U.S. COURT OF APPEALS CASE NO. 12-17808

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE K. YOUNG, JR.
Plaintiff and Appellant,

v.

STATE OF HAWAII, et al.
Defendants and Appellees,

and

AMICUS CURIAE BRIEF OF SAN DIEGO COUNTY GUN OWNERS POLITICAL ACTION COMMITTEE IN OPPOSITION TO THE PETITION FOR REHEARING

On Appeal from the United States District Court
for the District of Hawaii
District Court No. 12-00336-HG-BMK (Hon. Helen Gillmor)

John W. Dillon (SBN 296788)
jdillon@gdandb.com
GATZKE DILLON & BALLANCE LLP
2762 Gateway Road
Carlsbad, California 92009
Telephone: (760) 431-9501
Facsimile: (760) 431-9512

Attorneys for San Diego County
Gun Owners Political Action Committee

CORPORATE DISCLOSURE STATEMENT

San Diego County Gun Owners is a political action committee and not incorporated. Thus, pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a), San Diego County Gun Owners Political Action Committee has no parent corporations. It has no stock, and hence, no publically held company owns 10% or more of its stock.

November 16, 2018

Gatzke Dillon & Balance LLP
Attorneys for *Amicus Curiae*

By: *~~/s/ John W. Dillon~~*
John W. Dillon

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STATEMENT OF INTEREST[1]

The San Diego County Gun Owners Political Action Committee (SDCGO) is a diverse and inclusive 1,300-plus member political organization. SDCGO is dedicated to preserving and restoring citizens' gun rights. It has developed a strong, permanent foundation that focuses on changing the face of gun ownership and use by working with volunteers on state and local activities and outreach. Since its beginning in 2015, SDCGO has profoundly influenced and advanced policies protecting the Second Amendment.

SDCGO's primary focus is on expanding and restoring Second Amendment rights within San Diego County and in California due to an aggressive and largely successful legislative and regulatory effort to significantly limit or eliminate the firearms industry and the ownership and use of firearms at the California state, county, and municipal levels. These laws and regulations in California as a whole prohibit the average citizen from carrying a firearm either *openly* or *concealed* in public. See *Young v. Hawaii*, 896 F.3d 1044, 1050 (9th Cir. 2018) (pet. for reh'g en banc, filed Sept. 9, 2018) (panel opinion).

SDCGO advocated the right to carry a *concealed* firearm in public in San Diego during the pendency of the *Peruta* decision (*Peruta v. County of San Diego*,

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[1] All parties consent to the filing off this brief. No counsel for any party authored this brief in whole or in part. No person, other than *amicus curiae,* contributed money intended to fund the brief's preparation and submission.

824 F.3d 919 (9th Cir. 2016) (en banc) (*Peruta II*), which overturned a three-judge panel's decision striking down a *concealed* carry licensing statute (*Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014) (*Peruta I*). However, in the State of Hawaii, there is still hope that outright bans will be stricken, as in this case, because it is a violation of the Second Amendment. Hawaii Revised Statute section 134-9 prohibits anyone but essentially security guards from obtaining carry permits and only when the permit holder is "in the actual performance of his duties or within the area of his assignment." *Young*, 896 F.3d at 1070-1071. The statute operates as an outright ban on an average citizen's right to carry firearms in public for self-defense.

INTRODUCTION

The majority panel in *Young* correctly held "the right to bear arms must guarantee *some* right to self-defense in public." *Young*, 896 F.3d at 1068 (emphasis in original). This holding is wholly consistent with the Supreme Court decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010); and "open carry" was not addressed by the Ninth Circuit in its en banc decision in *Peruta II*.

As noted by the majority panel, *Peruta II*, 824 F.3d at 924, considered a challenge to San Diego's limitations on *concealed* carry of firearms outside of the home, and the en banc court held "the Second Amendment right to keep and bear

arms does not include, in any degree, the right of a member of the general public to carry *concealed* firearms in public." *Id*. at 939 (emphasis added.)

Glossed over by Appellees and in amicus curiae briefs, however, is the fact that the *Peruta II* court expressly left open the question of whether the Second Amendment encompasses a right to open carry. See *id*. ("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.") The majority panel properly resolved this question, holding the Second Amendment encompasses a right to carry firearms openly in public for self-defense. *Young*, 896 F.3d at 1068, 1074.

Appellees and amicus briefs misconstrue the text and history of the Second Amendment and seek to extend *Peruta II* to an issue that court did not answer; and, in doing so, they improperly conflate *open* carry and *concealed* carry in an attempt to blindly apply *Peruta* II's prohibition on *concealed carry* to the right to carry firearms in pubic *in any form* for self-defense. Appellees' petition for rehearing lacks merit and should be denied.

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ARGUMENT

A. Rehearing Should be Denied Because the Majority Panel Properly Applied a Textual and Historical Analysis Consistent with Supreme Court Precedent.

The majority panel opinion applied the established two-step approach to Second Amendment challenges. *Young*, 896 F.3d at 1051. Guided by *Heller* and *McDonald*, the panel determined the scope of the Second Amendment with regard to open carry by discerning the scope not as it appeared to the panel "now," but "with the scope [it was] understood to have when the people adopted [it]," citing *Heller*, 554 U.S. at 634-35. The panel followed the two "lodstars" — text and history — because they "bear most strongly on what the right was understood to mean, at the time of enactment, to the public. *Young*, 896 F.3d at 1051. Indeed, the panel used the *same* text and historical analysis set forth in *Heller*, considering: (i) the text of the Second Amendment; (ii) the English right to keep and bear arms; (iii) the writings of important founding-era legal scholars; (iv) nineteenth century judicial interpretations; and (v) the legislative setting following the Civil War. *Young*, 896 F.3d at 1052-1068. Appellees contend the panel opinion abandons the analysis in *Peruta II*. *See* Pet. 2-3, 13-16. Appellees are wrong.

B. The Second Amendment Text Firmly Establishes the Right of Law-Abiding Citizens to Carry Firearms Outside of the Home.

The majority panel opinion properly analyzed the text of the Second Amendment, and determined it supports at least some right to carry a firearm

publicly for self-defense. Indeed, as confirmed by the panel, to deny this right outside the home would negate "the central component" of the Second Amendment to keep and bear arms, quoting *Heller,* 554 U.S. at 599 and *Moore v. Madigan*, 702 F.3d 933, 936-937. See *Young*, 896 F.3d at 1053, fn. 4. However, like the dissent in the panel opinion, Appellees argue for a contrary conclusion that would limit the Second Amendment's reach to within the home only — without grappling with the text of the Second Amendment itself. See Pet. 8-18.

The Second Amendment explicitly protects not only the right to "keep" but also to "bear" arms. According to *Heller*, to "bear" means to "wear" or to "carry… upon the person or in the clothing or in a pocket, for the purpose… of being armed and ready for offensive or defensive action in a case of conflict with another person." *Young*, 896 F.3d at 1052, quoting *Heller*, 554 U.S. at 584. *Heller* also clarified that to "bear arms" did not solely refer to carrying a weapon as part of a militia, but rather to "bear" for "a particular purpose — confrontation." *Id.* at 584-585. Unquestionably, as the panel noted, confrontation is not limited to one's home or place of business, but can occur at any time, in any place in private or public. *Young*, 896 F.3d at 1052, citing *Wrenn*, 864 F.3d at 657, and *Moore*, 702 F.3d at 941 ("self-protection is as great outside as inside the home.")

Importantly, the panel opinion is not the first to address to what extent the Second Amendment applies outside the home, and the panel cited the D.C. Circuit's

opinion in *Wrenn v. District of Columbia*, 864 F.3d 933, 936-937 (7th Cir. 2012), the Seventh Circuit's opinion in *Moore*, 702 F.3d 933, 936-937, and the Illinois Supreme Court's decision in *People v. Aguilar*, 2 N.E.3d 321, 327 — all of which relied on *Heller*, 554 U.S. at 599. Thus, the majority panel opinion is hardly "misguided" or "dangerous." See Pet. 17. Further, as noted in *Heller*, it makes "little sense" to restrict the right to keep and bear arms to just the home, as "confrontations are not limited to the home." *Heller*, 554 U.S. at 599.

Significantly, both *Heller* and *McDonald* provide a similar understanding of the term "bear." *Heller* described the "inherent right of self-defense" as "most acute" within the home, suggesting that the right to bear arms for self-defense exists, but perhaps less so, outside the home. *Heller*, 554 U.S. at 628. Accordingly, the right to defense of self, family, and property is "most acute" in the home, but it does not stop there. It may be less acute elsewhere, but self-defense is not limited to the borders of a home. *Young*, 896 F.3d at 1051-1052.[2]

Heller also cited laws "forbidding the carrying of firearms in sensitive places such as schools and government buildings" as presumptively lawful. See *Young*, 896 F.3d at 1053. As persuasively noted in the panel opinion, this, of course, *necessarily*

[2] See Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1515 (2009)

requires there to be *non-sensitive* places where this right is still protected. The entire public sphere cannot possibly be considered a sensitive place. *Id.*

Also unavailing is Appellees' overreliance on the Second Circuit decision in *Kachalsky v. County of Westchester* 701 F.3d 81 (2d Cir. 2012). In upholding a concealed carry licensing scheme, the court left open the idea of an open carry right when it stated that a faithful reading of *Heller* "suggests… that the Amendment must have *some* application in the very different context of the public possession of firearms." Kachalsky, 701 F.3d at 89.

C. Historical Analysis of the Second Amendment and the Open Carry of Firearms —the Statute of Northampton and English Common Law.

Appellees' petition and supporting amicus briefs place great emphasis on the English Statute of Northampton, 2 Edw. III c. 3 (1328), claiming it "broadly limited the carrying of weapons in public." See Amicus Curiae Br., Everytown for Gun Safety at 7 (Everytown). This claims oversimplifies the statute's meaning and enforcement.

The Statute of Northampton states that no person shall "come before the King's justices,…with force and arms, nor bring no force in affray of the peace, 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.…" Statute of Northampton 1328, 2 Edw. 3, c. (Eng.). But, Everytown departs from the activities *actually*

prohibited by the statute, namely — to use force and arms *to terrorize the people*.[3] The panel opinion addressed this statute in detail, explaining that although it may have been enforced literally immediately after its enactment, enforcement became directed toward prohibiting *disturbing the peace*. See *Young*, 896 F.3d at 1063-1064. Quoting Serjeant William Hawkins, the panel opinion states:

> [N]o wearing of Arms is within the meaning of this Statute, unless it be accompanied with such Circumstances as are apt to terrify the People; from whence it seems clearly to follow, That Persons of Quality are in no Danger of Offending against this Statute by wearing common Weapons.

Id., at 1064.[4]

Moreover, the panel opinion correctly referenced Blackstone's interpretation of the statute, also cited in *Heller*, 554 U.S. at 627, to mean "going armed, with *dangerous or unusual weapons*, is a crime against the public peace…." *Young*, 896 F.3d at 1064 (emphasis added.) The panel opinion correctly points out that the qualification, as to "dangerous and unusual weapons," infers that not all weapons were prohibited from being carried. *Id*. Thus, as pointed out by the panel, the more recent historic record suggests that the Statute of Northampton only barred

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[3] See e.g., Joyce Lee Malcolm, *To Keep and Bear Arms: The Origins Of an Anglo-American Right,* 104-105; and David B. Kopel, *The Second Amendment in the Nineteenth Century*, 1998 BYU L. Rev. 1359, 1532 and fn. 724.

[4] See 1 William Hawkins, *A Treatise of the Pleas of the Crown*, ch. 163, § 9, at 135, 136 (1716).

Englishmen from carrying dangerous or unusual weapons (not common arms) for terror (not self-defense.)[5]

Notably, the *Peruta II* court provides a detailed accounting of English law as far back as 1299. It refers to the Statute of Northampton and the various orders, proclamations, and statutes subsequently enacted. However, many of the subsequent laws after the enactment of such statute addressed either *concealed carry* or the *types of firearms* prohibited from being carried; not a broad prohibition on the right to carry *all arms*. See *Peruta II* 824 F.3d at 929-932 (finding only that English law "prohibited carrying *concealed*" arms in public) (Emphasis in original). Thus, when reviewing early English laws and their application to *open carry*, the historical record supports the longstanding right to open carry arms. See *Young*, 896 F.3d at 929-932.

D. Early Legal Scholars.

Relying on *Heller*, 554 U.S. at 605, the panel opinion next considered the writings of "founding-era legal scholars" to discern the rights afforded by the Second

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[5] This interpretation is also supported by the decisions in *Rex v. Knight* 3 Mod. 117, 87 Eng. Re. 75, 76 (K.B. 1686) ([t]he Chief Justice said[] that the meaning of the statute… was to punish people who go armed *to terrify the king's subjects*); *Rex v. Dewhurst*, 1 State Trials, N.S. 529, 601-02 (1820) ("A man has a clear right to protect himself when he is going singly or in a small party upon the road where he is traveling or going for the ordinary purpose of business."); and *Rex v. Smith*, 2 Ir. Rep. 190, 204 (K.B. 1914) (holding the Statute of Northampton did not apply to one who peaceably walked down a public road with a loaded revolver, because the offense was "to ride or go armed without lawful occasion in *terrem populi*.")

Amendment because that "sort of inquiry is a critical tool of constitutional interpretation." *Young*, 896 F.3d at 1054-1055. For example, William Blackstone's *Commentaries on the Laws of England* were relied on in *Heller* and "constituted the preeminent authority on English law of the founding generation." *Id.* 554 U.S. at 593-94 (quoting *Alden v. Maine*, 527 U.S. 706, 715 (1999). Additionally, the writings of St. George Tucker, America's first Blackstone scholar, were considered and found to support an individual right to self-defense. The panel opinion correctly considered these founding-era sources, which state that the right to armed self-defense is the "first law of nature" and that "the right of the people to keep and bear arms" is the "true palladium of liberty." *Young*, 896 F.3d at 1053. Accordingly, the right to keep and bear arms is an individual right of self-defense, and necessarily includes the ability to openly carry firearms in public. *Id*. at 1053-1054.

E. Nineteenth Century Case Law Firmly Establishes The Second Amendment Right to Open Carry.

The Supreme Court in *Heller* and *McDonald*, and this Court in *Peruta II,* relied heavily on early nineteenth-century case law to determine the extent of Second Amendment protections. The panel opinion followed suit. *Young*, 896 F.3d at 1055-1061. When considering whether the Second Amendment includes the right to carry a firearm openly for self-defense, these cases are high in number and uniform in their interpretation. Simply, the cases confirm that the Second Amendment right to bear arms must include, at a minimum, the right to carry a firearm openly for self-defense.

The panel opinion properly applied the *Heller* and *Peruta II* early case law analysis to hold that the Second Amendment protects the right to open carry a firearm for self-defense. *Id.*

As noted, Appellees attempt to dismiss these early cases by conflating *concealed* carry and *open* carry. For example, Appellees ask this Court to dismiss the significance of *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822), cited in *Heller*, with regard to the *open carry* of firearms in the same way that it did in *Peruta II* for *concealed* carry of firearms. See Pet. 14 (asserting, among other things, that the case was later overturned by constitutional amendment). Not so fast.

Though Kentucky later amended its constitution to allow its legislature to "pass laws to prevent persons from carrying *concealed* arms," Kentucky "left untouched" the premise in *Bliss* that the right to bear arms protects *open* carry. See *Young*, 896 F.3d at 1055.

The same interpretation applied in *Bliss* was used by the Tennessee Supreme Court in *Simpson v. State*, 13 Tenn. (5 Yer.) 356 (1833) eleven years later.[6] As noted in the panel opinion, in *Simpson*, the Tennessee court acknowledged that a colonial law-based crime — which originated from English law — was abrogated by the Tennessee Constitution, which granted "an express power … secured to a free

[6] The analysis of *State v. Mitchell*, (Ind. 1833) 3 Blackf. 229, 229 was excluded from this analysis due to its one sentence opinion that only addresses *concealed* carry. However, nothing in this decision prohibits *open* carry.

citizens of the state to keep and to bear arms for their common defence, without qualification whatever as to their kind or nature." See *Young*, 896 F.3d at 1055. Thus, the two cases nearest in time to the founding era, which addressed the right to keep and bear arms — *Bliss* and *Simpson* — both acknowledged the broad protection afforded to *open* carry.

Further, the panel opinion referenced *State v. Reid*, 1 Ala. 612 (1840), cited in *Heller*, in which the Alabama Supreme Court declared that an Alabamian must be permitted some means of carrying a firearm in public for self-defense. The court in *State v. Reid* explicitly held carrying firearms *openly* was wholly protected:

> Under the provision of our constitution, we incline to the opinion that the *Legislature cannot inhibit the citizen from bearing arms openly*, because it authorizes him to bear them for the purposes of defending himself and the State, and it is only when carried openly, that they can be efficiently used for defence.

Id., *State v. Reid* at 619 (emphasis added).

In *State v. Chandler* 5 La. Ann. 489, 490 (1850), the Court agreed, holding that the right to carry openly "is the right guaranteed by the Constitution of the United States, and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations."

Moreover, the Georgia Supreme Court in Nunn v. State 1 Ga. 243, 251 (1846), found that a concealed weapons ban did not "deprive the citizen of his *natural* right

of self-defense, or of his constitutional right to bear arms. But that so much of it, as contains a prohibition against bearing arms *openly*, is in conflict with the Constitution, and *void*…." (Emphasis added in original). These cases clearly embody the understanding of the right to self-defense as requiring the visible carrying of weapons that would prevent unexpected, unmanly violence.

Using the reasoning in *Heller*, and as applied in *Peruta II*, the panel opinion surveyed the nineteenth century case law that limited *concealed* carry, and correctly determined that those *same* cases "command" that the Second Amendment must encompass the right to *open* carry. See *Young*, 896 F.3d at 1055-1062.

F. The Panel Opinion is Consistent with the Peruta II Analysis of the Legislative Setting after the Civil War.

The panel opinion correctly addresses Post-Civil War considerations and properly applied the analysis used in *Peruta II*. *Young*, 896 F.3d at 1059-1061. That analysis "follow[s] [Heller's] lead with respect to the Fourteenth Amendment" and discussed decisions after its adoption. See *Peruta II* 824 F.3d at 936-39.

First, referring to the post-Civil War state constitutions analyzed by this Court in *Peruta II*, five state constitutions prohibited only *concealed* carry, not *open* carry.[7] *Id.*, at 936-37. Additionally, six other states granted their legislative bodies the broad

[7] See State constitutions of North Carolina, Colorado, Louisiana, Montana, and Mississippi.

authority to regulate the manner in which arms could be carried. *Id.*, at 937.[8] However, for the post-Civil War period between 1865 and 1965, 16 states *did not* provide broad authority to the legislatures,[9] in comparison the six cited in *Peruta II*. Of the 16, only five restricted only concealed carry. Moreover, considering all state constitutions, 38 states do not place broad authority on their legislatures to regulate carrying firearms; 10 permit the regulation of *only concealed carry*; only 7 provide broad authority on the manner of carrying arms, and 6 state constitutions have no provisions.[10] Thus, the clear majority of state constitutions have permitted *open* carry.

G. The Panel Properly Rejected Certain Post-Civil War Cases and Other Laws.

In the years following adoption of the 14th Amendment, two states courts and one territorial court upheld restrictions on *concealed* arms. *Young*, 896 F.3d at 1058-59. But these decisions cannot be said to have upheld prohibitions or restrictions on the carrying of *all* arms, especially open carry. Further, the panel opinion correctly considered the implications of these courts' Second Amendment interpretations. The courts did not acknowledge an individual right to keep and bear

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[8] See State constitutions of Georgia, Texas, Tennessee, Florida, Idaho, Utah.

[9] Eugene Volokh, *State Constitutional Rights to Keep and Bear Arms,* 11 Tex. Rev. of L. & Pol. 191 (2006).

[10] *Id*.

arms under the Second Amendment; instead, they rest on a militia-focused view of that right, which was already rejected in *Heller*, 554 U.S. at 585.

When considering such cases, the panel opinion took these considerations into account and applied the current understanding that the Second Amendment right is an individual one. *Young*, 896 F.3d at 1057-59. This is the major flaw in the cases relied on by Appellees.[11] The fundamental reasoning for each such decision has been held to be invalid. Thus, how can their conclusions be afforded any significant authority?

Additionally, the panel opinion addresses the mischaracterization of surety laws as equivalent to "good cause" restrictions on the right to carry firearms in public. *Young*, 896 F.3d at 1061-1063. These laws do not operate similar to current good cause restrictions, which require "good cause" *before* the right can be exercised. Thus, as noted correctly by the panel opinion, "[w]hile surety laws used the language "reasonable cause," they bear no resemblance to modern-day good cause requirements to carry a firearm. *Young*, 896 F.3d at 1062-1063.

CONCLUSION

The panel opinion correctly applied the textual and historical analysis used in *Heller* and *Peruta II*. This analysis shows while the majority of the nineteenth

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[11]See *State v. Buzzard*, 4 Ark. 18 (1842); *English v. State*, 35 Tex. 473 (1871); *State v. Workman*, 35 W.Va. 367 (1891).

century courts held that prohibitions on *concealed carry* of firearms were lawful under the Second Amendment, these same courts have overwhelmingly permitted *open carry*. From 1822 to 1850, eight states faced challenges to states' statutes limiting the right to carry.[12] Six of those states, while restricting the right to *concealed* carry, explicitly permitted *open* carry and held that bans on *open* carry would violate the Second Amendment right to keep and bear arms.[13] One state acknowledged Second Amendment protections for both *concealed* and *open* carry.[14] Only one court provided nearly no limits on a legislatures ability to restrict the carrying of arms.[15]

The panel opinion also properly applied the Post-Civil War analysis used in *McDonald* and *Peruta II*. Most post-Civil War state constitutions and case law that have considered the right to bear arms under both the Second Amendment and various state constitutions, have included a right to carry firearms openly in public. As such, the panel opinion's textual and historical analysis is correct. Because

[12] *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822); *State v. Buzzard*, 4 Ark. 18 (1842); *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833); *State v. Reid*, 1 Ala. 612 (1840); *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840); *Nunn v State*, 1 Ga. 243 (1846); *State v. Chandler*, 5 La. Ann. 489 (1850); *State v. Huntly*, 25 N.C. (3 Ired.) 418 (1843).

[13] *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833); *State v. Reid*, 1 Ala. 612 (1840); *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840); *Nunn v State*, 1 Ga. 243 (1846); *State v. Chandler*, 5 La. Ann. 489 (1850); *State v. Huntly*, 25 N.C. (3 Ired.) 418 (1843).

[14] *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822)

[15] *State v. Buzzard*, 4 Ark. 18 (1842)

Hawaii Revised Statutes section 134-9 restricts Plaintiff from exercising his right to carry a firearm openly, it burdens conduct protected by the Second Amendment and is void.

Considering the historical analysis as applied to open carry, the panel opinion is correct that open carry for self-defense is a core Second Amendment right. *Young*, 896 F.3d at 1068-1070. Historical regulation centered on *concealed carry* not *open carry*. As such, these regulations do not remove the right to open carry for self-defense from the Second Amendment's core protection.

Clearly, section 134-9 amounts to a destruction of this core right, as all but a handful of people have *ever received* a license to carry *in the entire state of Hawaii.* The panel was correct to apply a categorical approach holding section 134-9 unconstitutional "[u]nder any of the standards of scrutiny" because Hawaiian citizens are "entirely foreclosed from exercising the core Second Amendment right to bear arms for self-defense" in public. *Young*, 896 F.3d at 1070-1071. Regardless, the panel opinion's intermediate scrutiny analysis removes all doubt. *Young*, 896 F.3d at 1071-1073. Hawaii's effective ban on *open* carry is a violation of the Second Amendment.

November 16, 2018

Gatzke Dillon & Balance LLP
Attorneys for *Amicus Curiae*

By: */s/ John W. Dillon*
John W. Dillon

CERTIFICATE OF COMPLIANCE WITH RULE 29-2(c)(2)

I hereby certify this brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(2) because this brief contains 4,184 words, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the 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 2013 in 14-point Times New Roman font.

November 16, 2018

Gatzke Dillon & Balance LLP
Attorneys for *Amicus Curiae*

By: */s/ John W. Dillon*
John W. Dillon

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2018, I electronically filed the foregoing Amicus Curiae Brief of San Diego County Gun Owners Political Action Committee in Opposition of the Petition for Rehearing with the Clerk of the Court by using the CM/ECF system. I certify that the participants of this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

November 16, 2018

Gatzke Dillon & Balance LLP
Attorneys for *Amicus Curiae*

By: */s/ John W. Dillon*
John W. Dillon