

No. 12-17808

**In the United States Court of Appeals
for the Ninth Circuit**

George K. Young, Jr.

Plaintiff-Appellant,

v.

State of Hawaii, et al.

Defendants-Appellees.

**Appeal from a Judgment of United States District Court
For the District of Hawaii
Civ. No. 12-00336-HG-BMK
United States District Court Judge Helen Gillmor**

**Appellant's Opposition to Appellees' Motion for Leave to File Reply in
Support of Petition for Rehearing *En Banc***

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Plaintiff-Appellant George K. Young, Jr. opposes¹ Defendants' Motion for Leave to file Reply in Support of Petition for Rehearing *en banc* ("Motion"), and states as follows:

1. Defendants' proposed reply does no more than rehash arguments made in their Petition for Rehearing *en banc*. Defendants' proposed reply presents no new theories, arguments or law that it believes the Panel ignored or misconstrued. Instead, going beyond Mr. Young's Response in Opposition to Defendants' Petition for Rehearing *en banc*, Defendants cite to its *amici* for various propositions already contained in the briefs of *amici*. Mr. Young did not discuss Defendants' *amici*, and Defendants' attempts to further rely on its own *amici* in a proposed reply just merely regurgitates what is already before this Court and is unnecessary.

2. Defendants simply disagree with the Panel's Opinion and with Mr. Young's arguments.² This disagreement is simply not enough for this Court to grant the

¹ Counsel for Mr. Young actually represented to counsel for Defendants that Mr. Young would consent to the Defendants' Motion to File a Reply if Defendants would consent to Mr. Young filing a surreply of equal length. And that Mr. Young would not consent if Defendants would not consent to Mr. Young filing a surreply. Counsel even proposed to Defendants that they jointly file a motion for requesting leave for Defendants to file a reply and for Mr. Young to file a surreply of equal length. *See* Exhibit "A".

² Ironically, Defendants complain about Mr. Young's "extra-record evidence" despite the Defendants' Petition for Rehearing *en banc* containing the Hawaii Attorney General's newly created opinion.

proposed reply. Neither the Federal Rules nor the Circuit Rules contemplate replies for *en banc* rehearing petitions. Further, both rules deny the non-moving party a response unless ordered by the Court.

3. A plain reading of Defendants' proposed reply demonstrates this is simply an attempt to rehash similar arguments they made in their Petition. One could merely look at the headings Defendants' used in the Motion and compare to their Petition. The headings are almost identical, save the first one which now claims instead that the "Panel Badly Misconstrued Hawaii's Open Carry Law" (*See* Motion, p. i) rather than "The Panel's Decision Rests on a Fundamental Misunderstanding of Hawaii Law" (*See* Petition, p. i). The remaining headings still claim that the Panel "flouted" *Peruta*; that the case is very important and of course, and that the Panel created a circuit split. Defendants however did finally cite to *District of Columbia v. Heller*, 554 U.S. 570 (2008) even though *Heller* was completely ignored in their Petition for Rehearing *en banc*.

4. In any event, even though the Federal Rules and the Ninth Circuit Rules do not contemplate replies to *en banc* petitions, Circuit Rule 27-1 allows a reply to a "Motion". That rule states that the "reply to a response may not exceed 10 pages." The Defendants' proposed reply is eleven pages long and claims it contains 2,586 words.

5. Mr. Young opposes Defendants' Motion and proposed reply, but to the extent that this Court believes Defendants' Motion and proposed reply should be granted, fundamental fairness dictates that Mr. Young be allowed to file a surreply of equal page length and/or word count as suggested to Defendants' counsel by Mr. Young's counsel. In the event the Defendants' Motion is granted, Mr. Young intends to file a Motion for Leave to File a Surreply and Defendants have already stated that they would oppose.

Respectfully submitted, this the 16th day of November, 2018.

s/ Alan Beck

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CERTIFICATE OF COMPLIANCE

I certify that the forgoing Response in Opposition complies with the type-volume limitations under the Federal Rules of Appellate Procedure 27 because it contains 582 words and this Response complies with the typeface and style requirements of the Federal Rules of Appellate Procedure 27 because it has been prepared using Microsoft Word in 14-point Times New Roman font.

s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh

CERTIFICATE OF SERVICE

On this, the 16th day of November 2018, 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 certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this the 16th day of November 2018.

s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh