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12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

19 DONALD J. TRUMP, in his official capacity as
20 President of the United States, *et al.*,

21 Defendants.

22 SIERRA CLUB and SOUTHERN BORDER
23 COMMUNITIES COALITION,

24 Plaintiffs,

25 v.

26 DONALD J. TRUMP, in his official capacity as
27 President of the United States, *et al.*,

28 Defendants.

Civil Action Nos. 4:19-cv-00872-HSG,
4:19-cv-00892-HSG

P.I. Hearing Date: May 17, 2019
Time: 10:00AM

**CONSENT MOTION OF FEDERAL
COURTS SCHOLARS FOR LEAVE TO
FILE *AMICI CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

State of California

Doc: 102

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT federal courts scholars hereby respectfully move the
3 Court for leave to file a brief *amici curiae* in the above-captioned cases in support of Plaintiffs’
4 motions for a preliminary injunction. A copy of the proposed *amici curiae* brief is appended as an
5 exhibit to this motion.
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7 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE***

8 District courts have discretion to permit third parties to participate in an action as *amici*
9 *curiae*, and courts have “exercised great liberality” in allowing *amicus* briefs. *Woodfin Suite*
10 *Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 WL 81911, at *3 (N.D. Cal. Jan. 9,
11 2007) (internal quotation marks and citations omitted). District courts frequently accept *amicus*
12 briefs from non-parties when the legal issues in a case “have potential ramifications beyond the
13 parties directly involved” or if the *amici* have “unique information or perspective that can help the
14 court.” *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D.
15 Cal. 2005) (internal quotation marks and citations omitted). There are no strict prerequisites that
16 must be established to qualify for *amicus* status; the sole criterion is that the applicant make a
17 showing that its “participation is useful to or otherwise desirable to the court.” *Woodfin Suite*
18 *Hotels*, 2007 WL 81911, at *3 (quoting *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D.
19 Cal. 1991)).
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23 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE***

24 *Amici curiae* are federal courts scholars with expertise in the jurisdiction of the federal
25 courts. They are thus particularly well-suited to provide the Court with a detailed response to the
26 government’s argument that this Court cannot hear this case because Plaintiffs have not pointed to
27 an express statutory cause of action. *Amici* are:
28

- 1 • Erwin Chemerinsky, Dean, Jesse H. Choper Distinguished Professor of Law,
2 University of California, Berkeley Law
- 3 • Michael C. Dorf, Robert S. Stevens Professor of Law, Cornell Law School
- 4 • David A. Strauss, Gerald Ratner Distinguished Service Professor of Law, Faculty
5 Director of the Jenner & Block Supreme Court and Appellate Clinic, University of
6 Chicago Law School
- 7 • Stephen I. Vladeck, A. Dalton Cross Professor in Law, University of Texas School
8 of Law

8 **III. PROPOSED *AMICI CURIAE* BRIEF’S RELEVANCE AND AID TO THE COURT**

9 The proposed, attached *amici curiae* brief plainly satisfies this Court’s standard for
10 accepting such briefs because it offers a detailed response to one argument the government makes
11 in its opposition to Plaintiffs’ motion for a preliminary injunction in *Sierra Club v. Trump*, No.
12 4:19-cv-00892-HSG. Specifically, the government argues that Plaintiffs “do not identify any
13 private right of action in the statutes they challenge” or any other “cause of action” and therefore
14 this Court should deny the motion. Gov’t Opp. 12. As *amici* know, however, there is a long
15 history of courts of equity hearing claims that executive branch officials have exceeded their
16 statutory power, and the Supreme Court has repeatedly recognized that redressing such claims is
17 within the equitable power of the federal courts. This case falls squarely within that legal tradition
18 and within Supreme Court precedent.

21 **IV. POSITION OF THE PARTIES**

22 Counsel for all parties have consented to the filing of this brief.
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1 **V. CONCLUSION**

2 For the foregoing reasons, *amici* respectfully request this Court’s leave to file the attached
3 brief.
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6 DATED: May 2, 2019

Respectfully submitted,

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