UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Case No. 21-15440

Robert S. Mann, Sr., Deborah Mann; Vern Murphy-Mann; Zachary Mann; and, William Mann,

Plaintiffs - Appellees,

vs.

City Of Sacramento, Sacramento Police Department; Samuel D. Somers, Jr.; John C. Tennis; and, Randy R. Lozoya,

Defendants - Appellants.

On Appeal From An Order Of The United States District Court
For The Eastern District Of California
The Honorable William B. Shubb
United States District Court Case No.:21-cv-01201-WBS-DB

BRIEF BY AMICI CURIAE THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, CALIFORNIA STATE ASSOCIATION OF COUNTIES, THE LEAGUE OF CALIFORNIA CITIES, AND THE CALIFORNIA ASSOCIATION OF JOINT POWERS AUTHORITY IN SUPPORT OF APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Amici curiae, the International Municipal Lawyers Association (IMLA), California State Association of Counties (CSAC), the League of California Cities (Cal Cities), and the California Association of Joint Powers Authority (CAJPA) are non-profit corporations, have no parent corporation and issue no stock.

IDENTITY STATEMENT AND INTEREST OF AMICI[1]

IMLA has been an advocate and resource for local-government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and state supreme and appellate courts. IMLA has identified this case as one of interest to its members.

CSAC's membership consists of the 58 California Counties. CSAC sponsors a Litigation Coordination Program, administered by the County Counsel's Association of California and overseen by the Association's Litigation Overview Committee. The Litigation Overview Committee monitors litigation of concern to

[1] All counsel consented to the filing of this brief.

counties statewide and has determined this case raises issues affecting all counties.

Cal Cities is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

CAJPA is a statewide association for insurance-based risk-sharing pools and has served as an information and educational network for joint powers authorities since 1981. CAJPA strives to provide leadership, education, advocacy, and assistance to public-sector risk pools to enable them to enhance their effectiveness. Its membership consists of more than 80 joint powers authorities representing municipalities, school districts, transit agencies, fire agencies and similar public entities throughout the State of California. CAJPA has identified this case as one directly impacting its members, who have a significant interest in the outcome.

STATEMENT OF AUTHORSHIP AND FINANCIAL SUPPORT

No counsel for any party in this case authored any part of this brief. No party or counsel for any party in this case contributed money intended to fund preparation or submission of

this brief. No person or entity other than amici and their counsel contributed money intended to fund preparation or submission of this brief.

INTRODUCTION

Joseph Mann died after an encounter with City of Sacramento law enforcement officers in 2016. Soon after his estate and Father filed a lawsuit, the City of Sacramento settled with Mann's father and estate for $719,000, a settlement that included claims for the father's loss of familial association rights under the Fourteenth Amendment. The City believed that settlement would end litigation over Joseph Mann's death. But the City was wrong. A few months after settling, Mann's two siblings subsequently sued and currently maintain damage claims under 42 U.S.C. section 1983 for violations of their First Amendment rights to associate with their brother.

This appeal presents the threshold issue of whether siblings have First Amendment association rights with each other. No published Ninth Circuit opinion holds siblings have First Amendment association rights with each other. And, as the district court recognized, two unpublished panel decisions *in this case* came to contradictory conclusions on the issue. *Compare Mann v. City of Sacramento*, 748 F. App'x 112, 115 (9th Cir. 2018) (*Mann II*) (Siblings *do not have* First Amendment association rights), *with Mann v. Sacramento Police Dep't*, 803 F. App'x 142, 143 (9th Cir. 2020) (*Mann III*) (Siblings *do have* First Amendment association rights); *see Mann v. City of Sacramento*, No. 2:17-cv-01201 WBS DB, 2021 U.S. Dist. LEXIS 34757, at *6-7

(E.D. Cal. Feb. 24, 2021) (*Mann IV*) ("The court's discussion of whether plaintiffs have adequately stated a § 1983 claim for deprivation of their First Amendment rights is complicated by the fact that the *Mann II* and *Mann III* decisions appear to be plainly contradictory. While *Mann II* stated that the right of intimate association should be analyzed in the same manner regardless of whether it is characterized under the First or Fourteenth Amendments, and that *Ward* bars intimate association claims by adult, non-cohabitating siblings, *Mann III* stated that Ward did not create a cohabitation requirement, and addressed only Fourteenth Amendment association claims, implying that the contours of an intimate association claim may differ depending on which amendment the claim is brought under.")[2]

Assuming siblings have First Amendment association rights with each other, this appeal presents other equally important issues that, without definitive answers, create obstacles to settling these types of claims in the future for local governments. To name a few: Does the association right exist as a matter of law because of blood relation? If so, does that mean, aunts, uncles, cousins, nephews, or any other blood relatives have First Amendment association rights? What about siblings

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[2] Amici question *Mann III's* characterization of *Mann II's* discussion of the First Amendment as "dicta." *Mann III*, 803 F. App'x at 143. Appellants' briefing in this case shows it was an issue raised by the parties and decided. Amici, however, leave it to this panel to determine how to reconcile these two contradictory decisions.

unrelated by blood (e.g., siblings adopted from different biological parents, step-siblings)? Or does a blood relationship not matter, and the existence of the association right rise or fall on the nature of the relationship? If so, can other relatives maintain First Amendment association claims? What about friends, roommates, classmates, or co-workers? And, regardless of the basis for the association right, what are the elements of the claim? What is the culpability standard for the defendant? How will recognition of sibling First Amendment rights of association impact the ability of public entities to evaluate and resolve claims? This Court's decision will have an impact on all these unanswered questions and will implicate important public policy issues around settling Section 1983 claims.

Amici accordingly try to help this Court make sense of the issues and view them in context of how public entities assess risk and make settlement determinations. Amici first discuss the state of the law on loss of familial association claims under the First and Fourteenth Amendment. Amici then explain the negative ramifications arising from adopting the fact driven *Rotary Club*[3] factors to determine sibling association rights under the First Amendment and how such a rule would dramatically undermine settlement of Section 1983 claims.

[3] *Board of Dirs. v. Rotary Club*, 481 U.S. 537 (1987)

STATE OF THE LAW REGARDING LOSS OF ASSOCIATION CLAIMS

"There are two distinct forms of freedom of association: (1) freedom of intimate association, protected under the Substantive Due Process Clause of the Fourteenth Amendment; and (2) freedom of expressive association, protected under the Freedom of Speech Clause of the First Amendment." *Erotic Service Provider Legal Education & Research Project v. Gascon*, 880 F.3d 450, 458 (9th Cir. 2018), *as amended*, 881 F.3d 792 (9th Cir. 2018); *see Keates v. Koile*, 883 F.3d 1228, 1236 (9th Cir. 2018) ("The First Amendment also protects 'family relationships, that presuppose "deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life."' *Lee v. City of Los Angeles*, 250 F.3d 668, 685 (9th Cir. 2001) (quoting *Board of Dirs. v. Rotary Club*, 481 U.S. 537, 545, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987))").

Although the First Amendment association right is at issue in this appeal, Amici believe it is necessary to first examine the Fourteenth Amendment association right before turning to the First Amendment.

A. Fourteenth Amendment Familial Association Claims

This Court's precedents on Fourteenth Amendment familial association claims are clear. Bright lines exist.

"Few close relationships - even between blood relatives - can serve as a basis for asserting Fourteenth Amendment loss of

companionship claims." *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1058 (9th Cir. 2018). Indeed, siblings do not have Fourteenth Amendment association rights with each other. *Ward v. City of San Jose*, 967 F.2d 280, 283-84 (9th Cir. 1991), *as amended; see also J.P. v. County of Alameda*, 803 F. App'x 106, 109 (9th Cir. 2020) ("In *Ward* ..., we explicitly ruled that siblings do not possess a cognizable liberty interest to assert a loss of familial association claim under the Fourteenth Amendment."). To be sure, *Mann II* affirmed dismissal of the siblings' Fourteenth Amendment association claims. *See Mann II*, 748 F. App'x at 115.

The elements of a Fourteenth Amendment association claim arising out of the death of a relative after an encounter with law enforcement are also clear. The decedent must have suffered a violation of his or her constitutional rights, *Gausvik v. Perez*, 392 F.3d 1006, 1008 (9th Cir. 2004), and the officer's conduct must "shock the conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Where there is time for actual deliberation by the officer, "'deliberate indifference' may suffice to shock the conscience." *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010). In situations where an officer must act quickly in response to rapidly changing circumstances, conscience-shocking conduct exists only when the officer acts with a "purpose to harm, unrelated to a legitimate law enforcement objective." *A.D. v. Cal. Highway Patrol*, 712 F.3d 446, 450 (9th Cir. 2013); *see Foster v. City of Indio*, 908 F.3d 1204, 1211 (9th Cir. 2018) (discussing what is and what is not a legitimate law enforcement objective).

B. First Amendment Familial Association Claims

This Court's published precedents establish parents and children have First Amendment association rights with each other. *Keates*, 883 F.3d at 1236 (parent/child); *Lee*, 250 F.3d at 685-86 (parent/child). Published precedent also establishes First Amendment loss of familial association claims are analyzed the same as Fourteenth Amendment loss of association claims. *Lee*, 250 F.3d at 685-86.

However, the law in this Circuit regarding sibling association rights under the First Amendment is not clear. No published decision from this Court has held siblings enjoy First Amendment association rights with each other. And to the extent the right exists, no published decision from this Court has articulated the elements of First Amendment loss of familial association claim to be anything different that a claim under the Fourteenth Amendment.

Because *Lee*, 250 F.3d at 685-86 analyzed First and Fourteenth Amendment loss of familial association claims together without distinguishing between the two constitutional rights, some courts, including the panel issuing *Mann II*, rely on *Ward* to hold siblings have no First Amendment association rights with each other because they do not have those rights under the Fourteenth Amendment. *See, e.g.*, *J.P.*, 803 F. App'x at 109 ("In *Ward* ..., we explicitly ruled that siblings do not possess a cognizable liberty interest to assert a loss of familial association claim under the Fourteenth Amendment. No basis exists to disregard this precedent simply because the claim is raised under

the First Amendment rather than the Fourteenth Amendment. Notably, the dissent cites no case to that effect."); *Mann II*, 748 F. App'x at 115 ("Because we analyze the right of intimate association in the same manner regardless [of] whether we characterize it under the First or Fourteenth Amendments, *Ward* necessarily rejected any argument that adult, non-cohabitating siblings enjoy a right to intimate association."); *Monterrosa v. City of Vallejo,* No. 2:20-cv-01563-TLN-DB, 2021 U.S. Dist. LEXIS 26791, at *33, 35 (E.D. Cal. Feb. 10, 2021); ("As Michelle and Ashley are adult siblings attempting to plead a § 1983 claim for violations of their right to familial association under the Fourteenth Amendment, their claim is foreclosed by the Ninth Circuit's holding in *Ward*." "The Ninth Circuit has expressly stated that '[n]o viable loss-of-familial-association claim exists for siblings under the First Amendment,' and thus far, the loss of familial association claims have been limited to the parent-child relationship. *J.P.*, 803 F. App'x at 109. The Ninth Circuit noted in *Ward* that it 'explicitly ruled that siblings do not possess a cognizable liberty interest to assert a loss of familial association claim under the Fourteenth Amendment' and '[n]o basis exists to disregard this precedent simply because the claim is raised under the First Amendment rather than the Fourteenth Amendment.' *Id.*"); *Briscoe v. City of Seattle*, 483 F. Supp. 3d 999, 1002 n.2 (W.D. Wash. 2020) (Citing *Ward* for the proposition that "[a]s Taylor's sister, and not his child, parent, or spouse, Briscoe cannot assert a substantive due process claim.").

Although no published decision from this Court has found *Ward* does not preclude sibling First Amendment association claims, the panel in *Mann III* did. *Mann III*, 803 F. App'x at 143-44 ("*Ward* did not create a cohabitation requirement or purport to govern First Amendment claims; *Ward* addressed only Fourteenth Amendment intimate-association claims brought by adult siblings. *See Ward*, 967 F.2d at 284....We therefore remand for consideration of Plaintiffs' First Amendment claim under the standard set forth in *Rotary Club* and its progeny.") (citing *Rotary Club,* 481 U.S. at 545 (1987)); *see Estate of Pimentel v. City of Ceres*, No. 1:18-cv-01203-DAD-EPG, 2019 U.S. Dist. LEXIS 106407, at *14 (E.D. Cal. June 24, 2019) ("[M]ultiple district courts have distinguished *Ward* and found that claims for freedom of association under the First Amendment may be brought outside of the parent-child context. [Citations].").

As stated earlier, whether sibling association rights exist under the First Amendment is only the first question. If they do, what are the elements of that claim? As many district courts have correctly observed, this Court has not articulated the elements of a First Amendment familial association claim for parents and children, much less siblings. *See e.g.*, *Tennyson v. County of Sacramento*, No. 2:19-cv-00429-KJM-EFB, 2021 U.S. Dist. LEXIS 99971, at *20 (E.D. Cal. May 25, 2021) ("Although the theoretical foundations of a First Amendment claim for interference with family relationships are well understood, it is unclear what a plaintiff must plead and prove to succeed in asserting such a claim."); *Estate of Mendez v. City of Ceres*, 390

F. Supp. 3d 1189, 1215 (E.D. Cal. 2019)("[T]he Ninth Circuit has held that 'claims under both the First and Fourteenth Amendment for unwarranted interference with the right to familial association could survive a motion to dismiss[]'" but "[l]ess clear are the exact contours of familial relationship that will permit recovery under Ninth Circuit precedent…."); *Kaur v. City of Lodi*, 263 F. Supp. 3d 947, 973 (E.D. Cal. 2017) ("Although the theoretical foundations of a First Amendment claim for interference with family relationships are well understood, it is unclear what a plaintiff must plead and prove to succeed in asserting such a claim. However, there appears to be 'no Ninth Circuit case setting out specifically the conduct or elements that constitute violation of familial association under the First Amendment.' [Citations]").

Faced with the absence of direction from this Court, district courts analyze First Amendment association claims the same as Fourteenth Amendment claims, analyzing the officer's conduct under the "deliberate indifference" standard or the "purpose to harm unrelated to a legitimate law enforcement objective" standard. *Kaur*, 263 F. Supp. 3d at 971-74 (parent claim); *Valdez v. City of Phoenix*, No. CV-18-0921-PHX-DGC, 2019 U.S. Dist. LEXIS 182312, at *10-14 (D. Ariz. Oct. 21, 2019) (parent claim) ; *Smith v. County of Santa Cruz,* No. 17-CV-05095-LHK, 2019 U.S. Dist. LEXIS 101958, at *43 (N.D. Cal. June 17, 2019) (sibling claim); *see Tennyson*, 2021 U.S. Dist. LEXIS 99971, at *19-21 (E.D. Cal. May 25, 2021) (analyzing parent and children's First and Fourteenth Amendment loss of familial association claims

together); *Lucas v. County of Fresno*, No. 1:18-cv-01488-DAD-EPG, 2019 U.S. Dist. LEXIS 223331, at *6-7 (E.D. Cal. Dec. 30, 2019) (same on claims by wife, children and parents); *Thomas v. San Diego HHS Agency*, No. 18cv1466-MMA (NLS), 2018 U.S. Dist. LEXIS 199768, at *6-7 (S.D. Cal. Nov. 26, 2018) (same on claims by parent and child).

This appeal presents an opportunity to provide clear guidance as to the state of the law on First Amendment intimate associational claims and the standard under which they should be analyzed. As discussed below, Amici believe a categorical rule for these types of claims is necessary for public policy reasons.

RAMIFICATIONS OF USING THE *ROTARY CLUB* FACTORS TO DETERMINE WHETHER SIBLINGS HAVE FIRST AMENDMENT ASSOCIATION RIGHTS WITH EACH OTHER

A. Lack Of Direction To The District Court By *Mann III*

Mann III remanded to the district court to consider the plaintiffs' First Amendment claim "for consideration ... under the standard set forth in *Rotary Club* and its progeny." 803 F. App'x at 144. However, *Mann III* gave the district court no more direction than that. It did not purport to outline what the plaintiffs had to plead to assert a First Amendment association claim. *See Mann IV*, 2021 U.S. Dist. LEXIS 34757, at *7 ("*Mann III* did not purport to define exactly how far a claim for intimate association under the First Amendment extends, but the fact that the Ninth Circuit reversed this court's dismissal of plaintiffs' claim under the First Amendment (*see* Docket No. 70) implies

that, at least in certain circumstances, the right of siblings to intimately associate falls within the First Amendment's ambit. [fn]").

Implicitly assuming a blood relationship itself is insufficient to confer First Amendment association rights between siblings, the district court examined *Rotary Club* in its attempt to comply with *Mann III's* direction:

> [T]he Court was tasked with determining whether the relationship between members of the Rotary Club, an international fraternal organization of almost a million members, was sufficiently intimate to warrant protection under the First Amendment. *See Rotary Club*, 481 U.S. at 539-40. The Court's analysis began by recognizing that 'the First Amendment protects those relationships, including family relationships, that presuppose "deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life."' *Rotary Club*, 481 U.S. at 545-46 (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 622, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984)). Though the Court noted that it had accorded constitutional protection to relationships "includ[ing] marriage, the begetting and bearing of children, child rearing and education, and cohabitation with relatives," it indicated that this list was not exhaustive, and even pointed out that it had "not held that constitutional protection is restricted to relationships among family members." *Id.* at 545 (collecting cases). According to the Court, other relationships, 'including family relationships,' may also be protected to the extent that the 'objective characteristics' of the relationship demonstrate that it is 'sufficiently personal or private to warrant constitutional protection.' *Id.* at 545-46. The Court listed four factors it would consider in making such a determination: 'size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship.' *Id.* at 546 (citing *Roberts*, 468 U.S. at 620).

Mann IV, 2021 U.S. Dist. LEXIS 34757, at *7-8. The district court concluded "the frequency and significance of the

interactions among parties to the relationship at issue are key factors in determining whether the right to intimate association is protected under the First Amendment." *Id.* at *10. The district court further observed: "The relationships to which protection has been afforded generally involve interactions that occur on a daily, or almost daily basis, and often involve intensely private exchanges, whether it be because the parties live together, [citation], or because some element of caretaking or custody is present, [citation]." *Id.* (citing *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1221 (9th Cir. 2012) and *Sanchez v. County of Santa Clara*, No. 5:18-cv-01871-EJD, 2018 U.S. Dist. LEXIS 140140, 2018 WL 3956427, at **8-9 (N.D. Cal. Aug. 17, 2018)). Analyzing the *Rotary Club* factors, the district court concluded the siblings sufficiently plead First Amendment association claims. *Mann IV*, 2021 U.S. Dist. LEXIS 34757 at *11-20.

B. Using The Rotary Club Factors To Determine The Existence Of Sibling First Amendment Association Claims Is Problematic And Creates Real World Problems

The *Rotary Club* factors require determining "whether a particular relationship is protected by the right to intimate association [under the First Amendment]" by "look[ing] to 'size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship.' *Bd. of Dirs. of Rotary Int'l*, 481 U.S. at 546." *Fair Housing Council*, 666 F.3d at 1220-21.

The first problem with using the *Rotary Club* factors to determine the existence of First Amendment association rights is

the factors are entirely fact-based and can be applied to nearly any relationship, familial or otherwise. *See, e.g, Fair Housing Council*, 666 F.3d at 1220-21 (roommates); *Sanchez v. County of Santa Clara*, No. 5:18-cv-01871-EJD, 2018 U.S. Dist. LEXIS 140140, at *20-23 (N.D. Cal. Aug. 17, 2018) (grandparents); *Graham v. County of Los Angeles*, No. CV 10-05059 DDP (Ex), 2011 U.S. Dist. LEXIS 95469, at *5-6 (C.D. Cal. Aug. 25, 2017) (fiancés). Thus, there is no real limit to who could assert First Amendment loss of association claims. And because the *Rotary Club* factors are extremely factual and relationship specific, whether it is a sibling relationship or some other one, the second problem is First Amendment association claims will require the trier of fact to resolve the existence or nonexistence of the association right in the first instance. This will render these claims nearly impossible to resolve short of trial. *See e.g., Club Level, Inc. v. City of Wenatchee*, 618 F. App'x 316, 318 (9th Cir. 2015) ("Given that there is ample evidence in the record demonstrating that, for at least part of the relevant time period, Fila and Silvestre were roommates, the district court erred in granting the defendants' motion for summary judgment on the ground that Fila 'failed to raise a genuine issue of material fact about whether Fila's relationship with Silvestre qualifies as a protected association[]" under the First Amendment).

Using the *Rotary Club* factors to determine the existence of sibling First Amendment association rights (or the existence of First Amendment association rights based on other relationships) will make evaluating and settling claims arising out of a law

enforcement related death extremely difficult for public entities, if not impossible. There are too many potential plaintiffs to properly evaluate and settle claims.

Under the Fourteenth Amendment, public entities know only parents and children have association rights. It is a limited and relatively easy to determine universe of claimants. In contrast, using the *Rotary Club* factors to determine sibling First Amendment association rights expands the universe of potential claimants without providing public entities any meaningful way to evaluate the universe of potential claimants short of litigation and discovery. Public entities will first have to determine whether siblings exist. While that itself could pose problems for any number of reasons, the bigger problem arises after the identification of siblings.

After a public entity identifies the universe of siblings, the public entity will have to further examine the nature and extent of the relationship between the siblings just to determine whether a First Amendment association right even exists. There is no way to do this short of litigation and discovery. The number of pre-litigation settlements will surely go down because public entities have no means to ensure they are settling all potential claims.

This case is a perfect example of the problem. The City of Sacramento thought it was putting an end to litigation when it settled with the decedent's estate and father just four months after the case was filed in 2016. But now they are embroiled in litigation with the decedent's siblings at the expense of the public

fisc, which has been pending since 2017. And use of the *Rotary Club* factors to determine whether the decedent's siblings have First Amendment association rights means the litigation likely will not end until the trier of fact tells the City which of the decedent's siblings, if any, have a First Amendment association right.

The problems just articulated become far more pronounced by the inevitable "slippery slope" if *Rotary Club* is the standard used to determine the existence of First Amendment association claims in cases like this. As already said, the *Rotary Club* factors are not necessarily limited to familial relationships. Any relationship between any two people could theoretically satisfy the *Rotary Club* factors, and thus qualify for First Amendment association protection. Given that reality, do public entities now have to determine and evaluate every relationship the decedent had with anybody should they wish to settle a claim? There is no way to do this.

Because of the ambiguity outlined above both in terms of the universe of possible plaintiffs and in terms of evaluating those individuals' relationships with the decedent, settlement of these claims will be nearly impossible. That result is directly contrary to public policy, which strongly favors settlement of judicial claims. *See Williams v. First Nat. Bank,* 216 U.S. 582, 595 (1910) (noting that courts favor "[c]ompromises of disputed claims"); *Speed Shore Corp. v. Denda*, 605 F.2d 469, 473 (9th Cir. 1979) ("It is well recognized that settlement agreements are judicially favored as a matter of sound public policy"); *United*

States v. McInnes, 556 F.2d 436, 441 (9th Cir.1977) (indicating the Ninth Circuit is "committed to the rule that the law favors and encourages compromise settlements"). This is because settling claims serves important purposes for litigants, the judicial system, and society at large. *See Ahern v. Cent. Pac. Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988), *quoting Speed Shore Corp.* 605 F.2d at 473 (recognizing "[s]ettlement agreements conserve judicial time and limit expensive litigation"); *MWS Wire Indus., Inc. v. California Fine Wire Co.*, 797 F.2d 799, 802 (9th Cir. 1986) (setting forth importance of settling claims, including allowing parties to avoid of "expense, delay, and uncertainty" and preventing burdens on court system through trials).

The finality of settlement is particularly important in Section 1983 cases involving use of force. From the defendants' perspective, these claims can be expensive and often carry attorney's fees with them. The longer a case is litigated where facts and the law dictate settlement is warranted, the more expensive the bill to the taxpayers will ultimately be. Thus, to protect the public fisc, settlement is often warranted and more importantly in some cases, the sooner the case can be settled, the better. But as set forth above, that will simply not be possible in many of these cases given the uncertainty in using the *Rotary Club* factors because an entity would never favor settlement without an ability to have finality as to the claim.

Similar concerns favor the ability to settle these claims for plaintiffs. Section 1983 claims can be amongst the most

emotionally taxing for plaintiffs, particularly those that involve the death of a loved one. In cases that involve use of force short of deadly force, the plaintiffs can sometimes be injured and have medical bills that they need to pay. Settlement allows plaintiffs to avoid protracted litigation that can take years and avoid risk of an adverse outcome. One need look no further than this case to see how long litigation can take in some of these cases. The siblings filed suit in 2017, this is the third trip to this Court, *and the case has not proceeded past the pleading stage*.

Allowing a First Amendment association claim to proceed under the *Rotary Club* analysis ignores these important public policy issues. Should that outcome seem unfair, the complaint should be to the state legislature, which is far better suited to weigh the myriad of questions regarding who should be able to bring a wrongful death / loss of association claim than the federal judiciary is. California, like most other states, statutorily established the universe of people that can recover their own damages for the death of another. *See* Cal. Civ. Proc., § 377.60. Finding such a claim hiding in the First Amendment, however, is not warranted and surely exceeds what the Framers envisioned.

Respectfully submitted,

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