

RICHARD L HOLCOMB (HI Bar No. 9177)  
Holcomb Law, A Limited Liability Law Corporation  
1136 Union Mall, Suite 808  
Honolulu, HI 96813  
Telephone: (808) 545-4040  
Facsimile: (808) 356-1954  
Email: rholcomblaw@live.com

ALAN BECK (HI Bar No. 9145)  
Attorney at Law  
4780 Governor Drive  
San Diego, California 92122  
Telephone: (619) 971-0414  
Email: ngord2000@yahoo.com

Attorneys for Plaintiff Christopher Baker

**UNITED STATES COURT OF APPEALS  
NINTH CIRCUIT**

CHRISTOPHER BAKER, )  
 )  
 Plaintiff, )  
 vs. )  
 LOUIS KEALOHA, as an individual and )  
 in his official capacity; )  
 CITY AND COUNTY OF HONOLULU; )  
 )  
 Defendants. )  
\_\_\_\_\_  
  
\_\_\_\_\_

No. 12-16258  
CASE NO. CV 11-00528  
REPLY TO NOTICE OF  
SUPPLEMENTAL AUTHORITY

**Reply to Notice of Supplemental Authority**

COMES NOW THE PLAINTIFF-APPELLANT, Christopher Baker by and through the undersigned counsel and replies to the Defendant-Appellees', Louis Kealoha *et.al.*, Notice of Supplemental Authority. As have all cases cited in the various notices filed by Defendants, *Drake v. Filko*, No. 12-1150 supports Mr. Baker's position that H.R.S. 134-9 is unconstitutional. Rather than belabor points made repeatedly throughout these proceedings, Mr. Baker simply cites to and attaches the study styled "GAO-12-717, Gun Control: States' Laws and Requirements for Concealed Carry Permits Vary Across the Nation." Page 75 of the study, clearly shows that in all of Hawaii there are no active permits. Page 76 shows that in New Jersey there are 32,000 active permits.

As raised in the brief, in oral arguments, and in the various supplemental authorities, Hawaii has vested absolute discretion in Defendant Kealoha to determine what is meant by "exceptional circumstances." Not only is it impossible to determine what those circumstances may be but also, as shown by the study and the proof in this record, no applicant has been able to satisfy whatever arbitrary interpretation that Defendant Kealoha has unilaterally assigned to the term "exceptional circumstances." Thus, this case is distinguishable from *Drake, supra*.as are each of the supplemental cases submitted by Defendants. Indeed, for

all of the reasons the law in New Jersey was held to be constitutional, Haw. Rev. Stat. § 134-9 is not.

The most analogous case to Hawaii's licensing scheme decided to date was the Seventh Circuit case styled *Moore v. Madigan*, 702 F. 3d 933 (7th Cir. 2012). There, the Court was confronted with an Illinois statute which banned the carrying of arms in public – a prohibition that Judge Posner, writing for the majority, held unconstitutional. *See Id.* An absolute ban is precisely what confronts Hawaii's law-abiding gun owners regardless of whether the statutory licensing scheme bestows false hope in applicants by suggesting that Defendant Kealoha might, in his sole arbitrary discretion, choose to issue a permit to a Honolulu applicant. Hawaii's licensing scheme is simply an effective absolute ban thinly veiled by a grossly unconstitutional procedure.

Mr. Baker again respectfully requests that this Court find that the lower court applied an erroneous legal standard when deciding Mr. Baker's Motion for Preliminary Injunction.

Respectfully submitted this 9th day of August, 2013

s/ Alan Beck  
\_\_\_\_\_  
Alan Beck (HI Bar No. 9145)

**CERTIFICATE OF SERVICE**

On this, the 9<sup>th</sup> day of August, 2013, I served the foregoing pleading by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

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

Executed this the 8<sup>th</sup> day of August, 2013

s/ Alan Beck

Alan Beck (HI Bar No. 9145)