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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

13 WILLIAM WIESE, et al.,
14
15 Plaintiffs,
16
17 v.

18 XAVIER BECERRA, ATTORNEY GENERAL,
19 AND MARTHA SUPERNOR, ACTING CHIEF OF
20 THE DEPARTMENT OF JUSTICE BUREAU OF
21 FIREARMS,

22 Defendants.

No. 2:17-cv-00903-WBS-KJN

**MEMORANDUM IN SUPPORT OF
EVERYTOWN'S MOTION FOR
LEAVE TO PARTICIPATE AS
AMICUS CURIAE**

Hearing Date: November 6, 2017
Hearing Time: 1:30 p.m.

Filing Date: October 4, 2017

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1 **I. INTRODUCTION**

2 Everytown for Gun Safety (“Everytown”) hereby moves for leave to file the attached
3 amicus brief in support of Defendants’ Motion to Dismiss Plaintiffs’ Second Amended
4 Complaint in this constitutional challenge to California Penal Code § 32310 as amended by
5 Proposition 63 (hereinafter, “Proposition 63”) banning the possession of large-capacity
6 magazines.¹ Everytown is the largest gun violence prevention organization in the country, with
7 supporters in every state, including tens of thousands of California residents and the mayors of
8 forty California cities. Part of Everytown’s mission is to assist courts in evaluating Second
9 Amendment challenges to common sense gun laws by presenting its substantial research on
10 historical firearms laws and expertise in gun law doctrine.

11 **II. ARGUMENT**

12 It is well settled that district courts have “broad discretion to appoint amici curiae.”
13 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v.*
14 *Conner*, 515 U.S. 472 (1995). An amicus curiae can “assist[] in a case of general public interest,
15 supplement[] the efforts of counsel, and draw[] the court’s attention to law that escaped
16 consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir.
17 1982). “District courts frequently welcome amicus briefs from nonparties concerning legal issues
18 that have potential ramifications beyond the parties directly involved or if the amicus has ‘unique
19 information or perspective that can help the court beyond the help that the lawyers for the parties
20 are able to provide.’” *Safari Club Int’l v. Harris*, No. 2:14-cv-01856-GEB-AC, 2015 WL
21 1255491, at *1 (E.D. Cal. Jan. 14, 2015) (citing *NGV Gaming, Ltd. v. Upstream Point Molate,*
22 *LLC*, 355 F. Supp. 2d 1061, 1016 (N.D. Cal. 2005)). “The touchstone is whether the amicus is
23 ‘helpful,’ and there is no requirement ‘that amici must be totally disinterested.’” *California v.*
24 *U.S. Dep’t of Labor*, No. 2:13-CV-02069-KJM-DAD, 2014 WL 12691095, at *1 (E.D. Cal.
25 Jan. 14, 2014) (citing *Hoptowit*, 682 F.2d at 1260). Everytown submits that these standards
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27 _____
28 ¹ Defendants consent to this request, which is being filed within seven days of their Motion to Dismiss. Plaintiffs indicated that they would neither consent nor object to this request before having the opportunity to review Everytown’s proposed amicus brief.

1 counsel in favor of the Court exercising its discretion to permit Everytown to file its brief as
2 amicus curiae.

3 Everytown’s proposed amicus brief seeks to inform the Court’s thinking in the first step
4 of its Second Amendment analysis, specifically, “whether the challenged law burdens conduct
5 protected by the Second Amendment.” *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir.
6 2013). This brief presents historical analysis that situates Proposition 63 in a long tradition of
7 laws prohibiting or regulating weapons that legislatures have determined to be unacceptably
8 dangerous—including a century of restrictions on firearms capable of firing a large number of
9 rounds without reloading. While this historical context alone should be sufficient for this Court
10 to find Proposition 63 to be constitutional under *Heller*, see *District of Columbia v. Heller*, 554
11 U.S. 570, 626-27 (2008), this brief also addresses why the “common use” test suggested by
12 Plaintiffs is circular and should not persuade this Court.

13 Everytown’s brief provides a unique perspective and expertise that merits granting
14 Everytown’s Motion here. See *Missouri v. Harris*, No. 2:14-cv-00341-KJM-KJN, 2014 WL
15 2987284, at *2 (E.D. Cal. July 1, 2014) (“An amicus brief should normally be allowed when,
16 among other considerations, the amicus has unique information or perspective that can help the
17 court beyond the help that the lawyers for the parties are able to provide.” (internal citation
18 omitted)). Everytown has provided similar expertise in several recent cases. See, e.g., Brief of
19 Everytown for Gun Safety as Amicus Curiae in Support of Defendants, *Flanagan v. Becerra*,
20 2:16-cv-06164-JAK-AS (C.D. Cal. Sept. 18, 2017); Brief of Amicus Curiae Everytown for Gun
21 Safety in Support of Appellees and Affirmance, *Wrenn v. District of Columbia*, No. 16-7025,
22 2016 WL 3928913 (D.C. Cir. July 20, 2016); Brief of Amicus Curiae Everytown for Gun Safety
23 in Support of Appellee and Affirmance, *Peña v. Lindley*, No. 15-15449, 2015 WL 5706896 (9th
24 Cir. Sept. 28, 2015); Brief of Everytown for Gun Safety as Amicus Curiae in Support of
25 Appellees and Affirmance, *Peruta v. Cty. of San Diego*, Nos. 10-56971, 11-16255, 2015 WL
26 2064206 (9th Cir. Apr. 30, 2015); Brief of Amicus Curiae Everytown for Gun Safety in Support
27 of Appellant and Reversal, *Silvester v. Harris*, No. 14-16840, 2015 WL 1606313 (9th Cir. Apr.
28 1, 2015).

1 In addition, the Court should grant leave for Everytown to submit an amicus brief
2 because this case implicates important public interests, including California citizens' interest in
3 public safety, with ramifications beyond the parties directly involved. Proposition 63 was
4 approved by California voters to address serious public safety concerns, giving the voters a direct
5 interest in the outcome of this case. Moreover, the resolution of Defendants' Motion will
6 necessarily involve application of Second Amendment constitutional principles, which will have
7 broader jurisprudence implications for other firearm regulation litigation nationwide. *See*
8 *California v. U.S. Dep't of Labor*, 2014 WL 12691095, at *1 (granting leave to file amicus brief
9 where case implicated constitutional issues and therefore had "potential ramifications beyond the
10 parties directly involved" (internal citation omitted)).

11 **III. CONCLUSION**

12 For the reasons stated above, Everytown respectfully requests that this Court grant leave
13 for it to participate as amicus curiae and submit a brief in support of Defendants' Motion to
14 Dismiss Plaintiffs' Second Amended Complaint.

15 Respectfully submitted,

16 Dated: October 4, 2017

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