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**UNITED STATE COURT OF APPEALS
NINTH CIRCUIT**

GEORGE K. YOUNG JR., }
 }
 Plaintiff, }
vs. }
STATE OF HAWAII ET. AL. }
 Defendants. }

No. 12-17808
CASE No. 1200336 HG BMK
NOTICE OF SUPPLEMENTAL
AUTHORITY

Notice of Supplemental Authority

Mr. Young writes this Court to inform it of the Ninth Circuit's recent opinion in *Fisher v Kealoha* (9th Cir. 2017). (attached). There, the Court upheld a challenge to Hawaii's application of 18 U.S.C. § 922(g)(9) because the litigant had yet to avail himself of Hawaii's sole means to restore rights which is by gubernatorial pardon. Judge Kozinski, in concurrence, suggested that if Mr. Fisher or a

similarly situated litigant were to be denied a pardon and refiled, 18 U.S.C. § 922(g)(9) may likely be unconstitutional as applied to them. This is because,

...gubernatorial clemency is without constraint; as Blackstone put it, an executive's mercy springs from "a court of equity in his own breast."⁴ William Blackstone, *Commentaries* *390. This unbounded discretion sits in uneasy tension with how rights function. A right is a check on state power, a check that loses its force when it exists at the mercy of the state. Government whim is the last refuge of a precarious right...In other contexts, we don't let constitutional rights hinge on unbounded discretion; the Supreme Court has told us, for example, that "[t]he First Amendment prohibits the vesting of such unbridled discretion in a government official." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992).

Handgun carry is similarly subject to the unbridled discretion of a government official. In Hawaii County, Mr. Young has proffered and Defendants concede that they completely ban the open carry of handguns for private citizens. *See* Complaint at 16. And while in practice, Defendants also ban the carry of concealed carry because they do not issue permits, if they did issue a permit it would be at Defendants' unbridled discretion. *See Id.* Thus, for the same reasons Judge Kozinski suggested that Hawaii's restoration of rights method may "sit[] in uneasy tension with how rights function..." so do Hawaii County's handgun carry policies.

This Court should find that Defendants handgun carry laws are unconstitutional both facially and as applied to Mr. Young. "The time has come to treat the Second Amendment as a real constitutional right. It's here to stay." *Id.*

Respectfully submitted this 7th day of May 2017

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

CERTIFICATE OF SERVICE

On this, the 7th day of May, 2017, 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 7th day of May, 2017

s/ Alan Beck