supp.2d
 6 1061, 1067 (N.D. Cal. 2005). “The touchstone is whether the amicus is ‘helpful,’
 7 and there is no requirement ‘that amici must be totally disinterested.’” *California v.*
 8 *U.S. Dept. of Labor*, No. 2:13-cv-02069-KJM-DAD, 2014 WL 12691095 at *1
 9 (E.D. Cal. Jan. 14, 2014), citing *Hoptowit*, 682 F.2d at 1260. This Court therefore
 10 has authority to permit the Law Center to participate as *amicus curiae*.

11 The Law Center brings unique information and perspective to the issues
 12 implicated in this constitutional challenge, and should be granted leave to submit a
 13 brief on those important issues. *See Missouri v. Harris*, No. 2:14-cv-00341-KJM-
 14 KJN, 2014 WL 2987284 at *2 (E.D. Cal. Jul. 1, 2014) (“An amicus brief should
 15 normally be allowed when, among other considerations, the amicus has unique
 16 information or perspective that can help the court beyond the help that the lawyers
 17 for the parties are able to provide.”) (internal citation omitted). The Law Center’s
 18 *amicus* submission will offer, among other things, context for the California
 19 firearms law at issue; historical information about the use of LCMs and whether the
 20 use of these devices is protected by the Second Amendment; perspective on the
 21 public safety interests that California’s LCM restrictions advance; and details about
 22 the specific regulatory loophole sought to be closed with the enactment of
 23 Proposition 63. A number of courts, including a federal district court, have relied on
 24 similar information provided in the Law Center’s *amicus* briefs when deciding other
 25 cases involving firearms. *See, e.g., Peruta*, 824 F.3d at 943 (citing the Law Center’s
 26 *amicus* brief for examples of “law-abiding” weapons owners who “place the public
 27 safety in jeopardy”); *Mishaga v. Smith*, 136 F.Supp.3d 981, 996 (C.D. Ill. 2015)
 28 (citing information in the Law Center’s *amicus* brief as one of “[s]everal lines of

1 reasoning driv[ing] [the Court's] conclusion").

2 In addition, the Court should grant leave for the Law Center to submit an
 3 *amicus* brief because this case implicates important public interests, including public
 4 safety interests, with ramifications beyond the parties directly involved. For
 5 example, Proposition 63 is a ballot measure duly enacted by California voters to
 6 address serious public safety concerns, giving the voters a direct interest in the
 7 outcome of this case. Furthermore, the resolution of Plaintiffs' Motion will involve
 8 the application of Second Amendment constitutional principles; this could have
 9 broader implications for other efforts, in California or elsewhere, to help reduce gun
 10 violence through the enactment of firearm safety legislation. *See California v. U.S.*
 11 *Dept. of Labor*, 2014 WL 12691095 at *1 (leave to file *amicus* brief granted where
 12 case implicated constitutional issues and therefore had "potential ramifications
 13 beyond the parties directly involved").

14 **IV. CONCLUSION**

15 For the foregoing reasons, the Law Center respectfully requests that the Court
 16 grant leave for the Law Center to participate as *amicus curiae* and submit a brief in
 17 connection with Defendant's Opposition to Plaintiffs' Motion for a Preliminary
 18 Injunction.

19 Respectfully submitted,

20 Dated: June 5, 2017

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25 Attorneys for Movant

26 Law Center to Prevent Gun Violence