

APPEAL NO. 12-17808

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR.,

Plaintiff-Appellant,

v.

STATE OF HAWAII and NEIL
ABERCROMBIE in his capacity as
Governor of the State of Hawaii;
DAVID M. LOUIE in his capacity as
State Attorney General; COUNTY OF

(caption continued)

D.C. No. 1:12-cv-00336-HG-BMK

APPEAL FROM A JUDGMENT OF
THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
HAWAII

THE HONORABLE HELEN
GILLMOR, DISTRICT JUDGE

STATE OF HAWAI‘I’S MOTION FOR LEAVE TO FILE
ATTACHED 2,384 WORD SUPPLEMENTAL
AMICUS CURIAE BRIEF OF THE STATE OF HAWAI‘I

EXHIBIT 1

CERTIFICATE OF SERVICE

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State of Hawaii

HAWAII, as a sub-agency of the State of Hawaii and WILLIAM P. KENOI in his capacity as Mayor of the County of Hawaii; and the Hilo County Police Department, as a sub-agency of the County of Hawaii and HARRY S. KUBOJIRI in his capacity as Chief of Police; JOHN DOES 1-25; JANE DOES 1-25; CORPORATIONS 1-5, AND DOE ENTITIES 1-5,

Defendants-Appellees.

STATE OF HAWAI'I'S MOTION FOR LEAVE TO FILE
ATTACHED 2,384 WORD SUPPLEMENTAL
AMICUS CURIAE BRIEF OF THE STATE OF HAWAI'I

Pursuant to FRAP 29(a), a "**state** may file an amicus-curiae brief without the consent of the parties or leave of court."¹ However, "[e]xcept by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief." FRAP 29(d). Because this Court's order filed June 15, 2016, provides that the parties' supplemental briefs are not to exceed 2,400 words, and the State of Hawai'i believes its amicus brief needs to be more than one-half of 2,400 words to adequately address the impact of the

¹ The State of Hawaii (along with its Governor and Attorney General) was dismissed below as a **party** defendant on immunity grounds. Clerk's Record 42 at 9-14. **And**, Plaintiff Young did **not** challenge that immunity dismissal of the State of Hawaii (or of its Governor and Attorney General) **on appeal**. Thus, the State of Hawaii, after its dismissal below on immunity grounds, and Young's failure to appeal that dismissal, was and is **no longer** a **party** to this appeal. Hawai'i thus seeks instead to file an **amicus** brief to defend the constitutionality of its laws.

Peruta decision, en banc, the State of Hawai‘i hereby respectfully moves for leave to file a 2,384 word supplemental amicus curiae brief.

The State of Hawai‘i has a tremendous stake in the outcome of this case, to the extent that plaintiffs challenge the constitutionality of, inter alia, HRS §134-9, which sets forth Hawai‘i's restrictions on the public carry of firearms, both concealed and open carry. Hawai‘i has determined that its significant interest in public safety is best served by limiting **concealed** carry to those exceptional cases where an applicant "shows reason to fear injury to the applicant's person or property," and limiting **open** carry to those "engaged in the protection of life and property." Id. Hawai‘i has the lowest gun death rate of any state in the nation.² Hawai‘i thus has a vital stake in ensuring that its gun laws, including its public carry restrictions, which date back nearly a century, be enforceable so as to continue to maintain the safety of its residents.

Given the complexity of the constitutional analysis, Hawai‘i discovered it needed more than one-half of the 2,400 word limit provided to the parties to adequately address the Peruta decision's impact upon this case. It thus seeks leave to file the supplemental amicus brief, attached as Exhibit 1 hereto, that is 2,384 words, which turns out to be **less than 10 full pages**, double-spaced, with 14-point

² Violence Policy Center, *States with Weak Gun Laws and Higher Gun Ownership Lead Nation in Gun Deaths, New Data for 2014 Confirms* (2016), available at: <http://www.vpc.org/press/states-with-weak-gun-laws-and-higher-gun-ownership-lead-nation-in-gun-deaths-new-data-for-2014-confirms/>

font. The supplemental amicus brief will argue that although the en banc Peruta opinions ostensibly do not resolve the constitutionality of good-cause type restrictions on **open** carry (or on public carry of **some kind**, open or concealed), the **reasoning** of the en banc Peruta opinions **does** in fact resolve that question in favor of upholding such good-cause restrictions, even as to **open** carry (or **some form** of public carry, **open or concealed**).

The supplemental amicus brief will demonstrate that the majority and the concurrence (each of which fully adopts the other's reasoning, thereby providing a majority for both opinions) **provide two independent, yet each individually sufficient, reasons** to uphold the constitutionality of good-cause restrictions (like Hawai'i's "reason to fear injury" prerequisite) on **open** carry or on **some form of public carry, open or concealed**, as well. First, the brief demonstrates that the historical analysis provided in the majority opinion applies equally well to reject Second Amendment protection not just for concealed carry, but for open carry or some form of public carry, open or concealed, too. Second, the brief separately explains why the concurring opinion (with reasoning the majority opinion expressly agrees with) supports the validity, under intermediate scrutiny, of good-cause-type restrictions not only on concealed carry, but on open carry or on some form of public carry (open or concealed), as well.

For the foregoing reasons, Hawai‘i respectfully requests leave to file the 2,384 word (less than 10 full pages) Supplemental Amicus Brief of the State of Hawai‘i, attached as Exhibit 1. Hawai‘i's ability to enforce the gun-safety laws it reasonably believes are necessary to protect the safety of its people is at stake.

DATED: Honolulu, Hawai‘i, July 12, 2016.

/s/ Girard D. Lau

GIRARD D. LAU

Solicitor General of Hawaii

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First Deputy Solicitor General

ROBERT T. NAKATSUJI

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Attorneys for Amicus

Curiae State of Hawaii

CERTIFICATE OF SERVICE

I certify that on July 12, 2016, I electronically filed the State of Hawai‘i's Motion for Leave to File attached 2,384 word Supplemental Amicus Curiae Brief of the State of Hawai‘i, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

DATED: Honolulu, Hawaii, July 12, 2016.

/s/ Girard D. Lau

GIRARD D. LAU

Solicitor General of Hawaii

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