

No. 12-15498

In The
United States Court of Appeals
For The Ninth Circuit

RICHARD ENOS, et al.;
Plaintiffs-Appellants,

v.

ERIC J. HOLDER, JR., et al.;
Defendants-Appellees.

On Appeal From The United States District Court
For The Northern District Of California

**CALIFORNIA RIFLE AND PISTOL ASSOCIATION
AND SELF DEFENSE FOUNDATION'S MOTION FOR LEAVE TO FILE
AMICI CURIAE BRIEF IN SUPPORT OF PETITION FOR REHEARING
EN BANC**

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California Rifle and Pistol Association (“CRPA”) and Self-Defense Foundation (“SDF”) seek to file an amici curiae brief in support of Appellants’ Petition for Rehearing En Banc. They have requested and received consent to that filing from Appellants, but as of filing, they have not received a response from Appellees. And so, pursuant to Ninth Circuit Rule 29-2(b), Proposed Amici CRPA and SDF respectfully move this Court for leave to file an amici curiae brief in support of rehearing en banc without the consent of Appellees.

AMICI’S ATTEMPTS TO OBTAIN APPELLEES’ CONSENT

Amici’s counsel began reaching out to Appellees’ counsel, Michael Raab, Benjamin Wagner, and Anisha Dasputa on December 18, 2014, for consent to file a brief in support of petition for rehearing en banc. (Decl. of Laura L. Quesada (“Quesada Decl.”) ¶ 2.) Those early emails to Mr. Wagner and Ms. Dasputa were returned as “undeliverable.” (Quesada Decl. ¶ 2.) Several email requests for consent addressed to Mr. Raab went unanswered, and counsel thereafter attempted to reach him by telephone on December 23, 2014. (Declaration of Anna M. Barvir (“Barvir Decl.”) ¶¶ 2-3; Quesada Decl. ¶ 2.) It was then learned that counsel had been sending messages to a different “Michael Raab.” (Quesada Decl. ¶ 3.) With what they believe to be the correct email addresses and phone numbers, counsel for amici began again reaching out to Appellees’ counsel on December 23, 2014.

(Quesada Decl. ¶ 4.) From December 23 through December 26, counsel made numerous attempts to reach Appellees' counsel via telephone and email to obtain consent to file their brief in support of petition for rehearing en banc. (Quesada Decl. ¶¶ 5-6.) Those communications have gone unanswered. (Barvir Decl. ¶ 4; Quesada Decl. ¶ 7.)

IDENTITY AND INTEREST OF AMICI

Amici are two nonprofit organizations dedicated to defending the Second Amendment and advancing laws that protect the rights of individual citizens. Both organizations have a strong interest in this case because the outcome will directly affect the right of some of their members or supporters to exercise their fundamental right to own and possess a firearm for self-defense or other lawful purposes.

The CRPA regularly participates in litigation challenging unconstitutional or illegal gun control laws, and it works to preserve constitutional and statutory rights of gun ownership, including the right to self-defense, the right to hunt, and the right to keep and bear arms. CRPA is also dedicated to the promotion and preservation of the shooting sports and to providing instruction to the public regarding firearms safety. CRPA's members include law enforcement officers, prosecutors, professionals, firearm experts, the general public, and loving parents.

SDF advocates and provides education regarding the law and practice of self-defense. Specifically, it provides law-abiding individuals with the tools necessary for the safe, ethical, and legal use of firearms in self-defense, and it seeks to challenge laws or policies that prohibit or hinder an individual's right to lawful self-defense.

**CRPA AND SDF'S BRIEF WILL ASSIST THE COURT AND IS
RELEVANT TO THE DISPOSITION OF THIS CASE**

Amici, through their proposed brief, seek to offer their unique experience, knowledge, and perspective to aid the Court in the proper resolution of this case. They have at their service preeminent Second Amendment and firearms law scholars, as well as reputable firearms and self-defense experts and lawyers with decades of experience in firearms litigation. As such, amici respectfully submit that they are uniquely situated to bring an important perspective to the resolution of the issues raised in this appeal.

Amici offer this brief to supplement, rather than duplicate, the efforts of the parties in this case of general public interest. Specifically, Amici's brief will provide this Court with a detailed discussion of the mechanisms available to those convicted of a misdemeanor crime of domestic violence for the restoration of civil firearms rights under both federal and California law. And it argues that en banc

review is appropriate here because this case provides a perfect vehicle for the entire Court to consider the important issue of whether the rights protected by the Second Amendment are considered core, civil rights for purposes of a general civil rights restoration clause alongside the rights to vote, serve on juries, and run for office. Further, amici's proposed brief lays out why Appellees' rejection of California's method for firearms rights restoration does not further the government's purported goals and leads to unjust and absurd results.

No delay in the proceedings will result in the granting of this application and both the CRPA and SDF believe that the proposed amicus curiae brief will be of considerable benefit to the Court. For these reasons, Amici CRPA and SDF respectfully ask this Court to grant leave to file the concurrently filed *[Proposed] Brief of California Rifle and Pistol Association and Self Defense Foundation as Amici Curiae In Support of Petition for Rehearing En Banc*.

Date: December 26, 2014

Respectfully submitted,
MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel
C.D. Michel
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Counsel for Amicus Curiae

DECLARATION OF LAURA L. QUESADA

I, Laura L. Quesada, declare as follows:

1. I am a legal secretary/paralegal employed with Michel & Associates, P.C. I have personal knowledge of each matter and the facts stated herein as a result of my employment with Michel & Associates, P.C., and if called upon and sworn to witness, I could and would testify competently thereto.

2. On or about December 18, 2014, our office sent an email to Appellees' counsel, Anisha Dasgupta, Michael Raab, and Benjamin Wagner seeking their clients' consent to file an amicus curiae brief on behalf of the California Rifle and Pistol Association and the Self-Defense Foundation in *Enos v. Holder*, Case No. 12-15498. The emails to Anisha Dasgupta and Benjamin Wagner were returned as undeliverable. No response was received from Michael Raab.

3. On or about Tuesday, December 23, 2014, I called who I thought to be Appellees' counsel, Michael Raab, on the telephone. It was then that I learned that my office had been in contact with a different attorney Michael Raab.

4. Later that day, I received what I believe to be the correct number for Appellees' attorney, Michael Raab. I called and left a voice message for Mr. Raab seeking his clients' consent to file an amicus brief in support of the petition for rehearing en banc. Mr. Raab did not return my telephone call.

5. On or about Friday, December 26, 2014, I called and left another voice message for Mr. Raab seeking consent to file an amicus brief in support of the petition for rehearing en banc. Again, Mr. Raab did not return my telephone call.

6. That same day, I attempted to reach out to another attorney listed for Appellees, Benjamin Wagner. I received his voice message and learned from listening to the message that Mr. Wagner would be out of the office until January 12, 2014, and would not be checking his voice messages.

7. Prior to filing the Motion for Consent to file an Amicus Brief, I called Mr. Raab's office once more and left a final message seeking consent. As of filing, that call has not been returned.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 26th day of December 2014, at Long Beach, California.



Laura L. Quesada
Declarant

DECLARATION OF ANNA M. BARVIR

I, Anna M. Barvir, declare as follows:

1. I am an associate attorney employed with Michel & Associates, P.C. I am admitted to practice in the Ninth Circuit Court of Appeals and before all courts of the State of California. I have personal knowledge of each matter and the facts stated herein as a result of my employment with Michel & Associates, P.C., and if called upon and sworn to witness, I could and would testify competently thereto.

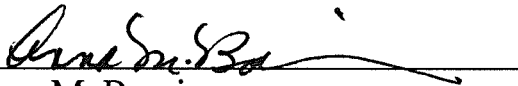
2. On or about December 22, 2014, I received an email from Clinton B. Monfort addressed to “mraab@raabmahoney.com”, asking “Mr. Raab” to respond to his December 18, 2014 request for consent to file an amici curiae brief on behalf of California Rifle and Pistol Association and the Self Defense Foundation in support of en banc review of *Enos v. Holder*, Case No. 12-15498. That night, “Mr. Raab” responded to the communication, though he seemed unfamiliar with the case and so could not then give consent to the filing. I then received an email response from Mr. Monfort clarifying his request.

3. On or about December 23, 2014, I received an email from Mr. Monfort addressed to “mraab@raabmahoney.com”, again asking “Mr. Raab” to respond to his December 18 and December 22 requests for consent to file an amici curiae brief in support of en banc review. I saw no response.

4. On or about December 23, 2014, after our office learned that we had been in contact with a different Michael Raab, I received an email from Mr. Monfort addressed to “michael.raab@usdoj.gov.” Like the previous messages, Mr. Monfort’s December 23 email requested consent to file an amici curiae brief on behalf of California Rifle and Pistol Association and the Self Defense Foundation in support of en banc review of *Enos v. Holder*, Case No. 12-15498. I have received no response from Mr. Raab to Mr. Monfort’s December 23 request for consent.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 26th day of December 2014, at Long Beach, California.



Anna M. Barvir
Declarant

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2014, I served the attached CALIFORNIA RIFLE AND PISTOL ASSOCIATION AND SELF DEFENSE FOUNDATION'S MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF PETITION FOR REHEARING EN BANC by electronically filing it with the court's ECF/CM system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: December 26, 2014

/s/ C.D. Michel

C.D. Michel

Counsel for Amicus Curiae