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No. 16-55727 and 16-55786

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In the  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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AMERICANS FOR PROSPERITY FOUNDATION,

Plaintiff-Appellee/Cross-Appellant,

v.

XAVIER BECERRA, in his Official Capacity as Attorney General of  
California,

Defendant-Appellant/Cross-Appellee.

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**MOTION TO WITHDRAW THE STATE OF MICHIGAN  
FROM JANUARY 27, 2018 AMICUS BRIEF  
IN SUPPORT OF PLAINTIFF-APPELLEE / CROSS-APPELLANT**

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The State of Michigan moves to withdraw its support for the  
amicus brief filed in this case in support of plaintiff-appellee and cross-  
appellant and provides the following in support of its motion:

1. On January 27, 2018, the State of Michigan under Attorney  
General Bill Schuette joined an amicus brief in support of plaintiff-  
appellee and cross-appellant. On October 5, 2018, the State of Michigan  
under Attorney General Bill Schuette joined an amicus brief in support  
of the petition for rehearing en banc.

2. On January 1, 2019, the new Attorney General in Michigan, Dana Nessel, took office.

3. In Michigan, the Attorney General is the chief law enforcement officer of the State, *Fieger v. Cox*, 734 N.W.2d 602, 604 (Mich. Ct. App. 2007), and the Attorney General has the authority to intervene in any action in which the Attorney General believes the interests of the People of the State of Michigan are implicated, Mich. Comp. Laws §§ 14.28, 14.101.

4. Likewise, under federal law, the State Attorney General represents the legal position for the State. *Cf.* 28 U.S.C. § 2403(b); Fed. R. Civ. P. 5(a)(1)(B).

5. In this matter, Attorney General Nessel has determined that the amicus brief filed on January 27, 2018, and the amicus brief filed on October 5, 2018, no longer represents the legal position of the State of Michigan. Thus, she seeks to withdraw Michigan's support for these amicus briefs.

Wherefore, the State of Michigan respectfully asks this Court to grant this motion to withdraw its support for the previously filed amicus briefs.

Respectfully submitted,

Dana Nessel  
Attorney General

/s/ Fadwa A. Hammoud  
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Date: February 6, 2019

### **CERTIFICATE OF SERVICE**

I certify that on February 6, 2019, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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