

No. 12-17808

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

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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**

**RESPONSE IN OPPOSITION TO APPELLEES' MOTION FOR  
SUPPLEMENTAL BRIEFING**

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*Attorneys for Appellant, George K. Young, Jr.*

Comes now, Appellant George K. Young, by and through counsel, and submits this, his Response in Opposition to Appellees' Motion for Supplemental Briefing ("Motion") and would show unto the Court the following:

Mr. Young opposes additional briefing at this late stage of litigation. First, the Court itself has not requested any additional briefing on any points raised in Appellees' Motion. Secondly, Hawaii states that it has not filed a "party brief" in this appeal and that "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." *See* Motion, p.3. This cannot be a serious contention.

Hawaii's "amicus curiae" brief is twenty-nine pages (7,000 words) long and did in fact address the constitutionality of the challenged statutes. *See* Docket No. 35. Hawaii's litigation position at that time was that it was not a party.<sup>1</sup> *Id.* at fn.1. Then, Hawaii filed an oversized supplemental amicus curiae brief. *See* Docket No. 91. This oversized supplemental brief was allowed to be the same length as the parties' supplemental briefs. Again, Hawaii defended the constitutionality of its statutes. Then, Hawaii disclaimed any interest it had in oral argument when it

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<sup>1</sup> If this was a serious contention, it should have sought leave to intervene under 28 U.S.C. § 2403(b). Eventually Hawaii did just that, but only *after* the panel decision was issued. *See* Docket No. 138.

notified the Court that “the State Defendants do not intend to participate in the oral argument for this case...” *See* Docket No. 118.

Hawaii complains now that it needs additional briefing to address various points, one of which was *created* by Hawaii after the panel filed its decision. To put it bluntly, there is no additional briefing which would assist the *en banc* Court in reaching a decision on the merits of Mr. Young’s appeal. The Court has already set this matter for argument the week of March 25, 2019. It is now February 12, 2019 and Appellees want the Court to order additional briefing to be due on March 13, 2019 - a week and a half before the argument. Additional briefing will do nothing but waste judicial resources. Hawaii will be afforded its opportunity during this second round of oral argument to make whatever argument it believes is necessary without the need for further briefing.

For these reasons, Mr. Young opposes the Motion for Supplemental Briefing.

Respectfully submitted, this the 12th day of February, 2019.

*s/ Alan Beck*

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**CERTIFICATE OF COMPLIANCE**

1. This Response complies with the type-volume limitations of Fed. R. App. P. 27 because it contains 405 words.
2. This brief complies with the typeface requirements of Fed. R. App. P.32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman.

*/s/ Stephen D. Stamboulieh*  
Stephen D. Stamboulieh

**CERTIFICATE OF SERVICE**

I hereby certify that on February 12th, 2019, I filed the foregoing Document 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/ Stephen D. Stamboulieh*  
Stephen D. Stamboulieh