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BY CM/ECF

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Young v. State of Hawaii, et al.*, No. 12-17808

Dear Ms. Dwyer,

The unpublished draft manuscript Young cites does not support his challenge to Hawaii's good-cause carry law. *See* ECF 313-2.

The article outlines a novel theory of "constitutional liquidation" that runs contrary to established precedent. *Id.* at 2. Under that theory, colonial and early American laws are relevant to the historical understanding of the Second Amendment only when "evidence has emerged that legislatures deliberated about the meaning of the right to bear arms." *Id.* at 3. But precedent makes clear that legislative deliberation over constitutional meaning is not, and has never been, a prerequisite for historical relevance. *See District of Columbia v. Heller*, 554 U.S. 570, 601-603 (2008); *Peruta v. County of San Diego*, 824 F.3d 919, 929-939 (9th Cir. 2016) (en banc).

Young also argues that the article shows that "there is almost no known record" of courts "enforcing the common law crime of going armed to the terror of the people." ECF 313-1. But states in the early Republic did not rely exclusively or even primarily on the "common law" to restrict public carry; they enacted statutes. And those statutes were regularly enforced. *See* Hawaii Br. 17, 24-26 & n.6. In any event, the history in the article supports the State's argument, not Young's: The article expressly recognizes that the "legislatures which passed surety laws intended them to be broad restrictions against public carry." ECF 313-2, at 12.

Young also improperly uses his 28(j) letter to reprise the argument that his as-applied challenge has been preserved. ECF 313-1. That argument is still wrong. Young's opposition to the County's motion to dismiss did not press the argument that the County's application of the statute violated the Second Amendment. Dist. Ct. Dkt. 29-2. Neither did his panel-stage opening brief. ECF 6. Merely reciting the word "application," as Young did at the motion-to-

dismiss stage, or the phrase "as applied," as Young did in his panel-stage brief, is not close to enough to preserve the claim. ECF 313-1; *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) ("bare assertion" without analysis is insufficient to preserve issue).

Respectfully submitted,

/s/ Neal Kumar Katyal
Neal Kumar Katyal

Counsel for Defendants-Appellees

cc: Counsel of Record (via CM/ECF)

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 12, 2020. 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 Kumar Katyal
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