

1 C. D. Michel - S.B.N. 144258
Glenn S. McRoberts - S.B.N. 144852
2 Clinton B. Monfort - S.B.N. 255609
MICHEL & ASSOCIATES, PC
3 180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
4 Telephone: 562-216-4444
Facsimile: 562-216-4445
5 Email: cmichel@michellawyers.com

6 Attorneys for Amicus Curiae Applicants National Rifle Association, Inc.

7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 THERESE MARIE PIZZO,) CASE NO. 09-CV-04493-CW
12)
Plaintiffs)
13 vs.) **NOTICE OF MOTION AND MOTION FOR**
14) **AMICUS CURIAE STATUS BY NATIONAL**
CITY AND COUNTY OF SAN) **RIFLE ASSOCIATION, INC., AND**
15 FRANCISCO, MAYOR GAVIN) **MEMORANDUM OF POINTS AND**
NEWSOM, in both his individual and) **AUTHORITIES IN SUPPORT**
16 official capacities; FORMER SAN)
FRANCISCO POLICE DEPARTMENT)
17 CHIEF OF POLICE HEATHER FONG, in)
both her individual and official capacities;)
18 SAN FRANCISCO POLICE)
DEPARTMENT CHIEF OF POLICE)
19 GEORGE GASCÓN, in his official)
capacity, SAN FRANCISCO SHERIFF)
20 MICHAEL HENNESSEY, in both his)
individual and official capacities; CITY)
21 AND COUNTY OF SAN FRANCISCO;)
and STATE OF CALIFORNIA)
22 ATTORNEY GENERAL KAMALA)
HARRIS in her official capacity,)
23)
Defendants.)
24)

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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 National Rifle Association, Inc. (NRA), hereby moves the Court to grant NRA amicus
3 curiae status in order to participate in this action as such.

4 The hearing on the motion will take place at 2:00 p.m. on May 5, 2011, or as soon
5 thereafter as may be heard, before the Honorable Claudia Wilken in Courtroom 2, Fourth Floor of
6 the United States District Court, Oakland Division, 1301 Clay Street, Oakland, California 94612.
7 The motion shall be based on this notice of motion and motion, the supporting memorandum of
8 points and authorities, declaration and evidence in support, any arguments of counsel at the
9 hearing, and any such further matters as the Court deems appropriate.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. PROCEDURAL POSTURE**

12 On May 15, 2009, the NRA and several individual and associational plaintiffs filed a
13 Complaint in *Jackson v. City and County of San Francisco*, Case No. 09-2143. The *Jackson*
14 plaintiffs sought declaratory and injunctive relief against the City and County of San Francisco,
15 Mayor Gavin Newsom, and Chief of Police Heather Fong (collectively “the City” or “the *Jackson*
16 defendants”). The *Jackson* case challenges the validity of three firearms-related ordinances
17 enacted and enforced by the City: (1) San Francisco Police Code (“SFPC”) section 4512, requiring
18 handguns kept within the home be stored in a locked container or disabled with a trigger lock; (2)
19 SFPC section 1290, prohibiting the discharge of any firearm within the limits of the City and
20 County of San Francisco; and (3) SFPC section 613.10(g), prohibiting the sale of ammunition
21 which “serves no sporting purpose.” (Decl. of C.D. Michel Supp. Mot. for Amicus Curiae Status
22 [“CDM Decl.”] ¶ 1; Ex. A.)

23 On July 9, 2009, the *Jackson* defendants filed a Motion to Dismiss for lack of Subject
24 Matter Jurisdiction. The *Jackson* plaintiffs then amended their Complaint, addressing the
25 jurisdictional concerns and obviating the need for a hearing on the City’s motion. (CDM Decl. ¶ 4;
26 *see also* Ex. A.)

27 On August 27, 2009, litigation of *Jackson* was stayed pending a decision in *Nordyke v.*
28 *King*, Case No. 07-15763, a Ninth Circuit case then expected to resolve the pertinent issue of

1 Second Amendment incorporation through the Fourteenth Amendment. (CDM Decl. ¶ 5; Ex. B.).

2 Thereafter, *Nordyke* was itself stayed pending the U.S. Supreme Court ruling in *McDonald*
3 *v. City of Chicago*, ___ U.S. ___, 130 S. Ct. 3020 (2010), on the incorporation issue. Order, *Nordyke*
4 *v. King*, No. 07-15763 (9th Cir. Sept. 24, 2009).

5 On September 23, 2009, some four months after *Jackson* was filed, *Pizzo v. Newsom* was
6 filed. Plaintiff Pizzo sued Mayor Gavin Newsom, former Chief of Police Heather Fong, and Chief
7 of Police George Gascón, in both their individual and official capacities, Sheriff Mike Hennessey
8 and California Attorney General Edmund G. Brown, in their official capacities only, and the City
9 and County of San Francisco. (Compl. at 6-7, ¶¶ 45, 49, 53, 56-59, 62.).

10 Like *Jackson*, the *Pizzo* case challenges the constitutionality of SFPC sections 4512, 1290,
11 and 613.10(g). But *Pizzo* also challenges California Penal Code section 12050 et seq. (concerning
12 the discretionary issuance of carry concealed weapons (CCW) licenses by local law enforcement),
13 California Penal Code section 12031(b) (prohibiting the carrying of a loaded firearm in a public
14 place or on a public street in one's vehicle, except as to current and retired police officers), and the
15 federal Law Enforcement Officers Safety Act (LEOSA), codified at 18 U.S.C. §§ 926B, 926C.
16 (Compl. at 7, ¶¶ 64-66.)

17 On December 10, 2009, *Pizzo* was stayed pending a decision in *Nordyke*. (Order Granting
18 Stay of Proceedings as Modified, Dec. 10, 2010.)

19 On June 28, 2010, the U.S. Supreme Court issued its decision in *McDonald v. City of*
20 *Chicago*, holding that “the Due Process Clause of the Fourteenth Amendment incorporates the
21 Second Amendment right [to possess a handgun in the home for the purpose of self-defense]
22 recognized in *Heller*” to apply to the states. 130 S. Ct. at 3050.

23 With the Second Amendment incorporation issue resolved, the *Jackson* plaintiffs filed a
24 Motion for Relief from Stay, which the court granted on September 13, 2010, over defendants'
25 opposition. (CDM Decl. ¶ 7; Ex. C.) At that time, *Pizzo* remained stayed.

26 On September 22, 2010, the *Jackson* defendants filed a motion seeking an extension of
27 time to file an answer to plaintiffs' Complaint. The *Jackson* plaintiffs did not oppose it out of
28 professional courtesy. (CDM Decl. ¶ 8, Ex. D.)

1 Even though the *Jackson* court had already determined that *Pizzo* and *Jackson* were not
2 similar enough to be “related,” the *Jackson* defendants filed a Motion to Consolidate the two
3 cases. (CDM Decl. ¶ 9; Ex. E at 1:26-27.) For various reasons, the *Jackson* plaintiffs opposed
4 consolidation, including the facts that plaintiffs in each case are pursuing drastically different
5 litigation strategies and that *Pizzo* was still stayed, while *Jackson* was moving forward. (CDM
6 Decl. ¶ 10.)

7 On December 16, 2010, the *Jackson* court denied defendants’ consolidation request.
8 (CDM Decl. ¶ 11; Ex. E.)

9 In January 2011, the *Jackson* defendants requested that plaintiffs stipulate to yet another
10 extension of time to file their responsive pleading. Plaintiffs agreed, on the condition that any
11 motion to dismiss would be filed and noticed so as to give plaintiffs at least one month to prepare
12 their opposition. The *Jackson* court accepted the parties’ stipulation on January 28, 2011. (CDM
13 Decl. ¶ 12, Ex. F.)

14 On January 4, 2011, a Case Management Conference was held in the *Pizzo* case. At that
15 case management conference, the stay in *Pizzo* was lifted. Deadlines were set for briefing and
16 hearing any motion to dismiss, and for case management up to and including trial. (Min. Order &
17 Case Mgmt. Order, Jan. 4, 2011).

18 On February 10, 2011, the *Jackson* defendants filed a Motion to Dismiss for Lack of
19 Jurisdiction on standing and ripeness grounds, and plaintiffs filed their opposition on March 23,
20 2011. The *Jackson* defendants’ Reply is due March 31, 2011. A hearing is set to be held before
21 Judge Richard Seeborg at 1:30 p.m. on April 14, 2011. (CDM Decl. ¶ 13; *see also* Ex. A.)

22 Meanwhile, on March 3, 2011, instead of filing a motion to dismiss *Pizzo*’s challenges to
23 SFPC 4512, 1290, and 613.10(g) on standing and ripeness grounds (as it did to *Jackson*’s identical
24 claims), the *Pizzo* City and County defendants filed an Answer. (Answer to Compl. by City &
25 County of San Francisco, Heather Fong, George Gascón, Michael Hennessy, Gavin Newsom.) So
26 *Pizzo* is moving forward, unencumbered by the many preliminary motions raised by the
27 defendants’ in *Jackson*.

28 Counsel for NRA has informed all *Pizzo* parties of its intention to file a motion seeking

1 amicus curiae status. (CDM Decl. ¶ 14-15; Ex. G.) Both plaintiff Pizzo and the City and County
2 defendants have indicated they would oppose NRA's request. (CDM Decl. ¶¶ 14, 16-17.) As of
3 the time of this filing, defendant State of California Attorney General Kamala Harris has yet to
4 respond. (CDM Decl. ¶ 18.)

5 **II. INTRODUCTION AND SUMMARY OF ARGUMENT**

6 Several claims in *Pizzo* were literally copied from the *Jackson* Complaint and pasted
7 nearly word for word into the *Pizzo* Complaint (which also contains other claims not made in the
8 *Jackson* case). *See, e.g.*, Complaint at ¶¶ 74-76, 100-102, 104-105, *Pizzo v. Newsom*, No.09-4493,
9 (N.D. Cal. filed Sept. 23, 2009); Complaint at ¶¶ 26-29, 52-54, 58-60, *Jackson v. City and County*
10 *of San Francisco*, No. 09-2143 (N.D. Cal. filed May 15, 2009).

11 NRA thus seeks to participate in *Pizzo* as an amicus primarily to address the challenges to
12 SFPC sections 4512, 1290, and 613.210(g), but would also like to be able to comment on other
13 challenges raised in *Pizzo* to the extent its members' interests might be impacted.

14 Of particular concern to NRA is the great possibility that defendants will litigate a
15 dispositive motion or otherwise reach the merits of the claims in *Pizzo*, while *Jackson* remains
16 stalled by what appears to be strategic gamesmanship and procedural maneuvering by the City.
17 While the City has the technical procedural ability to try to select the case it prefers to litigate first,
18 any outcome in the *Pizzo* case will have a bearing on NRA's claims in *Jackson*. And, because
19 NRA's members' interests cannot be sufficiently represented in *Pizzo*, it seeks amicus status to
20 ensure its members interests will be properly heard and protected.

21 Aside from the benefit to NRA and its members, the Court will benefit from NRA's
22 unique expertise in Second Amendment litigation and its wealth of knowledge and resources
23 regarding the use of firearms and ammunition for effective self-defense. Further, as discussed
24 below, NRA intends to and believes it can serve as amicus with no undue burden on the *Pizzo*
25 Court or parties.

26 **III. INTERESTS OF THE NATIONAL RIFLE ASSOCIATION**

27 NRA is a non-profit membership organization founded in 1871 and incorporated under the
28 laws of New York, with headquarters in Fairfax, Virginia, and an office in Sacramento,

1 California. NRA represents hundreds of thousands individual members and approximately 850
2 affiliated clubs and associations in California. Among its other activities, NRA works to preserve
3 and protect the constitutional and statutory rights of gun ownership, including the right to self-
4 defense and the Second Amendment right to keep and bear arms.

5 As an amicus, NRA intends to represent the interests of its members, including those who
6 reside in the City and County of San Francisco, and to promote their rights to keep their firearms
7 operable in their homes for effective use during self-defense emergencies, and to use those
8 firearms, along with appropriate ammunition, for self-defense.

9 **IV. ARGUMENT**

10 **A. NRA and the Other *Jackson* Plaintiffs Have Important Interests** 11 **at Stake in the *Pizzo* Case**

12 In addition to the general interests in the subject matter of this litigation, NRA and the
13 other *Jackson* plaintiffs have concrete interests at risk in this lawsuit that are more than sufficient
14 to support amicus status. An amicus need not necessarily have an interest at stake in order to assist
15 the Court in resolving a dispute, but NRA's interests in this case help demonstrate not only that it
16 will participate in a helpful way, but also that it *should* have its voice heard in the *Pizzo* case.

17 In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that D.C.'s
18 "ban on handgun possession in the home violates the Second Amendment, as does its prohibition
19 against rendering any lawful firearm in the home *operable for the purpose of immediate self-*
20 *defense.*" 554 U.S. at 635 (emphasis added). NRA's members in California, specifically those
21 residing in the City and County of San Francisco, brought their own challenge to SFPC sections
22 4512, 1290, and 613.10(g), seeking to vindicate their Second Amendment rights to render their
23 handguns operable for the purpose of employing effective, immediate self-defense, to access
24 ammunition most appropriate for that purpose (regardless of whether it also serves some "sporting
25 purpose"), and to discharge their firearms, as necessary, in defense of themselves, their families,
26 and their homes.

27 Those same interests are at stake in *Pizzo* – *because the Pizzo plaintiffs literally copied*
28 *them from the Jackson Complaint*. And because of the possibility, and perhaps likelihood, that

1 *Pizzo* will be litigated on its substantive merits before *Jackson* has moved much beyond
2 preliminary motions, any result in *Pizzo* will directly impact NRA’s claims in *Jackson*. As such,
3 NRA’s members have a strong interest in the outcome of *Pizzo*, and they deserve the opportunity
4 to be heard before the *Pizzo* court.

5 **B. NRA’s Interests Are Not Being Adequately Protected in *Pizzo***

6 Throughout the course of litigating the *Jackson* case, defendants appear to have tried to
7 stall the progress of that case. They no doubt deny this. But their actions suggest otherwise. Those
8 actions have taken the form of opposing the motion to lift the stay imposed pending the outcome
9 of *McDonald* and/or *Nordyke*, repeated requests for extended time to file a responsive pleading,
10 and the filing of several preliminary motions including a motion to consolidate *Jackson* and *Pizzo*,
11 and a motion to dismiss on standing and ripeness grounds. (CDM Decl. ¶¶ 7-9, 12-13.)

12 In *Pizzo*, on the other hand, those same defendants passed on the opportunity to dispose of
13 identical challenges to SFPC sections 4512, 1290, and 613.10(g) by way of a motion to dismiss on
14 standing and ripeness grounds, filing their Answer immediately after the stay in *Pizzo* was lifted.

15 While it is the strategic prerogative of defendants to try to choose which case (and which
16 lawyers) it would prefer to deal with first,¹ NRA need not stand idly by and watch it happen. NRA
17 reasonably fears that *Pizzo* will proceed to resolution on the merits, possibly negatively impacting
18 the interests of NRA’s members, before the NRA and the other *Jackson* plaintiffs have the
19 opportunity to be heard.

20 Further, NRA’s interests are not being and cannot be sufficiently represented in the *Pizzo*
21 case. *Pizzo* raises eleven claims, challenging local, state, and federal law, under a number of
22 theories, against multiple local and state officials. Such a “kitchen sink” approach itself indicates a
23 strategic choice that runs counter to the *Jackson* plaintiffs’ careful selection of their claims, and it
24 suggests that sufficient energy and resources will not be devoted to or expended on the

25
26 ¹ While NRA does not presume to *know* that this is the strategy being employed by the *Jackson*
27 defendants, it highly suspects this to be the case in light of the many procedural hurdles the City
28 has placed in the way of the *Jackson* plaintiffs’ ability to move forward with their claims—and the
absence of those same tactics in *Pizzo*. In fact, defendants’ counsel previously insinuated that she
might choose to move *Pizzo* more quickly than *Jackson*, a threat she appears to be carrying
through. (CDM Decl. ¶ 6.)

1 constitutional challenges to sections 4215, 1290, and 613.10(g).

2 While NRA has an interest in the state of the law regarding the issuance of CCW permits
3 in California and the right to carry firearms for self-defense and other lawful purposes, NRA
4 would have (and has) chosen to raise such claims wholly apart from their challenge to San
5 Francisco's local ordinances, which have little or nothing to do with the legal issues surrounding
6 the carrying of a firearm *outside* of one's home. Ultimately, NRA opposed consolidation of
7 *Jackson* and *Pizzo* to avoid being bogged down by the state and federal claims brought in *Pizzo*
8 and the vast differences among the issues presented by those challenges. (CDM Decl. ¶ 10.)²

9 What's more, plaintiff *Pizzo*'s counsel of record has an unfortunate history of missing
10 deadlines and pursuing ill-advised litigation strategies. For instance, in a previous Second
11 Amendment case of great public importance, *Silveira v. Lockyer*, 312 F.3d 1052 (2002), plaintiff's
12 counsel did not file a reply brief at the appellate level, passing on the opportunity to provide
13 valuable briefing to the Ninth Circuit on important Second Amendment constitutional issues and
14 allowing the opposing party's arguments to go unanswered. (*See* Ex. H (General Docket, *Silveira*
15 *v. Lockyer*, 312 F.3d 1052 (2002) (No. 01-15098).)

16 More recently, a judge in the United States District Court for the Eastern District of
17 California lambasted counsel's work on the record, suggesting that his lengthy complaint was
18 "Exhibit A of what you should *not* do in terms of pleading a complaint in federal court," that he
19 had "a fundamental lack of understanding of the Federal Rules of Civil Procedure," and that his
20 lawsuit was "almost frivolous, if not frivolous" in light of *Mehl v. Blanas*, a nearly identical
21 challenge brought unsuccessfully by plaintiff's counsel in 2003. (Ex. K (Reporter's Transcript,
22 Court's Rulings on Motions to Dismiss at 1:17-22, 17:22-18:8, 19:13-18, *Rothery v. Blanas*, No.
23 08-2064 (E.D. Cal. July 15, 2009).)³

24 _____
25 ² NRA also opposed consolidation with the *Pizzo* case because it remained stayed long after the
26 stay in *Jackson* was lifted. (CDM Decl. ¶ 10.) *Pizzo*'s choice not to move to lift the stay after the
27 ruling in *McDonald* was issued, while the *Jackson* plaintiffs moved *immediately* to protect their
fundamental rights, is yet another example of the wildly different litigation strategies being

28 ³ Further, in *Mehl v. Blanas*, Case No. 03-02682, plaintiff's counsel failed to timely object to
the prevailing parties' Bill of Costs, causing his late objections to be stricken. The court thus
Motion for Amicus Curiae Status by National Rifle Association, Inc.

1 These instances further underscore NRA’s fear that its members’ interests will be
2 insufficiently represented in the *Pizzo* case. Taken together with the fact that the *Jackson* and
3 *Pizzo* plaintiffs have taken vastly different strategic approaches to litigating their challenges to
4 SFPC sections 4512, 1290, and 613.10(g), it is apparent that, absent participation as amicus
5 curiae, NRA’s interests will not be adequately represented in *Pizzo*.

6 **C. NRA Will Assist in the Resolution of this Case and Will Not Unduly Burden**
7 **the Court or the Parties**

8 NRA can offer the Court valuable input on the legal and factual issues related to the
9 Second Amendment implications of this case, as it has had extensive involvement in these and
10 similar issues in other contexts. As amicus, NRA will strive to avoid duplicative and excessive
11 briefing by working, to the extent possible, to coordinate with the other parties.⁴ And NRA will
12 comply with any restrictions the Court deems necessary and appropriate. In short, by participating
13 as amicus, NRA will add a meaningful voice to this case of high public importance, but will direct
14 its efforts so as to refrain from placing undue burden on the Court and the other parties. *See Silver*
15 *v. Babbitt*, 166 F.R.D. 418, 435 (D. Ariz. 1994).

16 NRA has extensive knowledge of the issues involved in the *Pizzo* case, having participated
17 in numerous cases and proceedings regarding the constitutional and statutory rights of gun owners.
18 For instance, NRA has participated as plaintiff, intervenor, or amicus in countless challenges to
19 local, state, and federal regulations involving conduct protected by the Second Amendment,
20 including the use of in-home self-defense, firearm purchase, ownership, and possession, and
21 ammunition transfers. More specifically, NRA’s participation as a plaintiff in *Jackson*, which
22 includes identical challenges to SFPC sections 4512, 1290, and 613.10(g), makes it particularly
23 and uniquely well-versed in the issues of this case.

24 As amicus, NRA intends to submit briefing to assist the Court in resolving this matter, and
25

26 ordered his clients pay defendants’ costs in the amount of \$5,873.22. (Ex. J (Order, *Mehl v.*
27 *Blanas*, No. 03-2682 (E.D. Cal. Mar. 9, 2011).)

28 ⁴ For example, NRA would be willing to file its brief(s) a short time after plaintiff *Pizzo*
submits hers, in order to limit or avoid duplication of arguments made by other parties.

1 further intends to supplement and compliment plaintiff Pizzo’s presentation of this case, rather
2 than duplicate her efforts. NRA expects that its memoranda will specifically address those claims
3 that directly impact its interests in *Jackson*—namely, the challenges to SFPC sections 4512, 1290,
4 and 613.10(g)—and the fundamental right of law-abiding residents of the City and County of San
5 Francisco to defend themselves, their families, and their homes. In the case that other Second
6 Amendment issues require the unique perspective of NRA, its memoranda may also address those
7 issues. NRA can offer its unique experience, knowledge, and perspective to aid the Court in the
8 proper resolution of this case. And it has at its service preeminent Second Amendment scholars,
9 firearms, ammunition, and self-defense experts, and lawyers with decades of experience in
10 firearms litigation. To the extent these challenges hinge on factual contentions regarding effective
11 self-defense (and the rights appurtenant thereto), NRA is in a unique position to offer guidance to
12 the Court.

13 Further, NRA can participate in this capacity without inviting undue prejudice on any party
14 to this action. So as to minimize the burden on the Court and each party, NRA will abide by any
15 restrictions on its participation the Court deems necessary. Further, NRA will respect the briefing
16 schedule set in this case and will attempt, to the extent it is able, to work with plaintiff’s counsel
17 to avoid duplication and excessive briefing of the issues. And, if the Court so desires, NRA would
18 be willing to file its brief(s) after plaintiff’s filing(s) so as to avoid unnecessary repetition of
19 argument. Such an approach would be consistent with Federal Rule of Appellate Procedure 29,
20 which governs amicus participation in appellate proceedings. *See* Notes on Fed. R. App. P. 29(e)
21 (“The 7-day stagger was adopted because it is long enough to permit an amicus to review the
22 completed brief of the party being supported and avoid repetitious argument. A 7-day period is
23 also short enough that no adjustment need be made in the opposing party’s briefing schedule. The
24 opposing party will have sufficient time to review arguments made by the amicus and address
25 them in the party’s responsive pleading.”).

26 That said, it is apparent NRA will serve a significant benefit upon the Court in the role of
27 amicus, while inviting no undue prejudice upon the parties of this action. As such, the Court
28 should exercise its broad discretion to allow NRA to participate in this capacity.

1 **D. The Court Has Broad Discretionary Authority to Confer Amicus Status**

2 Although no Federal Rule of Civil Procedure specifically governs participation by amicus
3 curiae in the district courts, the Court has inherent discretionary authority to grant amicus status.
4 *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (upholding district court’s decision to
5 appoint amicus status sua sponte). There are no strict or formal requirements for granting amicus
6 status. Instead, courts often welcome the participation of an amicus who will offer information
7 that is both timely and useful, including information that will aid the court’s understanding of the
8 case and the potential ramifications of the resolution of the case. An amicus can also help the
9 court by “assisting in a case of general public interest, supplementing the efforts of counsel and
10 drawing the court’s attention to law that might otherwise escape consideration.” *Funbus Sys., Inc.*
11 *v. State of Cal. Pub. Utils. Comm’n*, 801 F.2d 1120 (9th Cir. 1986) (citing *Miller-Wohl Co. v.*
12 *Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982)). An amicus need not be impartial
13 to the outcome of the case, *Hoptowit*, 682 F.2d at 1260; in fact, some interest in the outcome of
14 the case is to be expected.

15 A case from the Third Circuit, penned by then-Judge, now-Justice Samuel Alito,
16 extensively analyzed the amicus issue. *See Neonatology Assocs., P.A. v. Comm’r of Internal*
17 *Revenue*, 293 F.3d 128, 132 (3d Cir. 2002). The court outlined some of the benefits an amicus
18 party can provide, including presenting background or factual information, offering special
19 expertise, briefing points not emphasized by existing parties, and explaining the potential impact
20 of a decision on a group. *Id.* at 132. Justice Alito adopted a “broad” approach to amicus
21 participation, following what he considered to be the “predominant practice in the courts of
22 appeal” and rejecting the “small body of judicial opinions that look with disfavor on motions for
23 leave to file amicus briefs.” *Id.* at 133. Finally, Justice Alito discussed safeguards the Court can
24 employ to ensure that an amicus curiae will not unduly burden the court and other parties. He
25 explained that the court should generally grant amicus status and, if the amicus brief is ultimately
26 unhelpful or duplicative, the court may simply disregard the amicus’ input. *Id.*

27 Consistent with Ninth Circuit precedent and Justice Alito’s reasoning, the Court should
28 exercise its broad discretion to allow NRA to participate as amicus, especially as it meets any

1 informal amicus criteria discussed above.

2 **V. CONCLUSION**

3 NRA seeks primarily to present to the Court with its expertise and perspective on
4 plaintiff's challenges to SFPC sections 4512, 1290, and 613.10(g). And it has demonstrated both
5 that it has sufficient interest in this case to qualify for amicus status and that it will work with all
6 parties to avoid unnecessary duplication of efforts. On behalf of its members in California, NRA
7 respectfully requests the Court grant its Motion for Amicus Curiae status.

8 RESPECTFULLY SUBMITTED.

9 Date: MICHEL & ASSOCIATES, PC

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/S/

C. D. Michel
Attorney for Plaintiffs

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

THERESE MARIE PIZZO,)	CASE NO.: CV-09-2143-RS
)	
Plaintiffs)	CERTIFICATE OF SERVICE
)	
vs.)	
)	
CITY AND COUNTY OF SAN FRANCISCO, MAYOR GAVIN NEWSOM, in both his individual and official capacities; FORMER SAN FRANCISCO POLICE DEPARTMENT CHIEF OF POLICE HEATHER FONG, in both her individual and official capacities; SAN FRANCISCO POLICE DEPARTMENT CHIEF OF POLICE GEORGE GASCÓN, in his official capacity, SAN FRANCISCO SHERIFF MICHAEL HENNESSEY, in both his individual and official capacities; CITY AND COUNTY OF SAN FRANCISCO; and STATE OF CALIFORNIA ATTORNEY GENERAL KAMALA HARRIS in her official capacity,)	
)	
Defendants.)	

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California, 90802.

I am not a party to the above-entitled action. I have caused service of:

**NOTICE OF MOTION AND MOTION FOR AMICUS CURIAE STATUS
BY NATIONAL RIFLE ASSOCIATION, INC., AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

“SEE ATTACHED SERVICE LIST”

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 31, 2011.

	/S/ C. D. Michel
	Attorney for Amicus

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“SERVICE LIST”

Gary William Gorski
Law Offices of Gary W. Gorski
8549 Nephi Way
Fair Oaks, CA 95628
(916)965-6800
(916)065-6801 (fax)
usrugby@gmail.com

Geoffrey Lloyd Graybill
California Attorney General's Office
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 324-5465
(916) 324-8835 (fax)
geoffrey.graybill@doj.ca.gov

Sherri Sokeland Kaiser
Office of the City Attorney
City & County of San Francisco
#1 Dr. Carlton B. Goodlett Place
City Hall, Room 234
San Francisco, CA 94102-4682
(415) 554-4691
(415) 554-4747 (fax)
sherri.sokeland.kaiser@sfgov.org

Daniel Michael Karalash
Law Ofc Daniel M Karalash
1207 Front St Ste 15
Sacramento, CA 95814
916-787-1234
916-787-0267 (fax)
dankaralash@gmail.com

Craig Cox Weaver
CC WEAVER & ASSOCIATES
P.O. Box 2275
Folsom, CA 95763
916-941-5184
916-404-4867 (fax)
craigcweaver@ccweaver.com