

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

GEORGE K. YOUNG, JR.

Plaintiff-Appellant,

vs.

STATE OF HAWAI'I and NEIL  
ABERCROMBIE in his capacity as  
Governor of the State of Hawai'i;  
DAVID M. LOUIE in his capacity as  
State Attorney General; COUNTY OF  
HAWAI'I, as a sub-agency of the State  
of Hawai'i and WILLIAM P. KENOI in  
his capacity as Mayor of the County of  
Hawai'i; and the Hilo County Police  
Department, as a sub-agency of the  
County of Hawai'i and HARRY S.  
KUBOJIRI in his capacity as Chief of  
Police; JOHN DOES 1-25; JANE DOES  
1-25; CORPORATIONS 1-5, AND DOE  
ENTITIES 1-5.

Defendants-Appellees.

No. 12-17808

Civil No. CV12-00336 HG BMK

APPEAL FROM A JUDGMENT OF  
THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF  
HAWAI'I

HONORABLE HELEN GILLMOR

**MOTION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR  
PANEL REHEARING OR REHEARING EN BANC**

**DECLARATION OF D. KAENA HOROWITZ**

**DECLARATION OF CLYDE J. WADSWORTH**

**CERTIFICATE OF SERVICE**

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Attorneys for Defendants WILLIAM P. KENOI  
AND HARRY S. KUBOJIRI

**MOTION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR  
PANEL REHEARING OR REHEARING EN BANC**

Pursuant to Federal Rules of Appellate Procedure (“FRAP”) 26(b) and Circuit Rule 31-2.2, Defendants-Appellees County of Hawai‘i, as a sub-agency of the State of Hawai‘i; William P. Kenoi , in his capacity as Mayor of the County of Hawai‘i; Hilo County Police Department, as a sub-agency of the County of Hawai‘i; and Harry S. Kubojiri, in his capacity as Chief of Police (collectively, the “County”) respectfully requests a forty-five (45) day extension of time to file a petition for panel rehearing or rehearing *en banc* in this appeal, up to and including September 14, 2018.

As set forth below, good cause exists for the requested extension on account of the complexity of the issues presented by the decision, as well as on account of the work schedule of counsel and specific deadlines in other matters. See *Declaration of D. Kaena Horowitz* ¶¶ 4-6.

Plaintiff-Appellant George K. Young, Jr., has indicated through counsel that he opposes the extension, as requested; he indicated he would be amenable to a fourteen (14) day extension, but nothing longer. *Declaration of D. Kaena Horowitz* ¶ 9.

Following the denial of his application for a handgun license, Plaintiff-Appellant brought this action challenging the constitutionality of a Hawai‘i licensing statute under the Second Amendment. On July 24, 2018, this Court

issued an opinion concluding that a right to carry a firearm openly for self-defense falls within the core of the Second Amendment and that Hawaii Revised Statutes § 134-9's limitation on the open carry of firearms to those "engaged in the protection of life and property" violates that core right and is therefore void.

Under FRAP 40(a)(1), "a petition for panel rehearing may be filed within 14 days after entry of judgment," and under FRAP 35(c), a petition for rehearing en banc "must be filed within the time prescribed by Rule 40 for filing a petition for rehearing." The petition for rehearing or rehearing *en banc* in this case is thus currently due on August 7, 2018. This Court may extend that due date for "good cause." Fed. R. App. P. 26(b), 40(a)(1); see also Circuit Rule 31-2.2.

This is the first request for an extension of time to file a petition for rehearing or rehearing en banc in this matter.

As set forth in the attached declaration, good cause exists for an extension.

This case presents a significant Constitutional question of first impression in this Circuit. Any petition for rehearing or rehearing *en banc* addressing the Court's important ruling requires thorough analysis of the history, text, and legal underpinnings for Second Amendment jurisprudence, as well as the specific language of the 59-page majority opinion and the 17-page dissent issued by the panel.

In light of the magnitude of the opinion, the County is pursuing the retention of outside counsel, for which additional time is necessary. Under the County's Charter, retention of outside counsel requires authorization by vote of the County Council. In order for the County Council to consider the hiring of special counsel, the matter must be publicly noticed and properly placed on the agenda. The hiring of special counsel requires the consideration and evaluation of various counsel, as well as preparing the necessary legal documents and fully briefing the County Council. The County intends to request Council consider the hiring of special counsel at their August 22, 2018 meeting.

In addition, counsel on this appeal has specific conflicting commitments in other cases that will require attention within the same time period. *Declaration of D. Kaena Horowitz* ¶ 6.

The County has exercised diligence at all times during this matter, and the petition for panel rehearing or rehearing *en banc* will be filed within the time requested.

In compliance with Circuit Rule 31-2.2(b), this motion is filed 7 days before the expiration of the time prescribed for filing the petition for rehearing or rehearing *en banc*.

For these reasons, as well as those set forth in the accompanying *Declaration of D. Kaena Horowitz*, the County respectfully requests that the time for filing a petition for rehearing or rehearing *en banc* in this appeal be extended forty-five (45) days, until and including September 14, 2018.

DATED: Hilo, Hawai‘i, July 31, 2018.

/s/ D. Kaena Horowitz  
JOSEPH KAMELAMELA  
LAUREEN MARTIN  
D. KAENA HOROWITZ

Attorneys for Defendants-Appellees County of Hawaii, as a sub-agency of the State of Hawaii; William P. Kenoi, in his capacity as Mayor of the County of Hawaii; Hilo County Police Department, as a sub-agency of the County of Hawaii; and Harry S. Kubojiri, in his capacity as Chief of Police

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**DECLARATION OF D. KAENA  
HOROWITZ**

**DECLARATION OF D. KAENA HOROWITZ**

I, D. Kaena Horowitz, declare that the following is true and correct,  
under penalty of perjury:

1. I am a Deputy Corporation Counsel for the County of Hawai'i and I  
make this *Declaration* based on personal knowledge.

2. This *Declaration* is made, pursuant to Circuit Rule 31-2.2(b), in support of the motion filed by Defendants-Appellees County of Hawai‘i, as a sub-agency of the State of Hawai‘i; William P. Kenoi, in his capacity as Mayor of the County of Hawai‘i; Hilo County Police Department, as a sub-agency of the County of Hawai‘i; and Harry S. Kubojiri, in his capacity as Chief of Police (collectively, the “County”) to extend the time in which to file a petition for rehearing or rehearing *en banc* in this matter.
3. This is the first request for an extension of time.
4. This case presents a significant question of Constitutional law that had not previously been decided in this Circuit and a petition for rehearing or rehearing *en banc* addressing the Court’s important ruling requires thorough analysis of the history, text, and legal underpinnings for Second Amendment jurisprudence, as well as the specific language of the 59-page majority opinion and the 17-page dissent issued by the panel.
5. In light of the magnitude of the opinion, the County is pursuing the retention of outside counsel, for which additional time is necessary. Under the County’s Charter, retention of outside counsel requires authorization by vote of the County Council. In order for the County



Council to consider the hiring of special counsel, the matter must be publicly noticed and properly placed on the agenda. The hiring of special counsel requires the consideration and evaluation of various counsel, as well as preparing the necessary legal documents and fully briefing the County Council. The County intends to request Council consider the hiring of special counsel at their August 22, 2018 meeting.

6. In addition to these reasons for an extension, my current and pending caseload warrants an extension, so that the appropriate amount of time can be dedicated to this important matter. I have the following matters pending in the next thirty (30) days:
  - In a United States District Court matter: a motion for summary judgment due no later than August 3, 2018; a hearing on my pending motion to dismiss on August 13, 2018; Court-ordered settlement conference (and associated settlement conference statement) set for August 22, 2018; and defending a deposition on August 31, 2018;
  - Arbitration of a personal injury case scheduled for August 10, 2018, with the prehearing statement and exhibits due to the Arbitrator no later than August 3, 2018;

- In a separate United States District Court case: resolving a discovery dispute which will allow me to move forward with reviewing medical records and scheduling and taking plaintiff's deposition, with a Court-ordered settlement conference (and associated settlement conference statement) scheduled for early September;
  - In a third United States District Court case: a reply brief to a motion to dismiss due on August 21, 2018, with hearing two weeks thereafter;
  - In a land use appeal before the Hawai'i Intermediate Court of Appeals, an answering brief that has already been extended once;
  - In a quiet title case, a responsive pretrial statement due no later than August 31, 2018; and
  - In two other state court cases, various discovery responses are due to me during the month of August.
7. For these reasons, good cause exists to extend the time for filing a petition for rehearing or rehearing *en banc* in this matter by forty-five (45) days, until and including September 14, 2018.

8. The County has exercised diligence at all times during this matter, and the petition for panel rehearing or rehearing *en banc* will be filed within the extension of time requested.
9. On July 30, 2018, counsel for Plaintiff-Appellant George K. Young, Jr., informed me that his client is amenable to a 14-day extension, but opposes anything beyond that.

Dated: Hilo, Hawai'i, July 31, 2018.

  
D. KAENA HOROWITZ

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his capacity as Mayor of the County of  
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**DECLARATION OF CLYDE J.  
WADSWORTH**

**DECLARATION OF CLYDE J. WADSWORTH**

I, Clyde J. Wadsworth, declare as follows:

1. I am the Solicitor General for the State of Hawaii (the “State”), and I make this declaration based on personal knowledge, unless otherwise stated herein.

2. This declaration is made in support of Defendants-Appellees County of Hawaii and related County officials’ (the “County”) *Motion for an Extension of Time to File a Petition for Panel Rehearing or Rehearing En Banc* (the “Motion”) in this appeal.

3. The district court dismissed Plaintiff-Appellant Young’s claims against the State on sovereign immunity grounds. On appeal to this Court, Young made no arguments to contest the district court’s reasons for dismissing his claims against the State. On July 24, 2018, this Court issued an Opinion (the “Opinion”) which, among other things, dismissed Young’s appeal against the State.

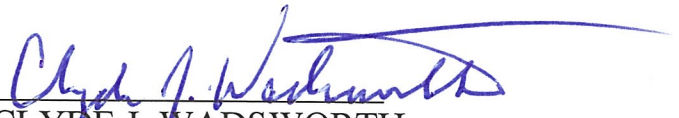
4. The Opinion also concluded that Hawaii Revised Statutes (“HRS”) § 134-9’s limitation on the open carry of firearms to those “engaged in the protection of life and property” violates the core of the Second Amendment and is therefore void.

5. Because the constitutionality of a State statute affecting the public interest has been drawn into question, the State intends to move to participate in this proceeding pursuant to 28 U.S.C. § 2403(b) and *Yniguez v. Arizona*, 939 F.2d 727 (9th Cir. 1991), to present argument on the question of constitutionality.

6. On that basis, the State supports the County's Motion. The State respectfully submits that the Court need not determine the State's precise status at this juncture in order to consider this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, July 31, 2018.

  
CLYDE J. WADSWORTH

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HAWAI'I, as a sub-agency of the State  
of Hawai'i; WILLIAM P. KENOI, in his  
capacity as Mayor of the County of  
Hawai'i; HILO COUNTY POLICE  
DEPARTMENT, as a sub-agency of the  
County of Hawai'i; HARRY S.  
KUBOJIRI, in his capacity as Chief of  
Police; JOHN DOES 1-25; JANE DOES  
1-25; DOE CORPORATIONS 1-5; DOE  
ENTITIES 1-5,

Defendants-Appellees.

No. 12-17808

D.C. No. 1:12-cv-00336-HG-BMK

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

I hereby 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 July 31, 2018.

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DATED: Hilo, Hawai'i, July 31, 2018.

COUNTY OF HAWAII'I,  
WILLIAM P. KENOI,  
HILO COUNTY POLICE DEPARTMENT,  
and HARRY S. KUBOJIRI, Defendants-  
Appellees

By /s/ D. Kaena Horowitz  
D. Kaena Horowitz  
Deputy Corporation Counsel  
Their Attorney