No. 12-17808

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR., Plaintiff-Appellant,

v.

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.

APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAI'I
THE HONORABLE HELEN GILLMOR
CASE NUMBER: CV12-00336 HG BMK

DEFENDANTS-APPELLEES COUNTY OF HAWAI'I, WILLIAM P. KENOI, HILO COUNTY POLICE DEPARTMENT, AND HARRY S. KUBOJIRI'S **MEMORANDUM IN OPPOSITION** TO PLAINTIFF-APPELLANT'S MOTION FOR ORDER TO FILE SUPPLEMENTAL BRIEFING [#84] FILED JUNE 9, 2016; CERTIFICATE OF SERVICE

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR., Plaintiff-Appellant, vs. STATE OF HAWAI'I; 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; 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 APPEAL FROM THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF HAWAI'I HONORABLE HELEN GILLMOR

DEFENDANTS-APPELLEES COUNTY OF HAWAI'I, WILLIAM P. KENOI, HILO COUNTY POLICE DEPARTMENT, AND HARRY S. KUBOJIRI'S MEMORANDUM IN OPPOSITION TO PLAINTIFF-APPELLANT'S MOTION FOR ORDER TO FILE SUPPLEMENTAL BRIEFING FILED [#84] JUNE 9, 2016

CERTIFICATE OF SERVICE

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, “County Defendants”), by and through their attorneys, respectfully submit this Memorandum in Opposition to Plaintiff-Appellant GEORGE K. YOUNG, JR.’s (“Appellant”) Motion for Order to File Supplemental Briefing [#84], filed June 09, 2016 (“Motion”). Appellant’s request must fail, as County Defendants object to even the limited amicus briefing agreed to by the State would not add to the court’s present ability to reach a decision in this case. The County Defendants further oppose allowing Appellant to extend the word count past the word count established by Rule 28(j) of the Federal Rules of Civil Procedure, as Appellant has consistently attempted to broaden the scope of this appeal by his continuous request for judicial notice and or submission of cases decided after the briefing in this case has closed. Therefore, this Court should deny Appellant’s Motion.

I. APPELLANT HAS NO NEW GROUND THAT HAS NOT ALREADY BEEN COVERED IN HIS PRIOR BRIEFS

Appellant states that “While Mr. Young addressed open carry in his Opening Brief (see pp. 1, 14, 15, 35)…” p.2 in his Motion for Leave to Amend clearly he had opportunity and did address the issue he now wishes to expand upon.

Therefore this Court has had access and time to consider Appellants arguments. A detailed excessive briefing of *Peruta* would not lend incite to this Court as Appellant has recognized that the *Peruta* Court did not address this issue. The Court in *Peruta* did not reach the open carry issue it is disingenuous of Appellant to seek reopening of the briefing when the case did not reach the issue he represents he will discuss in the extended briefing. The *Peruta* Court stated:

> Our holding that the Second Amendment does not protect the right of a member of the general public to carry concealed firearms in public fully answers the question before us. Because the Second Amendment does not protect in any degree the right to carry concealed firearms in public, any prohibition or restriction a state may choose to impose on concealed carry — including a requirement of "good cause," however defined — is necessarily allowed by the Amendment. There may or may not be a Second Amendment right for a member of the general public to carry a firearm openly in public. The Supreme Court has not answered that question, and we do not answer it here. *Peruta v. Cty of San Diego*, 2016 WL 319431516, 15 (2016).

The only question directly answered by the Ninth Circuit Court of Appeals is that Appellant has no right under the Second and Fourteenth Amendments of the United States Constitution to carry concealed firearms in public.

The Appellant's request for an order for further briefing should be denied.

II. SHOULD THE COURT GRANT APPELLANTS MOTION, IT SHOULD DENY AN EXTENSION OF RULE 28(j) or THE FEDERAL RULES OF APPELLANT PROCEDURE

Appellant is attempting to impermissibly modify the record on appeal and is requesting an unlimited word count to do so. Rule 28(j) of the Federal Rules of

Appellate Procedure is clear that 350 words is the limit to explain why a supplemental authority is being submitted and why it is relevant. If this court should allow Appellant his request it should be limited to the word count set forth in the Rule for "pertinent and significant authorities". Nothing more.

III. CONCLUSION

Appellant's request for an order for supplemental briefing is nothing more than further argument by Appellant with the hope of sliding in argumentative facts to supplement the record and distinguish recent case law that he admits is dispositive to one issue in his appeal. The County Defendants object to Appellant's request. We respectfully ask this Court to deny same.

DATED: Hilo, Hawai'i, June 16, 2016.

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

By /s/ Melody Parker
MELODY PARKER
Deputy Corporation Counsel
Their Attorney

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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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 June 16, 2016.

I hereby certify that the foregoing was served upon the following parties by using the appellate CM/ECF system on June 16, 2016:

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DATED: Hilo, Hawai‘i, June 16, 2016.

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

By /s/ Melody Parker
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Their Attorney