

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN et al. *

Plaintiffs-Appellees *

vs * Civil No: 23-55805

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
IN SUPPORT OF PLAINTIFFS-APPELLEES FOR AFFIRMANCE**

John Cutonilli files this motion for leave to file the accompanied Amicus Curiae Brief in Support of Plaintiffs-Appellees for affirmance 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 demonstrates flaws under California's theory of "arms". It provides historical insight into how the key phrases, "dangerous and unusual" and "in common use," relate to societal biases that carry forward into this case. It provides examples of the commonly accepted uses of large capacity magazines ("LCMs"). It demonstrates that "weapons that are most useful in military service" is not a Second Amendment disqualifier. It demonstrates through references to history and precedent, that the people themselves provide public safety. It provides insight into errors that invalidate the scrutiny process used in the previous en banc opinion. It provides clarification of some data about

shots fired in self-defense. It also offers additional textual and history-based interpretation of the text of the Second Amendment.

Respectfully submitted,

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28 December 2023

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 357 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: 28 December 2023

/s/ John Cutonilli

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CERTIFICATE OF SERVICE

I hereby certify that on 28 December 2023, I electronically filed the foregoing United States Court of Appeals for the Ninth Circuit by using the Electronic Document Submission System. I emailed a copy of the document to the following addresses

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