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Attorney for Plaintiffs

FILED
2012 DEC -7 PM 2: 02

D. PELLAZAR, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF SECOND CIRCUIT

STATE OF HAWAII

12 - 1 - 0 9 5 6 (2)

GREEN PARTY OF HAWAII, KAREN M.)	Civil No.	_____
HOLT, ELIZABETH M. RUZE, MICHAEL)	(Declaratory Action and Injunction)	
KRATZKE, MOANI KEALA AKAKA, KIM)		
DUFFETT, MARY JO DENNISON and)	COMPLAINT; SUMMONS	
MAKA'ALA KA'AUMOANA)		
)		
Plaintiffs)		
vs.)		
)		
SCOTT NAGO, Chief Elections Office, State of)		
Hawai'i, and STATE OF HAWAII,)		
)		
Defendants.)		

COMPLAINT

Plaintiffs GREEN PARTY OF HAWAII, KAREN M. HOLT, ELIZABETH M. RUZE, MICHAEL KRATZKE, MOANI KEALA AKAKA, KIM DUFFETT, MARY JO DENNISON and MAKA'ALA KA'AUMOANA, for cause of action against SCOTT NAGO, Chief Elections Officer, State of Hawai'i and the STATE OF HAWAII (collectively "Defendants") allege as follows:

1. The Court has subject matter jurisdiction over the claims for relief in this action pursuant to Haw. Rev. Stat. § 603-21.5, Haw. Rev. Stat. § 91-7, and/or Haw. Rev. Stat. § 632-1.
2. Venue is properly laid in this judicial circuit pursuant to Haw. Rev. Stat. § 91-7 because Plaintiffs reside in this judicial circuit.
3. Plaintiff GREEN PARTY OF HAWAII is a political party with members throughout

1 I hereby certify that this is a full, true and correct copy of the Original.

Clerk, Second Circuit Court

the state. The current co-chairperson resides on the island of Maui, State of Hawai'i.

4. Plaintiff KAREN M. HOLT is a resident of the island of Moloka'i and a registered voter.

5. Plaintiff ELIZABETH M. RUZE is a resident of the island of O'ahu and a registered voter.

6. Plaintiff MICHAEL KRATZKE is a resident of the island of O'ahu and a registered voter.

7. Plaintiff MOANI KEALA AKAKA is resident of the island of Hawai'i and a registered voter.

8. Plaintiff KIM DUFFETT is a resident of the island of O'ahu and a registered voter.

9. Plaintiff MARY JO DENNISON is a resident of the island of O'ahu and a registered voter.

10. Plaintiff MAKALA KA'AUMOANA is a resident of the island of Kaua'i and a registered voter.

11. Defendant SCOTT NAGO is the Chief Elections Officer of the State of Hawai'i and is authorized by the Chapter 11, Haw. Rev. Stat. to promulgate rules governing elections and is an "agency" within the meaning of Chapter 91, Haw. Rev. Stat.

12. During the 2012 federal and state election held on November 6, 2012, numerous precincts ran out of marksense ballots, additional blank marksense ballots were delayed in arriving to precincts, and, in some precincts, ballots were voted that contained electoral races for which voters were not entitled to vote in.

COUNT ONE – UNLAWFUL RULE-MAKING

13. Plaintiffs reaver and reallege as if more fully set forth herein all the allegations set forth in the preceding paragraphs.

14. On January 9, 2010, Defendant NAGO repealed the entire set of administrative rules and adopted new administrative rules regarding elections. Defendant did not adopt a rule regarding the methodology used to determine the number of blank ballots to be printed for an election.

15. The methodology used to determine the number of ballots to be printed for an election is a rule within the meaning of Chapter 91, Haw. Rev. Stat.

16. The methodology used to determine the number of ballots to be printed for an election was adopted without complying with the procedures in Chapter 91, Haw. Rev. Stat. for promulgating rules.

17. Plaintiffs seek a declaration invalidating the use of the methodology used to determine the number of ballots to be printed in the 2012 federal and state election.

COUNT TWO – UNLAWFUL RULE-MAKING

18. Plaintiffs reaver and reallege as if more fully set forth herein all the allegations set forth in the preceding paragraphs.

19. The procedure by which a precinct requests additional paper or marksense ballots when it runs out of ballots and receives additional blank paper or marksense ballots are rules within the meaning of Chapter 91, Haw. Rev. Stat.

20. The rules regarding the procedures by which a precinct requests additional paper or marksense ballots when the precinct rules out of ballots and receives additional blank paper or marksense ballots were adopted without complying with the procedures in Chapter 91, Haw. Rev.

Stat. for promulgating rules.

21. Plaintiffs seek a declaration invalidating the procedures by which a precinct requests additional paper or marksense ballots when the precinct rules out of ballots and receives additional blank paper or marksense ballots.

COUNT THREE – UNLAWFUL RULE-MAKING

22. Plaintiffs reaver and reallege as if more fully set forth herein all the allegations set forth in the preceding paragraphs.

23. The procedure used to rectify the situation when a voter votes a ballot that contains some races to which the voter is not entitled to vote are rules within the meaning of Chapter 91, Haw. Rev. Stat.

24. The rules regarding the procedure used to rectify the situation when a voter votes a ballot that contains some races to which the voter is not entitled to vote were adopted without complying with the procedures in Chapter 91, Haw. Rev. Stat. for promulgating rules.

25. Plaintiffs seek a declaration invalidating the procedure used to rectify the situation when a voter votes a ballot that contains some races to which the voter is not entitled to vote.

COUNT FOUR – INJUNCTIVE RELIEF

26. Plaintiffs reaver and reallege as if more fully set forth herein all the allegations set forth in the preceding paragraphs.

27. Defendants are engaging in conduct pursuant to unlawfully promulgated rules.

28. Plaintiffs' and Plaintiffs' members' right to vote and right to due process of law has and will be violated by Defendants conduct.

29. There is no adequate remedy at law for violations of the right to vote and the right to due and fair process of law.

30. Public policy strongly supports the right of the people to vote as the right to vote is the foundation of the legitimacy of all government.

31. Plaintiffs seek a temporary restraining order, a preliminary injunction, and a permanent injunction, enjoining Defendants and their agents and employees, and all persons acting under, in concert with, or for them from any conduct pursuant to rules that have not been properly adopted pursuant to the Hawai'i Administrative Procedure Act, Chapter 91, Haw. Rev. Stat.

Wherefore Plaintiffs pray and demand judgment against Defendants declaring: (1) the use of the methodology used to determine the number of ballots to be printed in a federal and/or state election, (2) the procedures by which a precinct requests additional paper or marksense ballots when the precinct runs out of ballots and receives additional blank paper or marksense ballots, and (3) the procedure used to rectify the situation when a voter votes a ballot that contains some races to which the voter is not entitled to vote, to be invalid, temporary, preliminary and/or permanent injunctive relief prohibiting Defendants from acting pursuant to such invalid rules, and an award of reasonable attorney's fees and costs.

DATED: Wailuku, Maui, Hawai'i

December 7, 2012



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs

IN THE CIRCUIT COURT OF SECOND CIRCUIT

STATE OF HAWAII

GREEN PARTY OF HAWAII, et al.)	Civil No. _____
)	(Declaratory Action)
Plaintiffs)	
vs.)	SUMMONS
)	
SCOTT NAGO, Chief Elections Office, State of)	
Hawai'i, and STATE OF HAWAII,)	
)	
Defendants.)	
_____)	

SUMMONS

To the Named Defendants:

You are hereby summoned and required to file with the court and serve upon the Law Office of Lance D. Collins, A Law Corporation, whose address is Post Office Box 2154, Wailuku, Maui, Hawai'i 96793, and answer to this complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.

If you fail to obey this summons may result in an entry of default and fault judgment against the disobeying person or party.

Pursuant to Rule 4(b) of the Hawai'i Rules of Civil Procedure, this summons shall not be delivered between 10:00 pm. and 6:00 am. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

DEC - 7 2012

DATED: Wailuku, Maui, Hawai'i

/sgd/ D. PELLAZAR (seal)

CLERK OF THE ABOVE-ENTITLED COURT