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11  
 12 UNITED STATES DISTRICT COURT  
 13 EASTERN DISTRICT OF CALIFORNIA  
 14

15 DESIREE MARTINEZ, FRESNO  
 16 HOMELESS UNION, FAITH IN THE  
 VALLEY, and ROBERT MCCLOSKEY,

17 Plaintiffs,

18 v.

19 THE CITY OF FRESNO,

20 Defendant.  
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 28

Case No. 1:22-cv-00307-DAD-SAB

**APPLICATION OF AMICI CURIAE  
 FIRST AMENDMENT COALITION,  
 CALIFORNIA NEWS PUBLISHERS  
 ASSOCIATION, CALIFORNIANS  
 AWARE, NATIONAL PRESS  
 PHOTOGRAPHERS ASSOCIATION,  
 NORTHERN CALIFORNIA CHAPTER  
 OF THE SOCIETY OF PROFESSIONAL  
 JOURNALISTS AND REPORTERS  
 COMMITTEE FOR FREEDOM OF THE  
 PRESS FOR LEAVE TO FILE AMICUS  
 BRIEF IN SUPPORT OF PLAINTIFFS'  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

Crtrm.: 5  
 Judge: The Hon. Dale A. Drozd

1 **I. INTRODUCTION**

2 This case concerns the right to access and distribute information regarding the City of  
3 Fresno’s homeless encampment abatements, commonly referred to as “sweeps.” Proposed *amici*  
4 *curiae* First Amendment Coalition, California News Publishers Association, Californians Aware,  
5 National Press Photographers Association, Northern California Chapter of the Society of  
6 Professional Journalists and Reporters Committee for Freedom of the Press seek leave to file the  
7 amicus brief submitted herewith, to bring the Court’s attention to the press and public’s First  
8 Amendment right to gather and disseminate news and the importance of government transparency,  
9 so that the Court can determine whether to grant Plaintiffs request for a Preliminary Injunction in  
10 this case. This application is made pursuant to Local Rule 230 and the Court’s inherent authority.

11 **II. FACTUAL AND PROCEDURAL BACKGROUND**

12 On February 28, 2022, the City of Fresno amended Section 10-616 of the Fresno  
13 Municipal Code (Fresno, Cal., Am. Ord. 2022-02 (eff. March 31, 2022) (the “Ordinance”), which  
14 substantially impairs the recording of law enforcement and other government officials while they  
15 conduct controversial “abatements” or “sweeps” of encampments where unhoused people are  
16 living. The Ordinance permits city officials, at their discretion, to prevent access to a “restricted  
17 area” of indeterminate size, which effectively prevents the public and the press from documenting  
18 and observing the city’s conduct at the proximity necessary to hold the government properly  
19 accountable.

20 Plaintiffs filed a Complaint against the City of Fresno on March 16, 2022 and a Motion for  
21 a Preliminary injunction on March 30, 2022 in this Court. The City of Fresno has not yet replied.

22 **III. THE COURT HAS DISCRETION TO PERMIT THE FILING OF THE AMICUS  
23 BRIEF AND RELATED DOCUMENTS, AND SHOULD DO SO IN THIS CASE.**

24 **A. The Court Has Discretion to Permit the Submission of the Amicus Brief, and  
25 Leave to File Amicus Briefs Is Liberally Granted.**

26 “The district court has broad discretion to appoint amici curiae. We may reverse an order  
27 appointing amici only if the district judge has abused his discretion.” *Hoptowitz v. Ray*, 682 F.2d  
28 1237, 1260 (9th Cir. 1982), *overruled on other grounds, Sandin v. Conner*, 515 U.S. 472 (1995);  
*Earth Island Inst. v. Nash*, No. 1:19-cv-01420-DAD-SAB, 2019 U.S. Dist. LEXIS 214578, at \*3

1 (E.D. Cal. 2019). “There are no strict prerequisites that must be established prior to qualifying for  
2 amicus status; an individual seeking to appear as amicus must merely make a showing that his  
3 participation is useful to or otherwise desirable to the court.” *In re Roxford Foods Litig.*, 790 F.  
4 Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D.  
5 La. 1990)).

6 “Generally, courts have exercised great liberality in permitting an amicus curiae to file a  
7 brief in a pending case, and, with further permission of the court, to argue the case and introduce  
8 evidence.” *In re Roxford Foods Litig.*, 790 F. Supp. at 997 (quoting *United States v. Louisiana*,  
9 751 F. Supp. at 620). Indeed, “[d]istrict courts frequently welcome amicus briefs from non-parties  
10 concerning legal issues that have potential ramifications beyond the parties directly involved or if  
11 the amicus has ‘unique information or perspective that can help the court beyond the help that the  
12 lawyers for the parties are able to provide.’ ” *Safari Club Int’l. v. Harris*, No. 2:14-cv-01856-  
13 GEB-AC, 2015 U.S. Dist. LEXIS 4467, at \*2 (E.D. Cal. 2015) (quoting *NGV Gaming, Ltd. v.*  
14 *Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)) (quotation omitted).  
15 “Even when a party is very well represented, an amicus may provide important assistance to the  
16 court.” *Jamul Action Comm. v. Stevens*, 2014 U.S. Dist. LEXIS 107582, at \*18 (E.D. Cal. 2014)  
17 (quoting *Neonatology Associates, P.A. v. C.I.R.*, 293 F. 3d 128, 132 (3d Cir. 2002)) (Alito, J.).  
18 “The touchstone is whether the amicus is helpful.” *Earth Island Inst. v. Nash*, No. 1:19-cv-01420-  
19 DAD-SAB, 2019 U.S. Dist. LEXIS 214578, at \*4. Under these standards, there is ample reason  
20 for the Court to consider this amicus brief and the supporting documents submitted herewith.

21 **B. The Amicus Brief, Which Demonstrates the First Amendment Right to Gather**  
22 **and Disseminate the News and the Importance of Government Transparency,**  
**Is Helpful and Should Be Accepted.**

23 In more depth than is possible in Plaintiffs’ brief, the Amicus Brief submitted herewith  
24 highlights the importance of recording and documenting the conduct of law enforcement and other  
25 government officials at encampment sweeps. The press and public have a First Amendment right  
26 to document and photograph matters of public interest that occur in public, which undoubtedly  
27 includes encampment sweeps. On that note, the public also enjoys a First Amendment right to  
28 receive the news.

1 The Amicus Brief also emphasizes that an accurately informed public is essential for the  
2 functioning of our democracy. The people must have access to information about what their  
3 government is doing so that they may direct its behavior. Government transparency through first-  
4 person accounts, photographs, and videos is necessary to keep the public informed. The City's  
5 attempt to secure unbridled authority to cordon off large areas would effectively allow it to  
6 conduct encampment sweeps in secret, which would undermine transparency and faith in  
7 government and enable to abuse the most vulnerable.

8 This brief outlines these issues for the Court, and the information contained in the brief  
9 will assist the Court in deciding whether to grant Plaintiffs' Motion for Preliminary Injunction.  
10 Amici therefore respectfully submit that the amicus brief submitted herewith should be accepted  
11 for filing by the Court, and request that the Court so order.

12 **IV. CONCLUSION**

13 *Amici Curiae* First Amendment Coalition, California News Publishers Association,  
14 Californians Aware, National Press Photographers Association, Northern California Chapter of the  
15 Society of Professional Journalists and Reporters Committee for Freedom of the Press ask that the  
16 Court grant this application and accept and consider this amicus brief and the supporting  
17 documents submitted herewith.

18 Dated: April 11, 2022

19 FIRST AMENDMENT COALITION

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