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**Pro hac vice* application forthcoming

Attorney for Amicus Curiae | Additional Attorney for Amicus Listed Below

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

CHRISTOPHER KOHLS,

Plaintiff,

v.

ROB BONTA, *et al.*,

Defendants.

No. 24-cv-02527-JAM-CKD

**MOTION FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF NEITHER
PARTY ON BEHALF OF
PROTECT DEMOCRACY
PROJECT**

Date: September 30, 2024

Dept: 6

Judge: Hon. John A. Mendez

Trial Date: Not Scheduled

Filed: 9/17/2024

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RULE 7.1 CORPORATE DISCLOSURE STATEMENT

The Protect Democracy Project is a nonprofit organization with no parent corporation and in which no person or entity owns stock.

MOTION

The undersigned counsel represent the Protect Democracy Project (“Protect Democracy”). On its behalf, undersigned counsel respectfully request leave to file the attached amicus brief in support of neither party on Plaintiff’s Motion for a Preliminary Injunction, ECF No. 6.

Counsel for Plaintiff, Mr. Frank, informed the undersigned that Plaintiff opposes this motion and asked that the undersigned counsel convey his full response. In full, Mr. Frank emailed the following on Wednesday, September 25, 2024:

Briefing concludes Thursday, and our small nonprofit would be unfairly prejudiced and burdened by anything filed after September 23, especially because we avoided recruiting amici in this procedural posture to avoid burdening the court.

Kohls opposes. We would consent to amicus at a later stage in the case when the briefing isn’t expedited and the amicus isn’t untimely.

Counsel for Defendants informed the undersigned that Defendants do not oppose this motion.¹

While Federal Rule of Appellate Procedure 29 governs amicus participation in the federal courts of appeal, the Federal Rules of Civil Procedure contain no similar rule for amicus briefs filed in the federal district courts. But the Ninth Circuit has made clear that district courts have “broad discretion to appoint amici curiae,” such that an

¹ *Amicus* affirms that no counsel for any party authored this brief in whole or in part and that no person other than *Amicus* or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

1 appellate court will not reverse absent an abuse of discretion. *Hoptowit v. Ray*, 682
2 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*,
3 515 U.S. 472, 487 (1995); *Foothill Church v. Watanabe*, 623 F. Supp. 3d 1079, 1084
4 (E.D. Cal. 2022) (“The district court has broad discretion regarding the appointment
5 of amici.”). “District courts frequently welcome amicus briefs from non-parties
6 concerning legal issues that have potential ramifications beyond the parties directly
7 involved or if the amicus has unique information or perspective that can help the court
8 beyond the help that the lawyers for the parties are able to provide.” *NGV Gaming,*
9 *Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005);
10 *Foothill Church*, 623 F. Supp. 3d at 1085. Indeed, in such circumstances, “[a]n amicus
11 brief should normally be allowed.” *Foothill Church*, 623 F. Supp. 3d at 1084. The
12 touchstone is whether the amicus is “helpful.” *California v. United States Dep’t of*
13 *Lab.*, No. 213CV02069KJMDAD, 2014 WL 12691095, at *1 (E.D. Cal. Jan. 14,
14 2014).

15 *Amicus curiae*, Protect Democracy, is a nonpartisan, nonprofit organization
16 dedicated to preventing our democracy from declining into a more authoritarian form
17 of government. It engages in litigation and other advocacy to protect free and fair
18 elections and challenge abuses of power and tortious conduct, including those that
19 violate constitutional protections for the freedom of speech and a free press. It has
20 litigated extensively on the First Amendment, voting rights, and election
21 administration, including several defamation lawsuits against defendants who spread
22 knowing falsehoods about election workers and voters. It has also engaged in
23 extensive advocacy to oppose laws and regulations that might trample First
24 Amendment rights, while promoting common-sense laws and regulations that support
25 the functioning of our political marketplace.

26 As Protect Democracy lays out in its proposed amicus brief, Mr. Kohls has
27 brought a facial challenge and now seeks a facial preliminary injunction to a California
28

1 law requiring that deceptive political deepfakes be labeled. Eighteen other states have
 2 enacted similar statutes, and Congress is considering enacting various bills that would
 3 likewise regulate deceptive political deepfakes. In these circumstances, the legal issues
 4 the Court must address to resolve Mr. Kohls' motion have potential ramifications far
 5 beyond the parties directly involved.

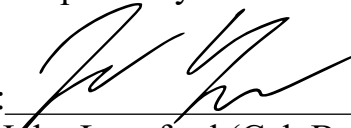
6 Protect Democracy's proposed brief does not support one party or the other on
 7 the ultimate resolution of Mr. Kohls' motion and takes no position on whether
 8 California's AB 2839 should stand or fall in the final analysis. *Amicus* seeks only to
 9 assist the Court and the parties in resolving the novel issues implicated by Mr. Kohls'
 10 motion in a way that comports with the proper First Amendment analysis for facial
 11 challenges and does not unnecessarily short-circuit ongoing legislative efforts to
 12 address the problem of deceptive political deepfakes.

13 For the foregoing reasons, Protect Democracy respectfully requests that the
 14 Court grant the enclosed proposed order granting Protect Democracy leave to file the
 15 proposed amicus brief included as an exhibit to this motion.

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 17
 18 Dated: September 27, 2024

Respectfully submitted,

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 20 By:


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