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Attorneys for Defendants  
SCOTT T. NAGO, STATE OF HAWAII 2011  
REAPPORTIONMENT COMMISSION,  
VICTORIA MARKS, LORRIE LEE STONE,  
ANTHONY TAKITANI, CALVERT CHIPCHASE 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; EDWIN J. GAYAGAS;  
ERNEST LASTER and JENNIFER  
LASTER

Plaintiffs,

vs.

SCOTT T. NAGO, in his official  
capacity as the Chief Election Officer

Civil No. CV 12-00184 JMS-RLP-MMM  
DEFENDANTS' CONCISE  
STATEMENT OF FACTS IN SUPPORT  
OF THEIR MOTION FOR SUMMARY  
JUDGMENT; DECLARATION OF  
JOHN F. MOLAY; EXHIBITS "A" –  
"MM"; CERTIFICATE OF SERVICE

State of Hawaii; STATE OF HAWAII  
 2011 REAPPORTIONMENT  
 COMMISSION, VICTORIA MARKS,  
 LORRIE LEE STONE, ANTHONY  
 TAKITANI, CALVERT CHIPCHASE  
 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.

**DEFENDANTS’ CONCISE STATEMENT OF FACTS IN SUPPORT OF  
THEIR MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants, by and through their attorneys, David M. Louie, Attorney General and John F. Molay and Patricia Cookson, Deputy Attorneys General, and hereby submit their concise statement of facts in support of their Motion for Summary Judgment.

Fact	Evidentiary Support
1. The Hawaii Constitution initially provided for the State House of Representatives (“House”) to be apportioned on the basis of the “registered voter” population.	1. Exhibit A at 3-4
2. The 1968 and 1978 Constitutions retained the use of registered voters as the population base.	2. Exhibit B at 2-3, 5-6
3. After the 1981 reapportionment, a federal lawsuit was brought challenging, in part, the State’s registered voter base. The Court held the registered voter base could no longer be used because it did not produce substantially the same distribution of legislators as a permissible population base.	3. <i>Travis v. King</i> , 552 F.Supp. 554 (D. Haw. 1982)

Fact	Evidentiary Support
4. The Court appointed Special Masters to come up with an interim plan for the 1982 elections. The reapportionment base that the Special Masters recommended was “total population less non-resident military and dependents” which was an approximation of the state citizen base.	4. Exhibits C, D
5. The Court accepted the plan with the reapportionment base that excluded non-resident military and their dependents.	5. Exhibit E
6. Following the 1982 elections, the 1981 reapportionment commission (“1981 Commission”) was reorganized to come up with a permanent plan of reapportionment.	6. Exhibit D at 177
7. The reorganized 1981 Commission examined a comprehensive analysis of possible reapportionment bases.	7. Exhibit F
8. The Schmitt Report said use of the Census population “may result in a distortion of representation in certain areas of Hawaii where there may be a high concentration of temporary residents (military and civilian Federal employees, or others such as students and aliens).”	8. Exhibit F at 7
9. The Schmitt Report said “state citizen” has commonly been defined as all legal residents of a state, with certain categories of residents excluded; “residents” included all people with an intent to make a particular state their legal residence. It noted that military personnel are required to declare a state of residency for income tax reporting purposes, and such a “process of declaring residency for the purposes of taxation is a strong indication of an intent to participate in the political processes of that same jurisdiction.” <i>Id.</i> , It said a reasonable definition of state citizen was “the permanent population of a state, thus excluding aliens and residents of other states.” It said the federal court in <i>Travis v. King</i> had approved an equivalent of the “state citizen base.”	9. Exhibit F at 7, 8, 11
10. Ultimately, the reorganized 1981 Commission	10. Exhibit D at 186

Fact	Evidentiary Support
adopted a “state resident” base which was the Census population, less the non-resident military and their dependents.	
11. The 1991 reapportionment commission (“1991 Commission”) decided to use a permanent resident base - total population less transients.	11. Exhibit G at 21-23
12. The 1991 Commission hired experts who determined that non-resident military were the one large, census-block-identifiable group of nonresidents included in the Census who could be excluded from the permanent resident population base.	12. Exhibit G at 23-24
13. In 1992, the Hawaii Constitution was amended to change the reapportionment base from registered voters to permanent residents.	13. Exhibit H
14. A Fact Sheet, mailed to absentee voters and posted at election sites, indicated that the permanent resident base would not include nonresident military and their dependents.	14. Exhibit I
15. The 2001 reapportionment commission (“2001 Commission”) initially decided that the permanent resident population base would be determined by subtracting non-resident military and non-resident students from the Census population. The 2001 Commission received much public testimony against inclusion of non-resident military dependents in the reapportionment base. Ultimately, the 2001 Commission reconsidered its decision and voted to exclude the dependents of non-resident military from the reapportionment base.	15. Exhibit J
16. The Hawaii Constitution initially insured meaningful representation for the neighbor islands in the State legislature by mimicking the U.S. Congress, i.e., the Senate being based on geographic areas while the House was based on population.	16. Exhibit A at 260-261
17. The State’s 1968 Constitutional Convention established new apportionment standards. One of the criteria the Convention used was that no district shall extend beyond county (basic island unit) boundaries	17. Exhibit K

Fact	Evidentiary Support
<p>which was to preserve “the integrity of political subdivisions.”</p>	
<p>18. The Convention recommended that the Hawaii Constitution be amended to allocate state legislators among the four basic island units via the method of equal proportions and to provide for minimum representation of the basic island units. The Convention said the term “basic island unit” was adopted “to reflect more clearly the fact that these areas are not only basic but are historical, geographical and political units with a strong identity of interest.”</p>	<p>18. Exhibit K at 260-261</p>
<p>19. The Convention said rigid adherence to the one-man, one-vote principle “may result in depriving substantial elements of our population in the state legislature in matters of government” due to two factors unique to Hawaii: (1) Hawaii’s geographical structure - islands or groups of islands separated by 30-70 miles of open ocean; and (2) Hawaii’s highly simplified and centralized government structure. <i>Id.</i> The Convention said “[n]o other state in the union possesses either of these characteristics and, of course, no other state even remotely approaches the situation resulting from a combination of both.”</p>	<p>19. Exhibit K at 261-263</p>
<p>20. The Convention gave details about the unique role of the State legislature - how it controls many matters which in other states would be local government matters, e.g., the State’s administration and control of the entire public education system, entire judicial system, all natural resources, boat harbors and airports, hospitals and health and welfare activities, administration and collection of all major taxes, etc.</p>	<p>20. Exhibit K at 261-263</p>
<p>21. Following the 1968 Convention, the method of equal proportions was challenged in federal court. However, the Court, citing the history of Hawaii, said that the 1968 Convention had studiously and with due deliberation determined that “the best means of apportioning its legislative representatives among its peoples in order to secure practical equality of suffrage was again to divide the State into its four basic political</p>	<p>21. <i>Burns v. Gill</i>, 316 F.Supp. 1285, 1290 (D. Haw. 1970)</p>

Fact	Evidentiary Support
(county) units and use the two-tiered method of equal proportions ....”	
22. Judge Pence described the unique geography, characteristics, and economies of the various islands; noted that each island was separated by open ocean channels with public transportation between them only by air; noted that each of the basic island units had geographies that had led to insulating groups of citizens into severable communities of interest; and that this insular life had caused residents to personally identify with their own counties. The Court described how the State controlled public offices, programs and facilities with the counties having few of the normal municipal powers.	22. <i>Burns v. Gill</i> , 316 F.Supp. 1285, 1290-1291 (D. Haw. 1970)
23. The Court concluded that the 1968 Convention was justified in concluding that if voters were to have functional representation in the State legislature each basic island unit must be given meaningful representation. It cited testimony from the State statistician that it was impossible to set up legislative districts of absolute numerical equality without conjoining areas on two islands that “had no fundamental community of interests” and creating an expensive and difficult campaign problem for the candidates of those districts and stultifying communication for those so elected.	23. <i>Burns v. Gill</i> , 316 F.Supp. 1285, 1292 (D. Haw. 1970)
24. In 1982, a District Court held that the deviations statewide in the State’s 1981 reapportionment plan exceeded the limitations allowable under the Equal Protection Clause.	24. <i>Travis, supra</i> , at 563.
25. The Court appointed Special Masters who created a plan that straddled election districts between two islands; the rationale being that unlike legislative-drafted plans, court-drafted plans were self-limited in terms of allowable deviations.	25. Exhibit D at 176
26. The public and legislature did not like these “canoe districts.”	26. Exhibit D at 178
27. Even the Special Masters, as residents of this multi-	27. Exhibit C at ii-iii

Fact	Evidentiary Support
island State, indicated that they would have preferred a plan with no canoe districts.	
28. The reorganized 1981 Commission was provided a report on the role of county integrity in Hawaiian politics and the impacts of split counties.	28. Exhibit D at 182, Exhibit L
29. Among other things, the Smith Report said: (a) the geographic separateness of the basic island units made it natural for them to have developed as separate political entities; (b) due to their separation, Hawaii's counties had developed a strong sense of identity and community which could be violated by districts that cut across basic island units, producing voter indifference and reducing voter participation; (c) Kauai had expressed outrage by being submerged in a canoe district after the 1982 elections; (d) Hawaii's uniquely centralized governmental structure means that ignoring county boundaries in districting severely disadvantages local representation in the State legislature; (e) ignoring county integrity severely hampers legislator-constituent relations; and (f) focusing only on percentage numbers increased gerrymandering.	29. Exhibit L
30. While the reorganized 1981 Commission wanted to maintain county integrity, it eventually adopted a plan that used canoe districts despite public animosity to such districts.	30. Exhibit D at 182, 186, 187
31. The 2001 Commission's initial proposed plan included a Senate canoe district between Kauai (North Shore) and Oahu (Waimanolo) and a House canoe district between Kauai (North Shore) and Oahu (Wailua/Schofield Barracks). Due to much public testimony against canoe districts, the 2001 Commission revised its final plan to do away with the canoe district even though that led to high statewide deviations.	31. Exhibits M (at 23-26), U
32. The 2011 Commission had until September 26, 2011 to prepare and file its reapportionment plan.	32. Exhibit N, at 7, HRS § 25-2(a)
33. The Commission was briefed on what groups of persons had been considered for extraction from the Census population by the 2001 Commission to establish	33. Exhibit N at 2-5

Fact	Evidentiary Support
the “permanent resident” population base, and what data had been available in 2001 for those groups, i.e., military sponsors and their dependents, university students, sentenced felons, and aliens.	
34. The 2011 Commission told Commission staff to get residence information for non-permanent resident military, military dependents, and students so that they could be accurately extracted from census blocks for reapportionment and redistricting purposes.	34. Exhibit N at 6
35. By August 3, 2011, the Commission had not received all the information requested from the military and colleges. Due to the pending deadline for filing the final plan, the Commission accepted a proposed plan that extracted no one from the Census population for the purpose of holding the public hearings required under HRS § 25-2 (“August 2011 Plan”). At the hearings, a major complaint was that the Commission had failed to extract non-permanent residents.	35. Exhibits N (at 7), O, P (at 3)
36. By September 2011, the military and some colleges had still not provided all the requested information. As such, on September 26, 2011, the Commission approved a final reapportionment plan that extracted only some military and students (“September 2011 Plan”).	36. Exhibits N (at 8), P (at 4)
37. The September 2011 Plan was challenged in the Hawaii Supreme Court. On January 4, 2012, the Court found the September 2011 Plan invalid because it included non-permanent residents in violation of Art. IV, § 4 of the Hawaii Constitution, and ordered the Commission to prepare a new plan.	37. Exhibits P (at 8-10), Q
38. Commission staff renewed efforts to the military and colleges to provide all of the information that the Commission had previously requested; eventually, the military and colleges provided the requested data.	38. Exhibits N (at 8-10), R <sup>1</sup>
39. Based on this data, Commission staff was able to extract the following from the Census population to	39. Exhibits N (at 10), S

<sup>1</sup> “Exhibit 7” referred to in the Declaration is now attached and made a part of Exhibit R.

