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Attorneys for Defendant

SCOTT NAGO, in his official capacity as

Chief Election Officer for the Hawaii Office of Elections

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RANDALL JAY REEVES,  
VINCENTE TOPASNA BORJA,  
EDMUND FREDERICK  
SCHROEDER, JR., RAVINDER  
SINGH NAGI, PATRICIA ARROYO  
RODRIGUEZ, LAURA CASTILLO  
NAGI, and EQUALLY AMERICAN,

Plaintiffs,

vs.

SCOTT NAGO, in his official capacity  
as Chief Election Officer for the Hawaii  
Office of Elections,

GLEN TAKAHASHI, in his official  
capacity as Clerk of the City and County  
of Honolulu,

CIVIL NO. 20-00433 JAO-RT

DEFENDANT SCOTT NAGO'S  
PARTIAL JOINDER IN THE  
FEDERAL DEFENDANTS'  
MOTION TO DISMISS FOR LACK  
OF SUBJECT MATTER  
JURISIDCTION [ECF #74] AND  
MEMORANDUM IN SUPPORT  
[ECF #75]

KATHY KAOHU, in her official  
capacity as Clerk of the County of Maui,

UNITED STATES OF AMERICA,

CHRISTOPHER C. MILLER, in his  
official capacity as the Acting Secretary  
of Defense,

FEDERAL VOTING ASSISTANCE  
PROGRAM, and

DAVID BEIRNE, in his official  
capacity as Director of the Federal  
Voting Assistance Program ,

Defendants.

DEFENDANT SCOTT NAGO'S PARTIAL JOINDER IN THE FEDERAL  
DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER  
JURISIDCTION [ECF #74] AND MEMORANDUM IN SUPPORT [ECF #75]

Pursuant to Local Rule 7.7, Defendant Scott Nago, in his official capacity as Chief Election Officer for the Hawaii Office of Elections (the "Chief Election Officer"), through the Attorney General, State of Hawai'i and her undersigned deputies, joins in part in the Federal Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, ECF #74 ("Motion to Dismiss"), and Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, ECF #75 ("Memo in Support") on the grounds that Plaintiffs' alleged injury is not redressable by a favorable decision. Specifically, the Chief Election Officer joins

in the redressability arguments set forth on pages 13-14 and pages 20-24 (section II) of the Federal Defendants' Argument in the Memo in Support (collectively, "Redressability Arguments").

As the Federal Defendants correctly note, "Plaintiffs' equal protection argument turns on what they consider inappropriate preferential treatment in UOCAVA for one U.S. territory: the Commonwealth of the Northern Mariana Islands." Memo in Support, ECF #74, p. 13. Although UOCAVA is a federal law, Plaintiffs sought declaratory and injunctive relief against the Chief Election Officer because he is responsible for implementing the State's federally mandated responsibilities under UOCAVA. *See* Haw. Rev. Stat. § 15D-4(a) ("The chief election officer shall be the state official responsible for implementing [Hawaii's Uniform Military and Overseas Voter Act] and the State's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act[.]"); *see also* Second Amended Complaint ("SAC"), ECF #73, ¶ 21. This is reaffirmed by Plaintiffs' assertion that, "[u]nder UOCAVA, States are required to allow former state citizens residing outside the United States or in the NMI to vote on an absentee basis in federal elections." SAC, ¶ 6 (emphasis added). This is further reaffirmed by Plaintiffs' assertion that, unlike UOCAVA, Hawaii's Uniform Military and Overseas Voter Act ("UMOVA") does "not grant enfranchisement to former state residents who move to *any* Territory." *Id.*, ¶ 53 (emphasis in original). The

Redressability Arguments would therefore apply equally to the Chief Election Officer because Plaintiffs' equal protection claim against the Chief Election Officer is inextricably grounded in UOCAVA. Accordingly, the Chief Election Officer respectfully requests that if this Court grants the Federal Defendants' Motion to Dismiss based on the Redressability Arguments, it also find that Plaintiffs' claims challenging UMOVA and claims as against the Chief Election Officer should be dismissed for lack of subject-matter jurisdiction.

The Chief Election Officer does not join in the remaining arguments raised by the Federal Defendants and expressly reserves the right to file a timely opposition thereto.

DATED: Honolulu, Hawai'i, January 15, 2021.

/s/ Lori N. Tanigawa  
PATRICIA OHARA  
LORI N. TANIGAWA  
Deputy Attorneys General  
Attorneys for Defendant  
SCOTT NAGO, in his official capacity as Chief  
Election Officer for the Hawaii Office of Elections