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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **OAKLAND DIVISION**

17 STATE OF CALIFORNIA, *et al.*,

18 *Plaintiffs,*

19 v.

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

22 *Defendants.*

Case No. 4:19-cv-00872-HSG

M.S.J. Hearing Date: Nov. 20, 2019
 Time: 10:00 AM

**MOTION OF THE U.S. HOUSE OF
 REPRESENTATIVES FOR LEAVE
 TO PRESENT ARGUMENT IN
 THE PARTIAL SUMMARY
 JUDGMENT HEARING**

23 The United States House of Representatives respectfully requests leave to present
 24 argument during the hearing on the parties' motions for partial summary judgment, which is
 25 currently scheduled for November 20, 2019 at 10:00 a.m. ECF No. 228. This Court granted the
 26 House's motion for leave to file a brief as amicus curiae expressing the views of the House in
 27 support of plaintiffs' motion for partial summary judgment. ECF No. 224. As discussed below
 28 and in our amicus brief, ECF No. 226, the House has a compelling institutional interest in the
 Court's grant of relief to prohibit the Executive Branch defendants from spending federal funds
 under 10 U.S.C. § 2808 without a valid Congressional appropriation. Because the expenditures
 challenged here usurp the House's Article I legislative authority, the House has a distinct interest

1 in this case and respectfully submits that its presentation of argument will aid the Court in its
2 determination of the issues. Plaintiffs and Defendants take no position on this motion.

3 This suit arises out of the Executive Branch defendants' expenditure of federal funds to
4 construct a wall along the southern border of the United States in violation of the Appropriations
5 Clause of the U.S. Constitution and constitutional separation-of-powers principles. The
6 Appropriations Clause provides that "[n]o Money shall be drawn from the Treasury, but in
7 Consequence of Appropriations made by Law." U.S. Const., Art. I, § 9, cl. 7. This Clause vests
8 Congress with "exclusive power over the federal purse," and it is "one of the most important
9 authorities allocated to Congress in the Constitution's 'necessary partition of power among the
10 several departments.'" *U.S. Dep't of the Navy v. FLRA*, 665 F.3d 1339, 1346 (D.C. Cir. 2012)
11 (quoting *The Federalist* No. 51 (James Madison) (Clinton Rossiter ed., 1961)).

12 As explained in our amicus brief, although Congress appropriated only \$1.375 billion for
13 the construction of barriers along the southern border, the President announced that his
14 Administration would spend up to \$8.1 billion. *See* ECF No. 226 at 3. The Administration
15 claims that it has statutory authority to expend those funds, including pursuant to 10 U.S.C.
16 § 2808. *Id.* at 3-4. Those arguments are incorrect, as plaintiffs and the House have argued: the
17 cited statutory provision provides no authority for the expenditures on a border wall. Absent a
18 valid Congressional appropriation, the defendants are violating the Appropriations Clause.

19 To protect its constitutional interests, the House has filed its own suit in the U.S. District
20 Court for the District of Columbia challenging the Administration's expenditure of federal funds
21 under, *inter alia*, Section 2808 to construct a border wall. *See U.S. House of Representatives v.*
22 *Mnuchin*, No. 19-cv-969 (D.D.C. April 5, 2019), *appeal docketed*, No. 19-5176 (D.C. Cir. June
23 14, 2019). To protect its constitutional interests, the House recently filed an amicus brief in this
24 suit urging the Court to grant the plaintiffs' motion for partial summary judgment concerning
25 expenditures pursuant to Section 2808. This Court has previously granted the House leave to file
26 an amicus brief in support of the plaintiffs' motion for a preliminary injunction, *see* ECF No. 72,
27 and to participate in the hearing on that motion, *see* ECF No. 111. With the Court's leave, the
28

1 House has also filed an amicus brief in support of the plaintiffs’ motion for summary judgment
2 concerning expenditures pursuant to 10 U.S.C. § 284. *See* ECF No. 181.

3 As noted at the outset, because the actions by the Executive Branch defendants here go to
4 the very heart of an essential power of Congress, put in place by the Framers to protect the people
5 of the United States from unchecked actions by the Executive Branch, the House has a unique
6 interest in this matter. Accordingly, the House respectfully requests leave to present argument
7 during the hearing on the motions for partial summary judgment.

8 CONCLUSION

9 For the foregoing reasons, the Court should grant the House’s motion for leave to present
10 argument in the partial summary judgment hearing scheduled for November 20, 2019.

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12 Respectfully submitted,

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23
24 October 25, 2019

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26 _____
27 * Attorneys for the Office of General Counsel for the U.S. House of Representatives are
28 “entitled, for the purpose of performing the counsel’s functions, to enter an appearance in any
proceeding before any court of the United States or of any State or political subdivision thereof
without compliance with any requirements for admission to practice before such court.” 2 U.S.C.
§ 5571.

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2019, I caused the foregoing document to be filed via the U.S. District Court for the Northern District of California's CM/ECF system, which I understand caused service on all registered parties.

/s/ Megan Barbero
Megan Barbero