

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN et al.

\*

Plaintiffs-Appellees

\*

vs

\*

Civil No: 19-55376

ROB BONTA,

\*

in his official capacity as

Attorney General of the State of California,

Defendant/Appellant

\*

**Motion for Leave to File**  
**BRIEF OF AMICUS CURIAE JOHN CUTONILLI**  
**ON REHEARING *EN BANC* IN SUPPORT OF PLAINTIFFS-APPELLEES**

John Cutonilli files this motion for leave to file the accompanied Amicus Curiae Brief on Rehearing *En Banc* in Support of Plaintiffs-Appellees in accordance with Federal Rules of Appellate Procedures 29(a) and 29-3. Cutonilli endeavored to obtain consent of all parties through email prior to moving the Court for permission to file the proposed brief. Plaintiffs-appellees did not respond to the request for permission to file an amicus brief. Defendant-appellants granted permission to file an amicus brief.

Cutonilli is a resident of Maryland and is subject to laws like those under consideration in the California case. As he is unable to bring suit against Maryland due to the precedent set in *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017), he seeks to provide additional insight into other aspects of the law that were neither addressed in *Kolbe* nor in the court's decision in this case. His intent is to help this court avoid previous errors so that other fellow Americans are not subject to such laws, which are detrimental to public safety. No counsel for any party authored this brief in whole or in part. Apart from amicus curiae, no person contributed money to fund this brief's preparation and submission.

There are several key considerations that this amicus brief brings to light, which are missing in the parties' briefs. It provides a further evidence that Large Capacity Magazines (LCMs) are commonly used. It provides additional analysis of public safety, the limits of the government's interest in public safety as well as the role law-abiding individuals play in providing public safety. It points out the insubstantial nature of the data used by California to justify the law in question and the logical fallacies inherent in their analysis of that data. This brief makes clear why the law will not alleviate the harms it proposes to address in a direct and material way. It also demonstrates the overbroad nature of the California Law.

Respectfully submitted,

/s/ John Cutonilli  
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21 May 2021

## CERTIFICATE OF COMPLIANCE

1. This motion and amicus brief complies with the length limits permitted by Ninth Circuit Rule 32-1 because this motion contains 341 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5), and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type.

Dated: 21 May 2021

/s/ John Cutonilli

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### CERTIFICATE OF SERVICE

I hereby certify that on 21 May 2021, I electronically filed this document with the Clerk of the Court by using the CM/ECF system. I certify that the participants of this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ John Cutonilli

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