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SCOTT T. NAGO, STATE OF HAWAII 2011
REAPPORTIONMENT COMMISSION,
VICTORIA MARKS, LORRIE LEE STONE,
ANTHONY TAKITANI, CALVERT CHIPCASE IV,
ELIZABETH MOORE, CLARICE Y. HASHIMOTO,
HAROLD S. MASUMOTO, DYLAN NONAKA, and
TERRY E. THOMASON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JOSEPH KOSTICK; KYLE MARK
TAKAI; DAVID P. BROSTROM;
LARRY S. VERAY; ANDREW
WALDEN; and EDWIN J. GAYAGAS,

Plaintiffs,

vs.

SCOTT T. NAGO, in his official
capacity as the Chief Election Officer
State of Hawaii; STATE OF HAWAII

Civil No. CV 12-00184 JMS-RLP

PARTIES' STIPULATED FACTS RE:
THE MOTION FOR PRELIMINARY
INJUNCTION IN RESPONSE TO
COURT ORDER [DOCKET 16];
EXHIBIT "A"; CERTIFICATE OF
SERVICE

2011 REAPPORTIONMENT
COMMISSION, VICTORIA MARKS,
LORRIE LEE STONE, ANTHONY
TAKITANI, CALVERT CHIPCASE
IV, ELIZABETH MOORE, CLARICE
Y. HASHIMOTO, HAROLD S.
MASUMOTO, DYLAN NONAKA,
and TERRY E. THOMASON, in their
official capacities of members of the
State of Hawaii 2011 Reapportionment
Commission; and DOE DEFENDANTS
1-10,

Defendants.

PARTIES' STIPULATED FACTS RE: THE MOTION FOR PRELIMINARY
INJUNCTION IN RESPONSE TO COURT ORDER [DOCKET 16]

The parties have stipulated to the following facts with respect to the Motion for Preliminary Injunction:

1. The U.S. Census ("Census") counts people at their "usual residence." "Usual residence" is defined by the Census as the place where a person lives and sleeps most of the time. It is not necessarily the same as the person's voting residence or legal residence. A true and correct copy of information from the Census about how it counts people at their "usual residence" is attached as Exhibit A.
2. The 2010 Census counted people at their "usual residence" as of April 1, 2010 ("Census Date").
3. All active duty military personnel who on the Census Date were usual residents of the State of Hawaii ("Hawaii" or "State") under the Census' usual residence definition, were or should have been counted by the 2010 Census as part of the Hawaii population.
4. All students who on the Census Date were enrolled at a Hawaii university or college and were usual residents of Hawaii under the Census' usual

- residence definition, were or should have been counted by the 2010 Census as part of the Hawaii population.
5. Tourists who on the Census Date were in Hawaii but away from their place of usual residence were not or should not have been counted by the 2010 Census as part of the Hawaii population.
 6. All active duty military personnel who on the Census Date were deployed outside of Hawaii were not or should not have been counted as usual residents of Hawaii for the purpose of State legislative reapportionment.
 7. In the data that the Commission received from the military, active duty military personnel who were deployed on or about the Census Date were identified on a spread sheet.
 8. To establish the permanent resident population base used for the 2012 Reapportionment Plan¹ that is being challenged in this lawsuit, the Commission extracted 42,332 active duty military personnel from the 2010 Census count based on military records or data denoting the personnel's state of legal residence.
 9. The Commission received testimony and documents during its public meetings and hearings regarding active duty military in Hawaii. Commission staff reviewed Census data regarding active duty military in Hawaii. Commission staff also reviewed the State Data Book regarding active duty military in Hawaii. The State Data Book does not contain information regarding the permanent or non-permanent residency of active duty military in Hawaii. Other than the foregoing and the information and data provided to the Commission by the military, the Commission did not perform any independent investigation regarding the permanent or non-permanent residency of the active duty military personnel extracted from the 2010 Census count.
 10. To establish the permanent resident population base used for the 2012 Reapportionment Plan that is being challenged in this lawsuit, the Commission extracted 53,115 military dependents from the 2010 Census count who, according to data provided by the military, had an active duty military sponsor who had declared a state of legal residence other than

¹ The 2012 Reapportionment Commission is defined in Stipulated Facts No. 36.

Hawaii. In other words, the Commission extracted military dependents who were associated or attached to an active duty military person who had declared a state of legal residence other than Hawaii.

11. The Commission received testimony and documents during its public meetings and hearings regarding military dependents in Hawaii. Commission staff contacted the State of Hawaii Department of Commerce and Consumer Affairs (“DCCA”) to obtain the number of persons in regulated occupations and professions who were military dependents. DCCA staff said that the DCCA does not collect this type of information. Commission staff contacted the State of Hawaii Department of Education (“DOE”) to obtain the number of teachers who were military dependents. DOE staff said that the DOE does not collect this type of information. Commission staff conducted research on how many students attending Hawaii schools were military dependents and reviewed the State Data Book regarding military dependents in Hawaii, but these efforts did not assist the Commission in determining how many military dependents were permanent or non-permanent residents of Hawaii. Other than the foregoing and using military data to identify whether a military dependent was associated or attached to an active duty military person who had declared a state of legal residence other than Hawaii, the Commission did not conduct any independent investigation into the permanent or non-permanent residency of military dependents.
12. The military did not provide the Commission with any data regarding the military dependents’ permanent or non-permanent residency other than their association or attachment to an active duty military sponsor who had declared a state of legal residence other than Hawaii.
13. The Commission’s technical contractor informed the Commission that the military did not provide data that could identify military dependents as permanent or non-permanent residents, aside from their association or attachment to an active duty military sponsor that had declared a state of legal residence other than Hawaii.
14. To establish the permanent resident population base used for the 2012 Reapportionment Plan that is being challenged in this lawsuit, the Commission extracted 13,320 students from the 2010 Census count on the basis of: (a) payment of non-resident tuition; or (b) a home address outside of Hawaii.

15. The universities that provided data regarding non-resident students consisted of the University of Hawaii system-wide (“UH”), Hawaii Pacific University (“HPU”), Chaminade University (“Chaminade”), and BYU Hawaii (“BYUH”).
16. Other than the universities identified above, no other Hawaii universities, private or public, provided data to the Commission.
17. The Commission did not seek data from universities other than the schools identified above.
18. The Commission relied upon information provided by UH regarding which students paid non-resident tuition. Other than this information, the Commission did not have any other information regarding non-permanent residency of the UH students who were extracted from the 2010 Census count as being non-permanent residents of the State.
19. The Commission relied upon information provided by HPU, Chaminade, and BYUH regarding the home address of their students. Other than this information, the Commission did not have any other information regarding non-permanent residency of the HPU, Chaminade, and BYUH students who were extracted from the 2010 Census count as being non-permanent residents of the State.
20. Other than active duty military and their dependents and university students, the Commission did not receive data from any source regarding any other potential non-permanent residents residing in the State who may have been counted in the 2010 Census as having their usual residence in the State. The Commission did receive information from Commission staff about what had been done in prior reapportionments to try and obtain data about aliens and other potential non-permanent residents residing in Hawaii.
21. Commission staff unsuccessfully tried to obtain data from the military about non-permanent military contractors and Department of Defense personnel in Hawaii. Aside from this, the Commission did not investigate or promulgate any investigation into whether any other potential non-permanent residents residing in the State may have been counted in the 2010 Census as having their usual residence in the State.

22. Other than active duty military and their dependents and university students, the Commission did not extract from the 2010 Census count any other non-permanent residents who may have been residing in the State.
23. The 2010 Census count may have included legal and illegal aliens whose usual residence was in Hawaii as of the Census Date. The Commission did not extract people from the 2010 Census count because they were legal or illegal aliens.
24. The 2010 Census count included convicted felons whose usual residence was in Hawaii as of the Census Date. The Commission did not extract people from the 2010 Census count because they were convicted felons.
25. The 2010 Census count included non-registered voters whose usual residence was in Hawaii as of the Census Date. The Commission did not extract people from the 2010 Census counts because they were non-registered voters.
26. All persons extracted by the Commission were counted as part of the Hawaii population by the 2010 Census.
27. The State legislative reapportionment plan accepted by the Commission for public hearings and comment on August 3, 2011 (“August 2011 Plan”) did not extract from the 2010 Census count, any active duty military personnel, military dependents, or students.
28. No definition of “permanent residents” as that term is used in article IV of the Hawaii State Constitution is provided by the Hawaii State Constitution.
29. The Commission has recommended that the State legislature initiate changes in the Hawaii Constitution and statutes to clarify the definition of permanent residents for the reapportionment population base.
30. Residence locations could not be determined for some persons identified as non-permanent residents and the Commission, therefore, could not place those persons in particular census blocks for purposes of redistricting. These non-permanent residents were allocated proportionally to census blocks in their basic island unit, using a disaggregation method. The Commission then extracted those non-permanent residents from the census block to which they had been allocated.

31. For purposes of the disaggregation method referred to above, the following proportions were used:

One person was extracted per 19.12 persons on Oahu

One person was extracted per 137.8 persons on Hawaii

One person was extracted per 337 persons on Maui)

One person was extracted per 300 persons on Lanai

One person was extracted per 185 persons on Molokai

One person was extracted per 131 persons on Kauai

32. On or about September 26, 2011, the Commission adopted and filed a reapportionment and redistricting plan for the State legislature (“2011 Final Reapportionment Plan”) that extracted 16,458 people from the 2010 Census count or population of 1,360,301 persons. An amended version of the 2011 Final Reapportionment Plan (amending staggered terms portion) was filed on October 13, 2011.
33. On October 10, 2011 and October 11, 2011, two original proceedings were filed in the Hawaii Supreme Court challenging the 2011 Final Reapportionment Plan. See *Solomon et al. v. Abercrombie, et al*, SCPW 11-0000732 (“*Solomon*”) and *Matsukawa v. State of Hawaii 2011 Reapportionment Commission, et al.*, SCPW 11-0000741 (“*Matsukawa*”). The Petitions in the *Solomon* and *Matsukawa* proceedings sought: a judicial determination that the 2011 Final Reapportionment Plan was constitutionally defective and invalid; an order to the Chief Elections Officer to rescind public notice of the Plan; and an order to the Commission to prepare and file a new reapportionment plan for the State legislature that uses a population base limited to “permanent residents” of the State of Hawaii.
34. On January 4, 2012, the Hawaii Supreme Court issued an Order Granting Petition for Writ of Mandamus and Judicial Review in the *Solomon* and *Matsukawa* proceedings that: (a) concluded that the 2011 Final Reapportionment Plan was constitutionally invalid; (b) concluded that the 2011 Final Reapportionment Plan disregarded article IV, section 4 of the

Hawaii Constitution by including non-permanent residents in the population base that the Commission used to allocate members of the State legislature among the basic island units; (c) invalidated the 2011 Final Reapportionment Plan; (d) ordered the Commission to prepare and file a new reapportionment plan that allocates members of the State legislature among the basic island units by using a permanent resident population base and then apportions the members among the districts as provided by article IV, section 6 of the Hawaii Constitution; and (e) ordered the Chief Election Officer to rescind publication of the 2011 Final Reapportionment Plan for the State legislature.

35. On January 6, 2012, the Hawaii Supreme Court issued an opinion in the *Solomon* and *Matsukawa* proceedings.
36. On March 8, 2012, the Commission adopted and filed a reapportionment and redistricting plan for the State legislature (“2012 Reapportionment Plan”) that: (a) was designed to conform to the Hawaii Supreme Court’s rulings in the *Solomon* and *Matsukawa* proceedings; and (b) extracted 108,767 active duty military personnel, military dependents, and university students from the 2010 Census population of 1,360,301. The Chief Election Officer published notice of the 2012 Reapportionment Plan on March 22, 2012.
37. The permanent resident population used by the Commission to reapportion the members of each house of the State legislature in the 2012 Reapportionment Plan was 1,251,534. Dividing 1,251,534 by 25 Senate seats or districts equals approximately 50,061 permanent residents per Senate seat or district (“Senate statewide ideal or target district”), and dividing 1,251,534 by 51 House seats or districts equals approximately 24,540 permanent residents per House seat or district (“House statewide ideal or target district”).
38. Under the 2012 Reapportionment Plan: (a) the largest Senate District (Senate District 8, Kauai basic island unit) contains 66,805 permanent residents which is +16,744 permanent residents or +33.44% more than the Senate statewide ideal or target district; and (b) the smallest Senate District (Senate District 1, Hawaii basic island unit) contains 44,666 permanent residents which is -5,395 or -10.78% less than the Senate statewide ideal or target district.

39. Under the 2012 Reapportionment Plan: (a) the largest House District (House District 5, Hawaii basic island unit) contains 27,129 permanent residents which is +2,589 permanent residents or +10.55% more than the House statewide ideal or target district; and (b) the smallest House District (House District 15, Kauai basic island unit) contains 21,835 permanent residents which is -2,705 permanent residents or -11.02% less than the House statewide ideal or target district.
40. The 2012 Reapportionment Plan resulted in one Senate seat moving from the Oahu basic island unit to the Hawaii basic island unit.

DATED: Honolulu, Hawaii, April 20, 2012.

STATE OF HAWAII

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