

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

NATIONAL SHOOTING SPORTS
FOUNDATION, INC., et al.,

Plaintiffs,

v.

LETITIA JAMES, in her official capacity as New
York Attorney General,

Defendant.

Civil Action No.
1:21-CV-01348-MAD-CFH

**UNOPPOSED MOTION OF GUN VIOLENCE PREVENTION GROUPS
FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF DEFENDANT’S
(I) OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION
AND (II) MOTION TO DISMISS**

Everytown for Gun Safety (“Everytown”), Brady, Giffords Law Center to Prevent Gun Violence (“Giffords”), Maxine E. Lewis, Nadine Sylvester, New Yorkers Against Gun Violence (“NYAGV”), and the Rohan Levy Foundation (collectively, “amici”) respectfully move for leave to file an amicus curiae brief in support of Defendant Letitia James’s opposition to Plaintiffs’ motion for a preliminary injunction and motion to dismiss (filed jointly, as DE # 35). The proposed amicus brief is attached hereto as **Exhibit A**. Neither party opposes this motion.

I. LEGAL STANDARD.

“A district court has broad discretion to grant or deny an appearance as amicus curiae in a given case.” *Hart v. Town of Guilderland*, No. 20-CV-00475, 2020 U.S. Dist. LEXIS 249527, at *2 (N.D.N.Y. July 28, 2020) (italics omitted) (quoting *Citizens Against Casino Gambling v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007)). While “[t]here is no governing standard,

rule, or statute prescribing the procedure for obtaining leave to file an [amicus brief] in the district court[.]” a “court may grant leave to appear as an [amicus] if the information offered is timely and useful.” *Id.* (internal citations omitted). A “court is more likely to grant leave to appear as an amicus curiae in cases involving matters of public interest.” *Pratt v. Indian River Cent. Sch. Dist.*, No. 09-CV-00411, 2010 U.S. Dist. LEXIS 156247, at *8 (N.D.N.Y. Dec. 6, 2010) (citations omitted).

II. THE PROPOSED BRIEF IS TIMELY AND USEFUL AND THERE ARE NO OBJECTIONS TO ITS FILING FROM THE PARTIES.

Here, amici’s memorandum of law is timely. Participation of amici will not delay the briefing or argument in this case. Defendant filed a motion in opposition to Plaintiffs’ preliminary injunction motion together with a motion to dismiss on February 18, 2022, and Plaintiffs have a deadline of March 11, 2022, for response filings. The filing of amici’s brief accords with the rule that applies to the filing of amicus briefs in the federal circuit courts of appeal, where an amicus curiae must file its brief within 7 days of the filing of the principal brief of the party being supported. Fed. R. App. P. 29(a)(6).

Amici’s memorandum of law will also be useful. Amici NYAGV and the Rohan Levy Foundation are New York-based organizations that work to prevent gun violence through advocacy for sensible gun violence prevention laws and by providing gun awareness education and support to survivors of gun violence. Amici Maxine E. Lewis and Nadine Sylvester are survivors of gun violence, who have become anti-violence leaders in their community. Amici Brady, Everytown,, and Giffords are nonprofit organizations that advocate for gun violence prevention laws, and are dedicated to researching, writing, enacting, and defending laws and policies proven to reduce gun violence and save lives.

In the brief, amici seek to provide this Court with additional context and analysis on the following topics: (i) background on the impact and causes of gun violence in New York, including the connection between gun industry practices and gun violence in the State; (ii) the purpose and scope of the Protection of Lawful Commerce in Arms Act (“PLCAA”), 15 U.S.C. § 7901 *et seq.*; (iii) the inapplicability of the dormant Commerce Clause to cases such as this, including past failed efforts by the gun industry to use the dormant Commerce Clause as a way to avoid liability; and (iv) the balance of the equities and the public’s interest in this case, with particular focus on explaining why a preliminary injunction would hinder New York State’s ability to reduce an escalating gun violence crisis.

This last point highlights the significant public interest at stake this case, which favors granting leave to amici to file their brief. As amici explain in greater detail in their proposed brief, gun violence costs New York State billions of dollars each year, including hundreds of millions paid by taxpayers.¹ Gun violence has risen significantly over the past two years. In Rochester, for example, the number of gun homicides in 2021 marked a 120 percent increase over the five-year average.² Furthermore, emerging data and research suggest that the spike in gun purchases in recent years has contributed to the rise in gun violence.³

Counsel for all parties have taken no position on the filing of a memorandum of law by amici. On behalf of all amici, counsel for Everytown contacted counsel for Plaintiffs and

¹ Everytown Research & Policy, *Everystat: New York*, <https://perma.cc/MBJ8-Q7B4>.

² New York State Division of Criminal Justice Services, *Gun Involved Violence Elimination (GIVE) Initiative: Shooting Incidents, Shooting Victims, and Individuals Killed by Gun Violence* (Jan. 13, 2022), <https://perma.cc/AF5W-4GZG>.

³ Champe Barton, *New Data Suggests a Connection Between Pandemic Gun Sales and Increased Violence*, *The Trace* (Dec. 8, 2021), <https://perma.cc/TGR8-X8KJ>.

Defendant by email to request the parties' position on this motion. Counsel for both Plaintiffs and Defendant responded that they take no position.

III. CONCLUSION.

Therefore, amici respectfully request that this Court grant this motion for leave to file an amicus brief.

Dated: February 25, 2022

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Respectfully submitted,

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Rohan Levy Foundation*

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2022, I electronically filed the foregoing with the Clerk of the Court of the United States District Court for the Northern District of New York by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

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