

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

The People of the State	)	
of California,	)	
	)	S260063
Plaintiff and Respondent,	)	
	)	
v.	)	
	)	
James Leo Carney et al.,	)	
	)	
Defendants and Appellants.	)	
_____	)	

Third Appellate District No. C077558  
Sacramento County Superior Court No. 11F00700  
The Honorable Kevin J. McCormick, Judge

**Opposition to Petitioners’ Request for Judicial Notice**

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To the Honorable Tani Cantil-Sakauye, Chief Justice,  
and the Honorable Associate Justices of the Supreme Court:

Petitioners ask this Court to take judicial notice of the contents of amicus’ website, [www.amicuspopuli.org](http://www.amicuspopuli.org). As with a newspaper, the truth of a website’s contents do not appear to be a proper matter for judicial notice. (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1147, fn. 5.) Petitioners contend “the existence of the website” can be immediately determined, but the existence of the website, independent of its contents’ truth, is irrelevant. (*Ibid.*)

But even if this Court considers petitioners’ “Exhibit A,” it does not support their request to reject amicus’ brief. Petitioners contend that as counsel “is apparently a former Deputy Attorney General, there is no showing that his interest as an individual is truly distinct from the Attorney General’s Office.” Assuming the truth of the website’s contents, the exhibit does not support petitioners’ theory that Amicus Populi is the alter ego of the Attorney General.

It is true that the website does not indicate counsel left the Attorney General's Office in the prior century. But the website does provide the brief Amicus Populi filed in case number S259011, where it took the position **opposing** the Attorney General's. If the Attorney General's Office created Amicus Populi as a mouthpiece, it must be disappointed.

The website also reveals counsel published an academic article on the history of the provocative act doctrine in 2014, several years before the Attorney General first briefed this case in the Court of Appeal. The majority of the amicus brief concerns that article's thesis, that the law would produce fairer and more consistent results through a uniform standard assigning liability for all defendants who proximately cause death in accordance with their mens rea. (See *People v. Cervantes* (2001) 26 Cal.4th 860, 872, fn. 15.) This thesis addresses petitioners' contention that although *People v. Sanchez* (2001) 26 Cal.4th 834, 846, cited *People v. Kemp* (1957) 150 Cal.App.2d 654, where the indirect cause (Kemp) was concurrently liable with the direct cause (Coffin), as both were proximate causes, that *Kemp* is inapposite, because it involved cars and manslaughter rather than guns and murder. (POB 15.) That page of *Sanchez* itself seemed to extend its reasoning to firearms (“[W]here the evidence indisputably showed one individual's gunshot directly caused decedent's death . . . the conduct of another individual also could have proximately caused the death”) but amicus' proposed standard would ensure a consistent standard for all

defendants who proximately cause death (whether the immediate instrumentality was a gun, car, or other object, and whether multiple proximate causes acted in concert or combat), in accordance with each defendant's personal mens rea (whether a premeditated intent to kill, conscious disregard of human life, culpable negligence etc.)

The Supreme Court has a legitimate interest in ensuring parties do not use sham intermediaries to present their positions. To achieve this end, this Court has ordered disclosure of any textual or monetary contribution to amicus' brief. (Rule of Ct., rule 8,520, subdivision (f)(4).) Amicus' truthful certification that there has been neither should conclusively resolve this concern.

This Court should deny petitioners' request for judicial notice.

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Mitchell Keiter  
Counsel for Amicus Curiae  
Amicus Populi

**Proof of Service**

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. On February 4, 2021, I served the foregoing document described as **Opposition to Petitioners' Request for Judicial Notice** in case number **S260063** on the interested parties in this action through True Filing.

Paul McCarthy  
nazcalito@gmail.com

Kimberley Donohue  
Kimberley Donohue@doj.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 4th day of February, 2021, at Beverly Hills, California.

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Mitchell Keiter

STATE OF CALIFORNIA  
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA  
Supreme Court of CaliforniaCase Name: **PEOPLE v. CARNEY**Case Number: **S260063**Lower Court Case Number: **C077558**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Mitchell.Keiter@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

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OPPOSITION	S260063_OPP_AmicusPopuli

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

2/4/2021

Date

/s/Mitchell Keiter

Signature

Keiter, Mitchell (156755)

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Last Name, First Name (PNum)

Keiter Appellate Law

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Law Firm