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. 12-CV-0336 (Gillmor, J.)

BRIEF OF *AMICUS CURIAE* GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE IN SUPPORT OF APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a), Giffords Law Center to Prevent Gun Violence states that it has no parent corporation. It has no stock, and therefore no publicly held company owns 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Giffords Law Center to Prevent Gun Violence ("Giffords Law Center") is a non-profit, national policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to reduce gun violence and save lives. The organization was founded in 1993 after a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in October 2017 after joining forces with the gun-safety organization founded by former Congresswoman Gabrielle Giffords. Today, Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement, and citizens who seek to make their communities safer from gun violence. As an *amicus*, Giffords Law Center has provided informed analysis in a variety of firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *Peruta v. County of San Diego*, 824 F.3d 919 (9th Cir. 2016) (en banc).[1]

[1] *Amicus* affirms, pursuant to Fed. R. App. P. 29, that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae* and its counsel made a monetary contribution to its preparation or submission. All parties to this action have granted consent for *amicus* to file this brief. *Id.*; Ninth Cir. R. 29-2; *see* Appellant George K. Young, Jr. Correspondence: Blanket Consent for amici curiae, *Young v. Hawaii*, No. 12-17808 (9th Cir. May 14, 2020), ECF No. 228.

BACKGROUND AND SUMMARY OF ARGUMENT

Among the 50 states, Hawaii and California have among the lowest rates of gun death, ranking 48th and 44th, respectively.[2] A rigorous body of social science evidence, bolstered with new and updated research from within the past year, supports the conclusion that strong public carry permitting laws like those enacted in Hawaii and California are significant factors in reducing violent crime and homicides in those states. Four other federal circuit courts have concluded that similar public carry permitting laws are constitutional under the Second Amendment. And in *Peruta v. Cty. of San Diego*, 824 F.3d 919 (2016) (en banc), this Court reached a similar conclusion with respect to California's concealed carry regulations.

Nonetheless, on July 24, 2018, a divided panel struck down Hawaii's statute requiring a license to openly carry firearms in public, issuable to those "engaged in the protection of life and property." In holding that the law violated the Second Amendment, the panel majority erroneously concluded, for the first time in this Circuit, that the right to carry a loaded, openly visible firearm in public is a "core" Second Amendment right that cannot be meaningfully regulated under the standard

[2] *Annual Gun Law Scorecard*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, http://lawcenter.giffords.org/scorecard/. While this case centers on a Hawaii open-carry law, it affects California directly. The *en banc* Court's decision will bind the panel that considers a Second Amendment challenge to California's public carry restrictions in *Flanagan v. Becerra*, No. 18-55717 (9th Cir. Sept. 21, 2018), ECF No. 12.

provided for in Hawaii's permitting statute. Panel Op. at 49-50. By a two-to-one vote, the panel elevated the right to openly carry loaded firearms in public to equal footing with the right to have a handgun for self-defense in one's home.

The panel majority's reading of the Second Amendment misconstrued historical evidence and invited confusion and uncertainty into a domain where courts should respect states' evidence-based legislative judgments. These errors have serious real-world consequences. Should the panel's reasoning prevail, Hawaii and California, among other states, will be obligated to authorize widespread carrying of openly displayed guns within their borders, a policy change research confirms is likely to drive up violent crime and homicide (*see infra* at pp. 11-13). On top of this, by conferring near-absolute protection for open carry, the panel's ruling empowers extremists who have increasingly used openly visible, loaded firearms to dangerous ends while claiming to exercise personal rights. An expansive open-carry right could allow the practice of wielding loaded guns to intimidate fellow citizens in public spaces,[3] stifle democratic debate over gun

[3] Robyn Thomas, *Armed Protestors Inspire Fear, Chill Free Speech*, GIFFORDS BLOG (May 27, 2020), https://giffords.org/blog/2020/05/armed-protestors-inspire-fear-chill-free-speech-blog/ (summarizing dozens of incidents in 2020 alone in which armed protestors used openly carried firearms to intimidate bystanders).

policy choices,[4] and interfere with First Amendment rights.[5] In short, the panel's faulty reasoning will force states to allow open carrying to become as widespread as home handgun possession, no matter the consequences for public safety and order—an outcome the Second Amendment cannot abide.

For the reasons stated in Hawaii's *en banc* petition,[6] and to align this Circuit's jurisprudence with historical evidence and the decisions of the majority of other federal appellate courts on the exceptionally important public-carry issue, this Court should uphold Hawaii's statute. The issue at stake—whether states within the Ninth Circuit can require people who want to carry loaded, openly visible firearms on public streets to show any urgency or need to do so—is exceptionally important, with its resolution potentially resulting in many more gun deaths and injuries annually. Recent and reliable historical and linguistics studies, social science research, and other credible evidence confirm that Hawaii's regulations are not only constitutional, but also the most informed policy choice the State could make to protect its citizens from intimidation and violence.

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[4] Grant Schulte, *Activists with Assault Rifles Stir Fears at Nebraska Capitol*, AP NEWS (Feb. 24, 2020), https://apnews.com/88b9dd6f34d930704273bd03fa0835f8.

[5] *See, e.g.*, Timothy Zick, *Arming Public Protests*, 104 IOWA L. REV. 223, 226 (2018) ("Constitutional scholars have argued that exercising First Amendment rights of speech and assembly is both physically and theoretically incompatible with open carry at protest events.").

[6] Brief for Petitioners-Appellees at 9, *Young v. Hawaii*, No. 12-17808 (9th Cir. Sept. 14, 2018), ECF No. 155.

ARGUMENT

The panel majority made two major errors in this case, corresponding to the two steps of the Ninth Circuit's two-part Second Amendment framework. First, the panel characterized the right to carry a firearm openly for self-defense as a protected and "core" Second Amendment right, contrary to the historical evidence considered in *Peruta*, 824 F.3d 919. Second, the panel declined to consider evidence that Hawaii's law satisfies intermediate scrutiny, instead deeming the law categorically invalid after finding it burdened a core right. These errors each provide an independent basis to reverse the panel's decision and to uphold Hawaii's licensing law.

I. Historical Evidence and New Linguistics Studies Confirm that Open Carry is Not a "Core" Second Amendment Right, and Open Carry Licenses are Constitutional.

In *Heller*, 554 U.S. 570, the Supreme Court stated that the Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. Sitting *en banc* in *Peruta*, this Court concluded that concealed-carry prohibitions are constitutional based in part on *Heller*'s guidance. *Peruta*, 824 F.3d at 936 (citing *Heller*, 554 U.S. at 626 ("[T]he majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment.")). In upholding concealed-carry prohibitions, this Court,

like the Supreme Court in *Heller*, never suggested that states must alternatively allow citizens to *openly* carry firearms—a practice that is in many ways more disruptive to public safety. *See Heller*, 554 U.S. at 595 ("[W]e do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation."). To the contrary, this Court reached its conclusion in *Peruta* after analyzing the history of public-carry regulations dating back to the Statute of Northampton, an English law from the fourteenth century that prohibited the *open* carrying of weapons, or the act of appearing armed in public. *See Peruta*, 824 F.3d at 931.[7] This Court "found nothing in the historical record suggesting that the law in the American colonies with respect to concealed weapons differed significantly from the law in England." *Peruta*, 824 F.3d at 933.

It is not possible to find that open carry is a "core" Second Amendment right, as the panel majority did, without ignoring the Second Amendment's legal and historical English origins—and, indeed, rejecting the very historical sources *Peruta* credited as authoritative.[8] And since *Peruta* was decided, new and

[7] The Statute of Northampton provided that "no Man great nor small . . . be so hardy to come before the King's Justices, or other of the King's Ministers doing their office, with force and arms . . . nor to go nor ride armed by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere . . .'" 2 Edw. 3, c. 3 (1328).

[8] *See, e.g.*, *Fife v. State*, 31 Ark. 455 (1876) (characterizing a carrying prohibition as a lawful "exercise of the police power of the State without any infringement of the constitutional right"); *State v. Workman*, 14 S.E. 9, 10-12 (W. Va. 1891); *Ex parte Thomas*, 97 P. 260, 262 (Okla. 1908) ("Practically all of the states under constitutional provisions similar to ours have held that acts of the Legislatures against the carrying of weapons concealed did not conflict with such

persuasive research in the field of corpus linguistics has further confirmed this legal and historical framework. This textual research indicates that the founding-era understanding of the phrase "bear arms" overwhelmingly referred to soldiers collectively wielding weapons in military service, not to individual civilians openly carrying guns in public as they went about daily life.

The field of corpus linguistics has enhanced historical and linguistic research techniques since *Heller*, by allowing researchers to analyze vast quantities of newly digitized historical texts. Applying this new approach to a data set containing more than 100,000 texts and billions of words, Josh Blackman and James C. Phillips observe that, "applying corpus linguistics to the Second Amendment" reveals that the "overwhelming majority of instances" in which the phrase "bear arms" was used in the founding era involved the military context, not civilians carrying guns for self-defense.[9] Professor Dennis Baron conducted a similar analysis and found that in the founding era, "[n]on-military uses of 'bear arms' are not just rare—they're almost non-existent."[10] Baron concludes that the

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constitutional provision denying infringement of the right to bear arms, but were a valid exercise of the police power of the state.").

[9] Josh Blackman & James C. Phillips, *Corpus Linguistics and the Second Amendment*, HARV. L. REV. BLOG (Aug. 7, 2018), https://blog.harvardlawreview.org/corpus-linguistics-and-the-second-amendment/.

[10] Dennis Baron, *Antonin Scalia Was Wrong About the Meaning of 'Bear Arms,'* WASH. POST. (May 21, 2018), https://www.washingtonpost.com/opinions/antonin-scalia-was-wrong-about-the-meaning-of-bear-arms/2018/05/21/9243ac66-5d11-11e8-b2b8-08a538d9dbd6_story.html.

military use of the phrase is the most natural reading, since "'[b]ear arms' has never worked comfortably with the language of personal self-defense, hunting or target practice." *Id.*[11] This recent linguistics research confirms that civilians carrying loaded firearms in public for self-defense was not recognized as a "core" right at the founding.

In combination, the above historical and linguistics evidence, and that presented by the Hawaii appellants and other *amici*, suggests the panel was wrong about the scope of the Second Amendment's protections for open carry. This Court should reject the panel's conclusion and side with the four federal circuits that have determined public carry is not a "core" right. *Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013); *Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Gould v. Morgan*, 907 F.3d 659, 671 (1st Cir. 2018).[12]

[11] Law professor and historian Alison LaCroix has conducted similar research and concluded that "[r]ecent advances in theoretical and computational linguistics, as well as vast new corpora of American and English usage" "demonstrates that the language of the Second Amendment points toward a more collective interpretation of the right of gun ownership," explaining that "consulting actual historical sources suggests that the context of the Second Amendment had more to do with militias and magazines than with solo householders molding bullets over their hearths." Alison L. LaCroix, *Historical Semantics and the Meaning of the Second Amendment*, THE PANORAMA (Aug. 3, 2018), http://thepanorama.shear.org/2018/08/03/historical-semantics-and-the-meaning-of-the-second-amendment/.

[12] With little analysis, one circuit has found that public carry is part of the "core" of the Second Amendment. *See Wrenn v. District of Columbia*, 864 F.3d 650, 667 (D.C. Cir. 2017) (striking down "good reason" law limiting issuance of concealed-carry licenses to those with a special need for self-defense). Even then, this circuit revisited its decision in 2019 to note that the "right is not unlimited." *United States v. Class*, 930 F.3d 460, 463 (D.C. Cir. 2019).

II. In the Alternative, This Court Should Apply Intermediate Scrutiny and Uphold Hawaii's Licensing Law Based on Social Science and Other Evidence.

The panel's first error led to its second. Having wrongly classified open carry as a "core" Second Amendment right, the majority declined to consider the public safety justifications for Hawaii's open carry restrictions, instead finding the law categorically unconstitutional. But as other circuits have correctly recognized, the *public* exercise of Second Amendment rights endangers public peace and the rights of other law-abiding citizens more directly than exercising those rights at home. This distinction makes it essential for courts to apply heightened constitutional scrutiny to public carry regulations—and specifically, intermediate scrutiny—instead of presuming them unconstitutional. *See, e.g.*, *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1126 (10th Cir. 2015) (intermediate, rather than strict scrutiny, is appropriate for a law regulating public carry because "[t]he risk inherent in firearms and other weapons distinguishes the Second Amendment right from other fundamental rights" that "can be exercised without creating a direct risk to others"). The great weight of authority from other circuits confirms that where "laws [] burden [any] right to keep and bear arms outside of the home[,]" intermediate scrutiny applies. *United States v. Masciandaro*, 638 F.3d at 471 (4th Cir. 2011); *see also Kachalsky v. Cty of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012) ("Because our tradition so clearly indicates a substantial role for state

regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate in this case.").

The weight of authority also indicates that public-carry licensing laws survive intermediate scrutiny and are constitutional. The First, Second, Third, and Fourth Circuits have applied this standard to uphold laws which, like Hawaii, require "good cause" or a similar showing to obtain a license to carry loaded firearms in public. *See, e.g.*, *Gould v. Morgan*, 907 F.3d 659, 674 (1st Cir. 2018) (Massachusetts established "a substantial link between the restrictions imposed on the public carriage of firearms and the indisputable governmental interests in public safety and crime prevention"); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 98 (2d Cir. 2012) (upholding New York's one-hundred-year-old law "limiting handgun possession in public to those who show a special need for self-protection" under intermediate scrutiny because it is "substantially related to New York's interests in public safety and crime prevention"). As these courts have done, this Court should analyze Hawaii's law with reference to the compelling public safety justifications that support them—not the erroneous standard and near-absolute open-carry right announced by the panel majority.

Had the panel applied heightened scrutiny, it should have considered new social science research and relevant law enforcement expertise confirming that public carry regulations serve imperative public safety interests. This evidence in

support of Hawaii's licensing law, discussed below, is more than sufficient to satisfy intermediate scrutiny. It shows that restricting the right to publicly carry firearms to those that establish good-cause, or that they are "engaged in the protection of life and property," furthers the important objective of protecting Hawaiian residents against firearm violence while reasonably allowing citizens to exercise their right to self-defense.

A. Empirical Evidence

Among this evidence is recent social science research supporting the conclusion that unrestricted carry of firearms leads to increased violent crime and homicides. A 2018 study led by Professor John J. Donohue concluded that permissive right-to-carry ("RTC") states experienced a 13 to 15 percent increase in violent crime rates compared to what would be expected absent passage of RTC laws.[13] Most troublingly, this analysis found statistically significant evidence of increases in murder in RTC states. *Id.* at 2. The Donohue study looked at 33 states that adopted RTC laws between 1981 and 2007. The study concluded that RTC laws increased violent crime by "increasing the likelihood a generally law-abiding citizen will commit a crime," in addition to "facilitat[ing] the criminal conduct of

[13] John D. Donohue, et al., *Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data, the LASSO, and a State-Level Synthetic Controls Analysis*, NAT'L BUREAU OF ECON. RESEARCH, Working Paper No. 23510 (2018), https://www.nber.org/papers/w23510.pdf.

those who generally have a criminal intent." *Id.* at 6. This research demonstrates that RTC laws "encourage[] hostile confrontations" for permit holders, are exploited by "criminal gangs," "furnish[] more than 100,000 guns per year to criminals" because of increased gun theft, encourage criminals to "arm themselves more frequently," and "complicate the job of police" since "efforts to get guns off the street . . . are less feasible when carrying guns is presumptively legal." *Id.* at 8-15.

The Donohue study also found that "the longer the RTC law is in effect . . . the greater the cost in terms of increased violent crime," which refutes the notion that RTC laws reduce violent crime. *Id.* at 36. Significantly, the impacts of RTC laws on violent crime "were uniform": "states that passed RTC laws experienced 13-15 percent higher aggregate violent crime rates than their synthetic controls after ten years." *Id.* at 42. As the Donohue study notes, this finding is consistent with previous research finding that "RTC laws increased murder by 15.5 percent for the eight states that adopted RTC laws" from 1999 to 2010.[14]

In another recent study, a team of researchers led by Dr. Michael Siegel compared the number of murders in RTC states and "may issue" states like Hawaii and California. They found that RTC laws increase firearm and handgun murders,

[14] *Id.* at 63 (citing Paul R. Zimmerman, *The Deterrence of Crime through Private Security Efforts: Theory and Evidence*, 37 INT'L REV. L. & ECON. 66 (2014)).

but do not increase non-gun murders.[15] This result was confirmed as robust in an additional study by the same research team.[16]

B. Law Enforcement Evidence

Evidence from scholars, law enforcement experts, and public experience confirms an additional safety benefit of Hawaii's licensing scheme: authorizing the widespread open carry of firearms would make it substantially more difficult for police officers to maintain public order and protect the public. Although not necessarily reducible to an empirical study, these experiences and observations are an appropriate factor in heightened constitutional scrutiny. *See e.g.*, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)) (even when applying strict scrutiny, Supreme Court has permitted justifications based "on history, consensus, and 'simple common sense'"); *National Ass'n of Mfrs. v. Taylor*, 582 F.3d 1, 15 (D.C. Cir. 2009) (rejecting argument that, under strict scrutiny, the government may only rely on "studies, statistics, or empirical evidence"); *see also* Joseph Blocher & Reva

[15] Michael Siegel et al., *Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States*, 107 AM. J. PUB. HEALTH 1923, 1923 - 1929 (2017).

[16] Michael Siegel et al., *The Impact of State Firearm Laws on Homicide and Suicide Deaths in the USA*, 1991–2016: A Panel Study, 34 J. GEN. INTERN. MED. 2021, 2021–28 (2019) (confirming result of 2017 American Journal of Public Health study).

Siegel, "Why Regulate Guns?" 48(4) J.L. Med. & Ethics (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3599603.[17]

Widespread, open carry of firearms makes it harder for law enforcement officers to do their jobs—with deadly implications. Professor Geoffrey Corn has observed that laws authorizing the general public to openly carry firearms "fundamentally alter" a police officer's ability to investigate individuals who are wielding loaded firearms in public—"leaving the officer to speculate whether the individual is lawfully entitled to carry the weapon or the weapon is an indication of potential criminal misconduct."[18] "Open carry laws present [a police] officer with a genuine Catch-22: her authority to temporarily seize the individuals in possession and/or their firearm is contingent on some indication of wrongdoing, but the lawful authority to carry the weapon openly indicates that her observation upon arrival at the scene cannot satisfy that requirement." *Id.* Further, refusal to cooperate with an officer in open-carry situations does not provide "good cause" for a seizure or arrest if open carry is deemed a core constitutional right. Corn observes that "the volatility of a situation will be exacerbated when police are unable to determine

[17] Professors Blocher and Siegel explain that "the constitutionality of a gun law need not pivot exclusively on how many shootings the law can be shown to prevent. Instead the government may justify" laws "in terms of the ways it contributes to public confidence and a sense of safety." *Id.*

[18] Geoffrey Corn, *Open-Carry Opens Up Series of Constitutional Issues for Cops*, THE HILL (Sept. 23, 2016), https://thehill.com/blogs/pundits-blog/civil-rights/297480-why-police-interactions-in-open-carry-states-are-so.

who should and who should not be armed, or when the lawfully armed citizen believes, perhaps justifiably, that police are exceeding their authority to demand cooperation." *Id.*

In July 2016, Americans witnessed the devastating truth of Professor Corn's observations when a gunman opened fire at police during a protest in Dallas.[19] Up to thirty civilians in attendance were lawfully carrying openly displayed rifles, but only one of them was the perpetrator. The Dallas Police Chief described the deadly confusion that ensued: "We don't know who the good guy is versus the bad guy when everyone starts shooting." In the time it took to separate the "good guys with guns" from the bad, twelve officers were shot, five of them fatally.

In another deadly incident illustrating the dangers of open carry, a woman in Colorado Springs called 911 after spotting her neighbor openly carrying a rifle on the street.[20] Instead of promptly sending police to investigate, the dispatcher explained that such conduct was perfectly legal under Colorado's open-carry laws. Only when the neighbor began shooting did his conduct become unlawful, and by then it was too late: before police ultimately did arrive, the neighbor killed a

[19] Molly Hennessy-Fiske, *Dallas Police Chief: Open Carry Makes Things Confusing During Mass Shootings*, LOS ANGELES TIMES (July 11, 2016), http://www.latimes.com/nation/la-na-dallas-chief-20160711-snap-story.html.

[20] Jesse Paul, *Open Carry Becomes Focus After Colorado Springs Shooting Rampage*, THE DENVER POST (November 3, 2015), http://www.denverpost.com/2015/11/03/open-carry-becomes-focus-after-colorado-springs-shooting-rampage/.

bicyclist and father of two, as well as two others. Even when open-carry incidents do not end in shoot-outs as in Colorado Springs, the confusion they cause threatens public safety by siphoning off limited law enforcement resources—and interfering with police responses to true emergencies.[21]

The challenges to maintaining public order in the face of widespread open carry are further exemplified by the recent series of anti-quarantine protests in response to COVID-19 shutdowns.[22] Open display of guns has surged among these protesters, contributing to conflict and unrest.[23] In Michigan, for example, individuals lawfully protested while openly carrying guns in public, including inside government buildings, and legislators needed police officers and sergeants-at-arms to block armed protestors from entering the chamber.[24] State senators reportedly wore bulletproof vests to protect themselves.[25] In the face of ongoing intimidation by protesters openly carrying assault weapons and other firearms, the

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[21] *See, e.g., Gun Rights Walk in Portland Spurs 911 Calls, Lockdown*, THE COLUMBIAN (January 10, 2013), http://www.columbian.com/news/2013/jan/10/gun-rights-walk-spurs-911-calls-lockdown/ (police sergeant observing that calls about open-carriers "take[] resources away from potentially more serious incidents").

[22] *See e.g., Why Are People Bringing Guns To Anti-Quarantine Protests? To Be Intimidating.* WASH. POST. (April 27, 2020), https://www.washingtonpost.com/outlook/2020/04/27/why-are-people-bringing-guns-anti-quarantine-protests-be-intimidating/.

[23] *See generally*, Thomas, *supra*, n.3.

[24] *Coronavirus: Armed Protesters Enter Michigan Statehouse.* BBC NEWS (May 1, 2020), https://www.bbc.com/news/world-us-canada-52496514.

[25] *Id*.

legislature had to adjourn its session prematurely, shutting down policy debate and grinding the democratic process to a halt at a time of unprecedented public challenge.[26]

In another example, 400 protestors in Lincoln, Nebraska brought loaded rifles to the state capitol to protest gun laws, despite the fact that the Nebraska state capitol does not allow concealed firearms.[27] A state senator, who sponsored a bill prohibiting people with domestic violence convictions from purchasing firearms, was quoted saying, "I was intimidated. I was scared." *Id.* These disturbances provide compelling evidence that openly carried firearms interfere with the democratic process, including legislators' and citizens' exercise of First Amendment rights. Unsurprisingly, such incidents disproportionately harm communities of color and other groups not wielding power in the form of openly displayed guns.[28]

Thus, both empirical evidence and national experiences confirm that licensing laws like Hawaii's are as vital to maintaining public order and protecting

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[26] David Welch, *Michigan Cancels Legislative Session to Avoid Armed Protestors*, BLOOMBERG NEWS (May 14, 2020), https://www.bloomberg.com/news/articles/2020-05-14/michigan-cancels-legislative-session-to-avoid-armed-protesters.

[27] Grant Schulte, Activists with Assault Rifles Stir Fears at Nebraska Capitol, AP NEWS (Feb. 24, 2020), https://apnews.com/88b9dd6f34d930704273bd03fa0835f8.

[28] *See, e.g.*, Kriston Capps, *White Supremacists Are Waging a War Against Public Space*, CITYLAB, https://www.citylab.com/equity/2017/08/white-supremacists-are-waging-a-war-against-public-space/536724/ ("In open-carry states, lawmakers have visibly ceded law enforcement authority to racist provocateurs").

fair access to our democracy as they are to reducing firearm violence. Both are compelling reasons to uphold Hawaii's law under intermediate scrutiny, and to protect the vital progress that has been made in Hawaii and other states in this Circuit toward reducing gun violence.

CONCLUSION

For these reasons, the Court should affirm the judgment below and uphold the Hawaii licensing statute as constitutional.

Dated: June 4, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because this brief contains 3979 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

Dated: June 4, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2020, I electronically filed the foregoing Brief of *Amicus Curiae* Giffords Center to Prevent Gun Violence in Support of the Petition of Defendants-Appellees for Rehearing En Banc with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

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.

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