

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.

On Appeal from the United States District Court
for the District of Hawaii, No. 1:12-cv-00336-HG-BMK
District Judge Helen Gillmor

MOTION FOR SUPPLEMENTAL BRIEFING

Pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 27-1, Defendants respectfully move for supplemental briefing before the *en banc* Court.

1. On February 8, 2019, this Court ordered that this case be reheard en banc, and scheduled an en banc oral argument for the week of March 25, 2019.

2. The en banc Court's review would be assisted by supplemental briefs from the parties. Several important developments have occurred since the parties filed briefs at the panel stage. The panel issued a majority opinion and a dissenting opinion that engaged in extensive discussion of the historical evidence and data

surrounding regulations on the public carry of firearms. The Hawaii Attorney General issued an opinion construing the Hawaii statute at issue, which expressly disagreed with the panel's construction. *See* Pet. for Rehearing *En Banc* Add. 77-86. Every county in the State has announced that it will comply with the Hawaii Attorney General's opinion. Br. of *Amici Curiae* City & County of Honolulu *et al.* In addition, the First Circuit has issued a decision that split from the three-judge panel and engaged in its own extensive discussion of the constitutional issue. *See Gould v. Morgan*, 907 F.3d 659 (1st Cir. Nov. 2, 2018). The Court would benefit from supplemental briefs that take into account these developments and respond to the arguments in these opinions and filings.

3. Furthermore, the State of Hawaii has not yet had the opportunity to file a party brief in this appeal. Because Mr. Young did not contest the district court's reasons for dismissing his claims against the State, the State participated as *amicus curiae* during proceedings before the panel. *See* Panel Op. 8 n.1. When the State sought to intervene in the case to seek rehearing *en banc*, the panel stated that the State of Hawaii "is, and remains, a party to this appeal during the pendency of any *en banc* proceedings." Order (Aug. 29, 2018). A supplemental brief would afford the State an opportunity as party to these proceedings to fully brief and defend the constitutionality of the Hawaii statute under challenge.

4. This Court has repeatedly authorized supplemental briefing after ordering that a case be reheard en banc. In *C.J.L.G. v. Whitaker*, for instance, the government moved for supplemental briefing following an order granting rehearing en banc, the plaintiff opposed that motion, and the Court granted the government's motion in part and directed the parties to file simultaneous supplemental briefs of no more than 7,000 words, followed by optional replies of no more than 3,500 words. Order, *C.J.L.G. v. Sessions*, No. 16-73801 (Oct. 1, 2018). Similarly, in *Marinelarena v. Whitaker*, the Court granted the parties' joint motion to file simultaneous supplemental briefs of no more than 7,000 words. Order, *Marinelarena v. Whitaker*, No. 14-72003 (Apr. 26, 2018). Supplemental briefing is similarly warranted here.

5. Defendants respectfully suggest that the parties be directed to file simultaneous supplemental briefs of no more than 7,000 words by March 13, 2019. That schedule would comport with the schedules for supplemental briefing ordered in *C.J.L.G.* and *Marinelarena*, and would afford the Court adequate time to take into account these briefs in advance of oral argument.

6. Plaintiff's counsel have informed counsel for Defendants that they oppose this Motion.

WHEREFORE, Defendants respectfully request that this Motion be granted, and that the parties be directed to file simultaneous supplemental briefs of no more than 7,000 words by March 13, 2019.

Respectfully submitted,

CLARE E. CONNORS
Attorney General of the State of Hawaii
CLYDE J. WADSWORTH
Solicitor General of the State of Hawaii
KIMBERLY T. GUIDRY
ROBERT T. NAKATSUJI
KALIKO‘ONALANI D. FERNANDES
Deputy Attorneys General
DEPARTMENT OF THE ATTORNEY
GENERAL, STATE OF HAWAII
425 Queen Street
Honolulu, HI 96813

*Attorneys for State of Hawaii
Defendants-Appellees*

JOSEPH K. KAMELAMELA
Corporation Counsel
LAUREEN L. MARTIN
Litigation Section Supervisor
D. KAENA HOROWITZ
Deputy Corporation Counsel
COUNTY OF HAWAII
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

*Attorneys for County of Hawaii
Defendants-Appellees*

/s/ Neal K. Katyal
NEAL K. KATYAL
COLLEEN E. ROH SINZDAK
MITCHELL P. REICH
HOGAN LOVELLS US LLP
555 Thirteenth Street NW
Washington, DC 20004
Telephone: (202) 637-5600
Fax: (202) 637-5910
Email: neal.katyal@hoganlovells.com
Attorneys for Defendants-Appellees

CERTIFICATE OF COMPLIANCE

I certify that the forgoing Motion complies with the type-volume limitation of Fed. R. App. 27 because it contains 572 words. This Motion complies with the typeface and type style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

/s/ Neal K. Katyal
Neal K. Katyal

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2019, I filed the foregoing Motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Neal K. Katyal
Neal K. Katyal