

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

RONALD G. LIVINGSTON;
MICHAEL J. BOTELLO; KITIYA M.
SHIROMA; JACOB STEWART; and
HAWAII RIFLE ASSOCIATION,

Plaintiffs,

v.

SUSAN BALLARD, in her official
capacity as Police Chief of the City &
County of Honolulu; CITY &
COUNTY OF HONOLULU; and
CLARE E. CONNORS, in her official
capacity as Attorney General of
Hawai‘i,

Defendants.

CIVIL NO. 19-00157 JMS-RT

MEMORANDUM IN SUPPORT OF
MOTION

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Defendant Clare E. Connors, in her official capacity as Attorney General of Hawai‘i (“Defendant”), respectfully requests that this case be reassigned to the Honorable Helen Gillmor pursuant to Local Rule 40.2. This case involves the same or substantially the same subject matter, and the same or substantially identical questions of law, as *Young v. Hawaii*, Civ. No. 12-00336 HG-BMK, a case decided by Judge Gillmor that is currently pending before the Ninth Circuit.

Efficiency and judicial economy counsel in favor of reassigning the instant case to Judge Gillmor.

BACKGROUND

In 2012, George Young sued the State of Hawai‘i, the County of Hawai‘i, and various State and County officials, contending, *inter alia*, that Hawaii’s statute governing licenses to carry firearms – Hawaii Revised Statutes (“HRS”) § 134-9 – violates his Second Amendment right to the public carry of a firearm for self-defense. *See* Complaint, *Young v. Hawaii*, Civ. No. 12-00336 HG-BMK, ECF No. 1, attached hereto as Exhibit “A.”¹ *Young* was assigned to Judge Gillmor, who eventually dismissed the suit. *See Young v. Hawaii*, 911 F. Supp. 2d 972 (D. Haw. 2012).

In 2018, a divided, three-judge panel of the Ninth Circuit reversed. *See Young v. Hawaii*, 896 F.3d 1044 (9th Cir. 2018). Early this year, a majority of nonrecused active Ninth Circuit judges voted that the case be reheard *en banc*. *See Young v. Hawaii*, 915 F.3d 681 (9th Cir. 2019). Pursuant to the Ninth Circuit’s order regarding *en banc* review, the three-judge panel disposition may not be cited as precedent by or to any court of the Ninth Circuit. *Id.*

¹ Defendant respectfully requests that the Court take judicial notice of the filings in *Young v. Hawaii*, Civ. No. 12-00336 HG-BMK (D. Haw.). *See* Fed. R. Evid. 201; *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“We may take judicial notice of court filings and other matters of public record.”).

The Ninth Circuit subsequently stayed *en banc* proceedings in *Young* pending the issuance of an opinion by the United States Supreme Court in *New York State Rifle & Pistol Association, Inc. v. City of New York*, No. 18-280. See Order, *Young v. Hawaii*, No. 12-17808 (9th Cir.), ECF No. 209, attached hereto as Exhibit “B.”²

ARGUMENT

Local Rule 40.2, governing the assignment of similar cases, provides in relevant part:

Whenever it shall appear that civil actions or proceedings involve the same or substantially identical transactions, happenings, or events, or the same or substantially the same parties or property or subject matter, or the same or substantially identical questions of law, or for any other reason said cases could be more expeditiously handled if they were all heard by the same judge, then the chief district judge or any other district judge appointed by the chief district judge in charge of the assignment of cases may assign such cases to the same judge. Each party appearing in any such action may also request by appropriate motion that said cases be assigned or reassigned to the same judge.

Local Rule 40.2 sets a “low bar” for reassignment. See *Ilar v. Routh Crabtree Olsen, P.S.*, Civ. No. 13-00145 SOM-RLP, 2013 WL 4455609, at *3 (D. Haw. Aug. 15, 2013); see also *Bald v. Wells Fargo Bank, N.A.*, Civ. No. 13-00135 LEK-KS, 2013 WL 2453271, at *2 (D. Haw. June 5, 2013) (“This Court emphasizes that

² Defendant respectfully requests that the Court take judicial notice of the filings in *Young v. Hawaii*, No. 12-17808 (9th Cir.). See Fed. R. Evid. 201; *Reyn’s Pasta*, 442 F.3d at 746 n.6.

reassignment pursuant to Local Rule 40.2 presents an even less rigorous standard than consolidation pursuant to Fed.R.Civ.P. 42(a).”).

This case involves the same or substantially the same subject matter, and the same or substantially identical questions of law, as *Young*, and it should be reassigned to Judge Gillmor under Local Rule 40.2 for those reasons.

Both Mr. Young and Plaintiffs herein filed suit following the denial of applications for a carry license pursuant to HRS § 134-9. *Compare* Exhibit “A,” Complaint, *Young v. Hawaii*, at 13 (alleging that Young applied for, and was denied, a carry license pursuant to HRS § 134-9), and *Young*, 896 F.3d at 1049 (noting that Young’s applications for a carry license were denied pursuant to HRS § 134-9), *with* Complaint, *Livingston v. Ballard*, Civ. No. 19-00157 JMS-RT, ECF No. 1 at PageID # 4-7 (alleging that Plaintiffs applied for, and were denied, carry licenses pursuant to HRS § 134-9).

And both Mr. Young and Plaintiffs herein have objected to the denial of their applications on the same legal basis: according to both Mr. Young and Plaintiffs, there is a Second Amendment right to carry a firearm in public for self-defense, and HRS § 134-9 violates that right. *Compare* Exhibit “A,” Complaint, *Young v. Hawaii*, at 10 (contending that HRS § 134-9 “openly denies [Young’s] free exercise to carry a firearm for the lawful purpose of personal self-defense”), *and Young*, 896 F.3d at 1049 (“Primarily alleging that denying his application for a

handgun license violates his Second Amendment right to carry a loaded firearm in public for self-defense, Young requested, among other things, injunctive and declaratory relief from the enforcement of section 134-9's licensing requirements.”), *with* Complaint, *Livingston v. Ballard*, Civ. No. 19-00157 JMS-RT, ECF No. 1 at PageID # 20 (requesting that this Court “[d]eclare that the Second Amendment protects the right of ordinary, law-abiding citizens to carry a handgun outside the home for self-defense” and “[d]eclare that the provisions of H.R.S. § 134-9(a) that prevent ordinary, law-abiding citizens from carrying handguns outside the home or place of business for self-defense in some manner, either concealed or openly, are unconstitutional facially and as applied to plaintiffs”).

Plaintiffs herein have raised the very same legal issues, regarding the very same statute, as presented to Judge Gillmor and the Ninth Circuit in *Young*. Plaintiffs' own Complaint references *Young* numerous times, and makes this case's connection to *Young* abundantly clear. *See* Complaint, *Livingston v. Ballard*, Civ. No. 19-00157 JMS-RT, ECF No. 1.

Because of Judge Gillmor's experience with *Young*, a case involving the same subject matter and the same legal issues as the instant case, efficiency and judicial economy counsel in favor of reassigning the instant case to Judge Gillmor. *See Bald*, 2013 WL 2453271, at *3 (granting motion for reassignment pursuant to

Local Rule 40.2 given that judges who handled earlier cases raising nearly identical issues “could handle the instant case more expeditiously”). It is of no consequence that *Young* is not currently pending before Judge Gillmor. *See id.* (concluding that it is “irrelevant” to reassignment of a case that prior cases raising nearly identical issues were “no longer pending”). *Young*, moreover, could potentially be remanded to Judge Gillmor by the Ninth Circuit in the future.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this case be reassigned to Judge Gillmor pursuant to Local Rule 40.2.

DATED: Honolulu, Hawai‘i, April 16, 2019.

/s/ Clyde J. Wadsworth

CLYDE J. WADSWORTH
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