

MOTION INFORMATION STATEMENT

Docket Number(s): 17-839 Caption [use short title] _____

Motion for: Leave to File Brief Amicus Curiae in Support of Petition for Rehearing En Banc United States of America v. Philip Zodhiates

Set forth below precise, complete statement of relief sought:
Leave to file brief amicus curiae in support of petition for rehearing en banc

MOVING PARTY: Downsize DC Foundation
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: _____

MOVING ATTORNEY: William J. Olson
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: _____

William J. Olson, P.C.
370 Maple Ave. W, Suite 4
Vienna, VA 22180-5615

Court-Judge/Agency appealed from: USDC-W.D. NY.

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): Counsel for the parties consented to the filing of the brief amicus curiae.

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
 Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney: /s/ William J. Olson Date: 9/6/18

Service by: CM/ECF Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PHILIP ZODHIATES,

Defendant-Appellant.

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) Docket No. 17-839
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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF
DOWNSIZE DC FOUNDATION, DOWNSIZEDC.ORG, FREE SPEECH
COALITION, FREE SPEECH DEFENSE AND EDUCATION FUND, GUN
OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION, POLICY
ANALYSIS CENTER, AND RESTORING LIBERTY ACTION COMMITTEE
IN SUPPORT OF DEFENDANT-APPELLANT’S
PETITION FOR REHEARING *EN BANC*

The movants, Downsize DC Foundation, DownsizeDC.org, Free Speech Coalition, Free Speech Defense and Education Fund, Gun Owners of America, Inc., Gun Owners Foundation, Policy Analysis Center, and Restoring Liberty Action Committee, are educational and legal organizations. Through their undersigned counsel, the movants hereby request leave of this Court to file their Brief *Amicus Curiae* in Support of Defendant-Appellant’s Petition for Rehearing *En Banc* in the above-captioned action.

The grounds in support of this motion are as follows:

1. The movants, *amici curiae* Downsize DC Foundation, *et al.*, are educational and legal organizations having an interest in the proper interpretation and construction of the Constitution and laws of the United States. All, except Restoring Liberty Action Committee, are exempt from federal taxation under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Restoring Liberty Action Committee is an education organization. This case presents questions of exceptional importance concerning the Fourth Amendment and the rule of law. It is believed that this *amicus curiae* brief presents important analysis supplementing the Defendant-Appellant's petition. Some of these *amici* filed an *amicus curiae* brief before this Circuit on July 5, 2017 during panel consideration with the consent of both parties.

2. Downsize DC Foundation, *et al.*'s *Amicus Curiae* Brief is timely. Rule 29(b) of the Federal Rules of Appellate Procedure provides that an *amicus curiae* brief in support of a petition for rehearing must be filed "no later than 7 days after the petition is filed." The Defendant-Appellant's Petition for Rehearing *En Banc* was filed on September 4, 2018; therefore, Downsize DC Foundation, *et al.*'s *Amicus Curiae* Brief, being filed on September 6, 2018, clearly is timely.

3. In all other respects, Downsize DC Foundation, *et al.*'s *Amicus Curiae* Brief complies with the Federal Rules of Appellate Procedure, including with respect to content and form, F.R.A.P. 29, and with respect to length, F.R.A.P. 29(b)(4), as the brief is no more than 2,600 words.

4. Finally, the parties have consented to the filing of Downsize DC Foundation, *et al.*'s *Amicus Curiae* Brief. As set forth in the Brief itself (page 1, footnote 1), counsel for the movants have contacted counsel for Defendant-Appellant and has received their consent to the filing of Downsize DC Foundation, *et al.*'s Brief *Amicus Curiae*. Counsel for movants has attempted to contact counsel for Plaintiff-Appellee, but has received no response.

WHEREFORE, the movants, *amici curiae* Downsize DC Foundation, DownsizeDC.org, Free Speech Coalition, Free Speech Defense and Education Fund, Gun Owners of America, Inc., Gun Owners Foundation, Policy Analysis Center, and Restoring Liberty Action Committee, pray that their motion be granted and that they be given leave to file their Brief *Amicus Curiae* in Support of Defendant-Appellant's Petition for Rehearing *En Banc* in this matter.

Respectfully submitted,

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Attorneys for Movants, *Amici Curiae*
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CERTIFICATE OF COMPLIANCE WITH RULE 27(d)(2)(A)

IT IS HEREBY CERTIFIED:

1. That the foregoing Motion for Leave to File Brief *Amici Curiae* of Downsize DC Foundation, *et al.*, complies with the type-volume limitation of Rule 27(d)(2)(A), Federal Rules of Appellate Procedure, because this motion contains 459 words, excluding the parts of the brief exempted by Rule 32(f).

2. This motion 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 this brief has been prepared in a proportionally spaced typeface using WordPerfect version 18.0.0.200 in 14-point Times New Roman.

/s/ William J. Olson
William J. Olson
Attorney for *Amici Curiae*
Downsize DC Foundation, *et al.*

Dated: September 6, 2018

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Motion for Leave to File Brief *Amici Curiae* of Downsize DC Foundation, *et al.*, in Support of Defendant-Appellant's Petition for Rehearing *En Banc*, was made, this 6th day of September, 2018, by the Court's Case Management/Electronic Case Files system upon the attorneys for the parties.

/s/ William J. Olson
William J. Olson
Attorney for *Amici Curiae*