

No. 19-55376

**In the United States Court of Appeals
for the Ninth Circuit**

VIRGINIA DUNCAN, et al.,
Plaintiffs-Appellees,

v.

XAVIER BECERRA, in his official capacity as
Attorney General of the State of California, et al.,
Defendant-Appellant.

On Appeal from the USDC for the Southern District of California

**MOTION TO EXTEND TIME
TO FILE AMICUS BRIEFS**

NOW COMES Gun Owners of America Inc., Gun Owners Foundation, Gun Owners of California, California Constitutional Rights Foundation, Virginia Citizens Defense League, Conservative Legal Defense and Education Fund, Policy Analysis Center, The Heller Foundation, and Restoring Liberty Action Committee who intend to file an amicus brief in this case in support of the Plaintiffs-Appellees on rehearing *en banc*.

Pursuant to Federal Rule of Appellate procedure 29 and 31 and Ninth Circuit Rules 29-2(e)(2) and 31-2.2(b), the aforementioned amici request an extension of time to file, and in support thereof, show the Court the following:

1. On September 23, 2019, the aforementioned amici filed an amicus brief when this case was before the panel, which opinion has now been vacated.
2. On February 25, 2021, the Court granted *en banc* rehearing and scheduled the case for argument on March 22, 2021.
3. On March 5, 2021, the Court reset argument for June 22, 2021.
4. Defendant-Appellant filed a Motion for Supplemental Briefing on March 18, 2021, which was granted by the Court on March 22, 2021, setting May 14, 2021 as the deadline for parties' supplemental opening briefs, and June 1, 2021 as the deadline for parties' supplemental reply briefs.
5. Amicus curiae supporting the position of the responding party generally would have been allowed thirty-five days from the date of the petition for *en banc* rehearing was granted (or until April 2, 2021) to file a brief. Circuit Rule 29-2(e)(2).
6. However, given that the Court granted the Defendant-Appellant's request for supplemental briefing 25 days after ordering rehearing *en banc*, and given that the rules do not specifically contemplate timing of amicus

briefs when the Court orders supplemental briefing, the aforementioned amici respectfully request an extension of time to file their amicus brief until seven days after the supplemental opening briefs are due in this case.

7. Such extension of time will not affect or delay any proceeding herein since argument is already calendared and a supplemental briefing schedule has issued from the Court, and amicus briefs would be filed 11 days before parties' simultaneous reply briefs are due on June 1, 2021.
8. Undersigned counsel contacted counsel for both Plaintiffs-Appellees Paul Clement and Erin Murphy, and Defendant-Appellant Sam Siegel, seeking consent on filing of this amicus brief and their motion to extend time. Counsel for Plaintiffs-Appellees consented to the filing of this amicus brief and to the extension of time. Counsel for Defendant-Appellant consented to the filing of this amicus brief and asked us to report the government's position on the extension of time as follows: "The Attorney General does not oppose the motion for an extension of time provided that any other amici are subject to the same extended deadline."

WHEREFORE, the aforementioned amici pray for the following:

1. That this Court extend the time to file its supplemental amicus brief until seven days after the simultaneous supplemental initial briefs are due in this case; or alternatively,
2. That this Court extend the time to file such brief until thirty-five days after it issues its ruling on this Motion.

Respectfully submitted,

/s/Jeremiah L. Morgan
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March 30, 2021

CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the word limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 513 words, excluding the parts of the motion exempted by Rule 32(f).

I further certify that the motion complies with the type face requirements of Fed. R. App. P. Rule 32(a)(5), and the type style requirements of Rule 32(a)(6),

because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman.

/s/ Jeremiah L. Morgan
Jeremiah L. Morgan
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2021, I filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/Jeremiah L. Morgan
Jeremiah L. Morgan
Attorney for *Amici Curiae*