

NEIL ABERCROMBIE  
GOVERNOR



DAVID M. LOUIE  
ATTORNEY GENERAL

RUSSELL A. SUZUKI  
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
APPELLATE DIVISION  
425 QUEEN STREET  
HONOLULU, HAWAII 96813  
(808) 586-1360  
(808) 586-1237 (fax)

November 25, 2013

Ms. Molly C. Dwyer  
Clerk of Court  
Office of the Clerk  
U.S Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119

RE: 28(j) letter in *Young v. State of Hawaii et al.*, No. 12-17808

Dear Ms. Dwyer:

Hawaii submits this FRAP 28(j) letter regarding United States v. Chovan, 2013 WL 6050914 (9th Cir. 11/18/13).

First, Chovan suggests that where claimed right has been "proved" to "have **historically** been restricted," it is wholly outside "rights protected by the Second Amendment." Id. at \*8-\*9. As argued in Hawaii's Amicus Brief at 15-17, public carry has historically been restricted in Hawaii since 1927, in other states for over a century, and in England for over six centuries. Heller itself cited the upholding of public concealed carry prohibitions by the "majority of the **19th-century** courts" as an example of the limited scope of the Second Amendment right. Heller, 554 U.S. at 626. Thus, Chovan supports amicus brief's argument that public carry is wholly outside Second Amendment.

Second, even if public carry were within the Second Amendment (contrary to above), Chovan makes clear that at most intermediate scrutiny is applicable

Ms. Molly C. Dwyer  
November 25, 2013  
Page 2

where a claimed right "does not implicate [the] **core** Second Amendment right," even if the "burden the statute places on" the claimed right "is quite **substantial**." Id. at \*9-\*10. Chovan stated that the **core** right was "the right of law-abiding, responsible citizens to use arms in defense of **hearth and home**." Id. at \*9. Because **public** carry does not implicate defense of "hearth and home," Chovan supports the amicus brief's argument, p.19, that public carry restrictions do not implicate **core** Second Amendment rights, and thus should be subject at most to intermediate scrutiny.

Chovan explained that because the lifetime ban there "amounts to a '**total prohibition**' on firearm possession for a class of individuals," id. at \*10, the ban effected a "quite substantial" burden on the claimed right. Hawaii's public carry restriction, in contrast, does not totally prohibit public carry, authorizing public concealed carry for applicants who "show[] reason to fear injury." HRS §134-9(a). Chovan thus supports the notion that Hawaii's public carry restriction does not impose a "substantial" burden upon plaintiff's claimed right to public carry. See Amicus Brief at 23-25. Given **both non-core** claimed right, and no substantial burden on that right, Chovan suggests less than intermediate scrutiny is warranted.

Sincerely,

/s/ Girard D. Lau

Girard D. Lau  
Solicitor General  
Kimberly T. Guidry  
First Deputy Solicitor General  
Robert T. Nakatsuji  
Deputy Solicitor General  
Attorneys for Amicus Curiae  
State of Hawaii

cc: counsel for all parties, via the appellate CM/ECF system