

Of Counsel:

DAMON KEY LEONG KUPCHAK HASTERT

Attorneys at Law

A Law Corporation

ROBERT H. THOMAS 4610-0

rht@hawaiilawyer.com

ANNA H. OSHIRO 5852-0

aho@hawaiilawyer.com

MARK M. MURAKAMI 7342-0

mmm@hawaiilawyer.com

1003 Bishop Street, Suite 1600

Honolulu, Hawaii 96813

www.hawaiilawyer.com

Telephone: (808) 531-8031

Facsimile: (808) 533-2242

Attorneys for Plaintiffs

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOSEPH KOSTICK; et al.,)	CIVIL NO. 12-00184 JMS-LEK-
)	MMM
Plaintiffs,)	
)	STIPULATION TO DISMISS
v.)	COUNT V OF THE FIRST
)	AMENDED COMPLAINT
)	(FILED APRIL 27, 2012)
SCOTT T. NAGO, in his official)	
capacity as the Chief Election)	
Officer State of Hawaii; et al.,)	THREE-JUDGE COURT (28
)	U.S.C. § 2284)
Defendants.)	
)	

**STIPULATION TO DISMISS COUNT V OF THE FIRST
AMENDED COMPLAINT (FILED APRIL 27, 2012)**

RECITALS

A. Plaintiffs Joseph Kostick; Kyle Mark Takai; David P. Brostrom; Larry S. Veray; Andrew Walden; Edwin J. Gayagas; Ernest Laster; and Jennifer Laster (“Plaintiffs”) filed the First Amended Complaint in this action on April 27, 2012 (Doc. 32) (“First Amended Complaint”).

B. In Count V of the First Amended Complaint (¶¶ 65 – 69), Plaintiffs alleged that Defendants Scott T. Nago, in his capacity as the Chief Election Officer 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 as members of the State of Hawaii 2011 Reapportionment Commission (“Defendants”), “subjected Plaintiffs to unequal treatment in the exercise of their inherent and inalienable rights, drew districts that unduly favored persons or political factions, and did not apportion the members of each house of the legislature on the basis, method, and criteria prescribed by the U.S. Constitution.”

C. Counsel for Plaintiffs and Defendants have conferred, and in the interests of judicial economy, to avoid further process related to Count V, and to move this litigation forward once this Court issues a ruling on the parties' pending motions for summary judgment on the other Counts of the First Amended Complaint, have agreed to a stipulation dismissing Count V without prejudice. In agreeing to this stipulation, Plaintiffs expressly reserve any and all of their rights under Counts I, II, III, and IV of the First Amended Complaint and their arguments related thereto, and Defendants agree and acknowledge that they shall not assert waiver or make any claim that the dismissal of Count V in any way prejudices or affects Plaintiffs' rights and arguments under Counts I through IV of the First Amended Complaint.

STIPULATION

Pursuant to Fed. R. Civ. P. 41(a), the parties, all of whom have appeared in this action, through their attorneys of record, hereby stipulate as follows:

1. Count V of the First Amended Complaint is dismissed without prejudice, the parties to bear their respective costs, including attorneys' fees or other expenses of this litigation related only to Count V of the First Amended Complaint.

2. Plaintiffs expressly reserve any and all of their rights under Counts I, II, III, and IV of the First Amended Complaint and their arguments related thereto, and Defendants agree and acknowledge that they shall not assert waiver or make any claim that the dismissal of Count V in any way prejudices or affects Plaintiffs' rights and arguments under Counts I through IV of the First Amended Complaint.

DATED: Honolulu, Hawaii, January 22, 2013.

Respectfully submitted,

/s/ Robert H. Thomas

ROBERT H. THOMAS

ANNA H. OSHIRO

MARK M. MURAKAMI

Attorneys for Plaintiffs

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

/s/ John F. Molay

DAVID M. LOUIE

Attorney General of Hawaii

JOHN F. MOLAY

PATRICIA COOKSON

Deputy Attorneys General

Department of the Attorney General,

State of Hawaii

Attorneys for Defendants

SCOTT T. NAGO, IN HIS OFFICIAL
CAPACITY AS THE CHIEF ELECTION
OFFICER 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 AS MEMBERS OF THE STATE
OF HAWAII 2011 REAPPORTIONMENT
COMMISSION

Joseph Kostick, et al. v. Scott T. Nago, etc., et al., Civil No. 12-00184
JMS-LEK-MMM, U. S. District Court for the District of Hawaii,
STIPULATION TO DISMISS COUNT V OF THE FIRST AMENDED
COMPLAINT (FILED APRIL 27, 2012)