



February 5, 2021

**BY ECF**

Honorable Gregory H. Woods  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

RE: *City of Syracuse, et al. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives, et al.*, Case No. 20-cv-06885-GHW

Dear Judge Woods:

I, Cody J. Wisniewski, along with local counsel David C. McDonald and David D. Jensen, represent Zachary Fort; Frederick Barton; BlackHawk Manufacturing Group, Inc., d/b/a 80% Arms ("80% Arms"); and Firearms Policy Coalition, Inc. ("FPC") (collectively, "*Amici*") in the above-referenced matter. *Amici* write to this Court to respectfully request leave to file an *amici curiae* brief in support of Federal Defendants' Cross-Motion for Summary Judgment and Opposition to Petitioners' Motion for Summary Judgment, which brief is attached hereto. *Amici* contacted counsel for the parties in this matter to ascertain their clients' positions on *Amici's* motion. Counsel for Petitioners do not oppose this motion and counsel for Federal Defendants take no position on this motion.

*Amici* have a direct and personalized interest in this matter, as has already been recognized by this Court. ECF No. 83, at 5.<sup>1</sup> After denying *Amici's* motion to intervene, this Court nevertheless invited *Amici* to file an *amici curiae* brief. ECF No. 83. *Amici* are timely filing this request, based on this Court's Order dated January 25, 2021, directing *Amici* "to file any *amicus* brief by no later than February 5, 2021." ECF No. 93.

Given there is no applicable rule of civil procedure governing the filing of *amicus curiae* briefs, *cf.* Fed. R. App. P. 29, "[d]istrict courts have broad discretion to permit or deny an appearance as *amicus curiae* in a case." In *GLG Life Tech Corp. Securities Litigation*, 287 F.R.D. 262, 265 (S.D.N.Y. Nov. 9, 2012) (quoting *Auto. Club of N.Y. v. Port Auth. of N.Y. & N.J.*, No. 11-cv-06746-RJH, 2011 WL 5865296, at \*1 (S.D.N.Y. Nov. 22, 2011)). "The usual rationale for *amicus curiae* submissions is that they are of aid to the court and offer insights not available from the parties." *Auto. Club*, No. 11-cv-06746-RJH, 2011 WL 5865296, at \*1 (citing *United States v. El-Gabrowni*, 844 F. Supp. 955, 957 n.1 (S.D.N.Y. 1994)). "An *amicus* brief should normally be allowed . . . when the *amicus* has an interest in some other case that may be affected by the decision

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<sup>1</sup> All CM/ECF citations in this letter motion are to the Court's electronically maintained docket in this matter and all pin cites are to the page number applied by the CM/ECF system, not to the filing's internal pagination numbers.

in the present case . . . or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007) (citing *Ryan v. Commodity Futures Trading Com’n*, 125 F.3d 1062, 1063 (7th Cir. 1997)).

*Amici* have substantial legal and economic interests in the outcome of this litigation. “If Plaintiffs are successful, FPC’s members—producers, sellers, purchasers, and possessors of unfinished frames and receivers including Mr. Fort, Mr. Barton, and 80% Arms—will be impacted.” ECF No. 83, at 5. This Court also acknowledged that *Amici*’s property and “existing business practices will be made illegal and may put some entities out of business entirely.” *Id.* (citing ECF No. 44, at 18–19). Furthermore, this Court found that *Amici* “have shown that their interest may be impaired by invalidation of the ATF’s interpretive rule and determination letters.” *Id.* In addition, *Amici* note that they provide a different perspective from that of Federal Defendants—apparent in *Amici*’s attached brief, which, amongst other differences, argues against the Court’s application of *Chevron* deference in this matter. *See Amici* Br. at 18–22 (attached hereto). Finally, *Amici* 80% Arms, which has undergone the ATF’s evaluation process, offers this Court a perspective not currently represented. *See id.* at 20–21.

Accordingly, *Amici* respectfully request this Court grant them leave to file an *amici curiae* brief in this matter, which brief is attached hereto. I thank the Court for its attention to this matter.

Respectfully Submitted,

/s/ Cody J. Wisniewski

Cody J. Wisniewski\*

\*Admitted *Pro Hac Vice*

David C. McDonald

MOUNTAIN STATES LEGAL FOUNDATION

2596 South Lewis Way

Lakewood, Colorado 80227

(303) 292-2021

cody@mslegal.org

dmcdonald@mslegal.org

David D. Jensen

DAVID JENSEN PLLC

33 Henry Street

Beacon, New York 12508

(212) 380-6615

david@djensenpllc.com

*Attorneys for Amici Curiae*