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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JOSEPH KOSTIC; et al.,	)	CIVIL NO. CV 12-00184
	)	JMS-LEK-MMM
Plaintiffs,	)	
	)	(THREE-JUDGE COURT (28
v.	)	U.S.C. § 2284))
	)	
SCOTT T. NAGO, in his official capacity as the Chief Election Officer State of Hawaii; et al.,	)	**REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; DECLARATION OF ANNA H. OSHIRO; EXHIBIT "J";**
Defendants.	)	

) **DECLARATION OF K. MARK**
) **TAKAI; EXHIBITS "K" AND**
) **"L"; CERTIFICATE RE:**
) **WORD LIMITATION (LR 7.5);**
) **CERTIFICATE OF SERVICE**
)
) Hearing Date: May 18, 2012
) Time: 10:00 a.m.

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

In this Reply, Plaintiffs[1] make four main points:

1. Defendants' Opposition ("Opp.") stakes everything on three assumptions that cannot survive "close constitutional scrutiny" required when a reapportionment plan burdens the fundamental rights of "usual residents" of Hawaii to equal representation in the state legislature, and to petition government equally.

2. Hawaii may be unique, but its reapportionment plan is still subject to the rules of substantial population equality.

3. Every "usual resident" of Oahu has standing to challenge the extraction of 108,767 persons—a vast majority of whom are on Oahu—because each has been injured by the extraction, which resulted in Oahu being deprived of a seat in the state Senate. Every resident of a district in which extracted persons reside is also injured by the 2012 Plan and has standing, because their rights to petition and representation have been diluted by the extraction.

4. Contrary to Defendants' claim, relief is not only possible, it is being anticipated by the Office of Elections.

[1] On April 27, 2012, Plaintiffs amended their Complaint to add Ernest and Jennifer Laster as Plaintiffs. Nothing else changed.

I. PLAINTIFFS MUST SHOW LIKELIHOOD OF SUCCESS ON THE MERITS

Defendants overstate one critical component of the preliminary injunction standard, asserting that Plaintiffs must "*clearly* show they will succeed on the merits." Opp. at 16 (emphasis original). In *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008), however, the Court concluded that overall, a "clear showing" is required for preliminary relief, *id.* at 22, but that on the "success on the merits" and "irreparable injury" components:

> A plaintiff seeking a preliminary injunction must establish that he is *likely* to succeed on the merits, that he is *likely* to suffer irreparable harm in the absence of preliminary relief[.]

Id. at 20 (emphasis added). *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (same). Plaintiffs have met their burden of showing that their equal representation and malapportionment claims are likely to succeed. The Commission admitted as much when it acknowledged the 2012 Plan is "prima facie discriminatory and must be justified by the state." 2012 Plan at 9. Thus, the burden rests squarely on Defendants to (1) justify ignoring the right of all persons to be represented in the Hawaii legislature and to petition on an equal basis, and (2) justify the Plan's deviations from the population equality

standard. They have not done so, and the 2012 Plan, by denying equal representation to all persons who are unquestionably "usual residents" of Hawaii, violates Equal Protection.

A. Plans That Burden Representational Equality Are Reviewed With "Close Constitutional Scrutiny"

At issue in this case is whether the three assumptions Hawaii used to extract nearly 8% of its population are within the "limited latitude" allowed when reapportionment plans burden fundamental rights and "depart from strict total population equality." *Garza v. County of Los Angeles*, 918 F.2d 763, 772 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991) (citing *Gaffney v. Cummings*, 412 U.S. 735 (1973)). In *Burns v. Richardson*, 384 U.S. 73, 92 (1966), the Supreme Court concluded that a state has latitude to exclude "aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of a crime" from its population basis of "registered voters," provided the resulting plan is substantially similar to one based on population. In *Garza*, the Ninth Circuit concluded that if a reapportionment plan strays from "a plan that provides for districts of equal population," the burden is squarely on the state to show its choice is based on

"significant state policies" *Garza*, 918 F.2d at 774 (citing *Chapman v. Meier*, 420 U.S. 1, 24 (1975)).

Pursuant to *Solomon v. Abercrombie*, 270 P.3d 1013 (Haw. 2012), the Commission extracted 108,767 persons whom it deemed were not Hawaii "permanent residents." Defendants assert this extraction is based on the "significant state policy" of excluding transients. Opp. at 18-19. These extractions were the product of three assumptions about the nature of "permanent residence." First, servicemembers who do not pay Hawaii income taxes and declared another state to be their legal residence for taxation purposes are not Hawaii "permanent residents." Second, military family members who can be "associated or attached" to those servicemembers have the same residences as the servicemembers. Third, students who do not qualify to pay resident tuition are not "permanent residents."

At the core of Hawaii's exclusionary policy lies its supposition that servicemembers, their families, and students are not truly present in Hawaii, and thus may be excluded from representation in our legislature. Relying upon the rationale of *Holt v. Richardson*, 238 F. Supp. 468 (D. Haw. 1965), Defendants argue that Hawaii today has not changed since the days of the buildup to the Vietnam war nearly half a

century ago, and that Hawaii continues to have "special problems with a large and fluctuating military presence." Inclusion, they argue, would skew Hawaii's legislative representation. Opp. at 21.

The critical issue in the present case is by what standard are these three assumptions tested? Contrary to Defendants' arguments, *Burns* does not provide the answer. There, the Court held that Hawaii's choice of "registered voter" as its population basis "satisfie[d] the Equal Protection Clause *only* because on this record it was found to have produced a distribution of legislators not substantially different from that which would have resulted from the use of a permissible population basis." *Burns*, 384 U.S. at 93. The Court, however, did not define what constituted a "permissible population basis," and it has not done so in the intervening decades. *See Chen v. City of Houston*, 532 U.S. 1046 (2001) (Thomas, J., dissenting from denial of certiorari) ("[w]e have never determined the relevant 'population' that States and localities must equally distribute among their districts."); *Garza*, 918 F.2d 785 (Kozinski, J., concurring and dissenting in part) ("I must acknowledge that [the majority] may ultimately have the better of the argument. We are each attempting to divine from language used by the Supreme Court in the past what the Court would say about an issue it

has not explicitly addressed."); *Daly v. Hunt*, 93 F.3d 1212, 1225 (4th Cir. 1996) (noting the circuit conflict and that "the Court in *Burns* did not articulate precisely what constitutes a "permissible population basis."). Although the Supreme Court has not expressly established the governing standard of review, its opinion in an analogous case shows that Hawaii's three assumptions should be reviewed with "close constitutional scrutiny."

In *Evans v. Cornman*, 398 U.S. 419 (1970), the unanimous Court held that a state's denial of the fundamental right to vote in a state election—the result of a facially neutral residency test—violated Equal Protection because those denied had a right to equal opportunity for political representation. In that case, Maryland denied the residents of the National Institutes of Health the right to vote in state elections, because NIH was a federal enclave and its residents did not pay state property taxes. *Id.* at 425. Like the persons extracted by Hawaii, the NIH residents "clearly live[d] within the geographical boundaries of the State ... and they [were] treated as state residents in the census and in determining congressional apportionment." *Id.* at 421. Like Hawaii, Maryland justified its discrimination by suggesting that the NIH residents were "substantially less interested in Maryland affairs than

other residents of the State." Its goal was "to insure that only those citizens who [were] primarily or substantially interested in or affected by electoral decisions have a voice in making them." *Id.* at 423.

Like *Burns* held in reapportionment, the *Evans* Court "recognized that the States 'have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised." *Id.* at 422 (quoting *Lassiter v. Northampton Election Bd.*, 360 U.S. 45, 50 (1959)). This latitude, however, may not be "inconsistent with the Equal Protection Clause of the Fourteenth Amendment.'" *Id.* (quoting *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966)). The Court concluded that "the right to vote, as the citizen's link to his laws and government, is protective of all fundamental rights and privileges[,] [a]nd before that right can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny." *Id.* at 422 (citations omitted); *Bullock v. Carter*, 405 U.S. 134, 142 (1972) (filing fee burdening right to vote subject to "close scrutiny" and must be "reasonably necessary to accomplishment of legitimate state objectives.").

The Court assumed Maryland's stated interests could be compelling, but applying that exacting standard of review, held that its

claim "cannot lightly be accepted" because a state "may not dilute a person's vote to give weight to other interests." *Id.* at 423 (citing *Reynolds v. Sims*, 377 U.S. 533 (1964)). The Court rejected Maryland's argument that the residents of the federal enclave were not interested in Maryland affairs, noting that the state did not "deny that there are numerous and vital ways in which NIH residents are affected by electoral decisions." *Id.* at 424. For example, Maryland collected many types of taxes from the NIH residents, and a host of state laws applied to them. The Court stated:

> All of these factors led the District Court to 'conclude that on balance the (appellees) are treated by the State of Maryland as state residents to such an extent that it is a violation of the Fourteenth Amendment for the State to deny them the right to vote.' Appellants resist that conclusion, arguing that NIH residents do not pay the real property taxes that constitute a large part of the revenues for local school budgets. However, Maryland does not purport to exclude from the polls all persons living on tax-exempt property, and it could not constitutionally do so.

Id. at 424-25 (citation and footnote omitted).

The *Evans* rationale applies with equal force here, and Hawaii's assumptions about who is deemed to be a "permanent resident" for reapportionment purposes do not survive "close constitutional scrutiny."

First, like voting, the right of all persons to petition state government on an equal basis, and to equal representation in the state legislature, is fundamental. *Garza*, 918 F.2d at 775 ("The purpose of redistricting is not only to protect the voting power of citizens; a coequal goal is to ensure 'equal representation for equal numbers of people.'"); *Id.* at 774 ("government should represent *all* the people") (emphasis original). The right to equal representation, similar to voting, is "the citizen's link to his laws and government" regardless of where she pays taxes. *See Evans*, 398 U.S. at 422; *Garza*, 918 F.2d at 775 (even noncitizens have a right to petition and to be represented in the legislature). Thus, servicemembers who are stationed in Hawaii and who are counted by the Census as Hawaii "usual residents" are entitled to be represented—and represented equally—in Hawaii's legislature, regardless of where they declare they want to pay income tax. The same holds true for military family members who are "associated or attached" to a servicemember, and university students who do not pay resident tuition.

Second, Equal Protection guarantees the right of all persons to be represented on an equal basis. This prohibits "impermissibly burden[ing]" the rights to petition of both the extracted persons and

those who reside in the same districts as those extracted by diluting their representational equality. Defendants argue that those who are extracted are not barred from participating in the political process in Hawaii, even if they are not counted. Defendants also assert that persons marked for extraction may avoid it by choosing to register to vote in Hawaii, or may submit a new military tax form (DD2058) and pay Hawaii income tax. Opp. at 22-23. That is undoubtedly correct, yet it completely misses the point: Plaintiffs do not claim they are absolutely barred from political participation or representation, but rather that their rights to participation and representation *on an equal basis* with others who are "usual residents" of Hawaii are unconstitutionally diluted by the 2012 Plan. Like the vote dilution in *Evans*, failure to include all persons in the reapportionment population basis dilutes their First Amendment petition rights by forcing them to compete with more people for their representatives' attention. *Evans*, 398 U.S. at 423. *See also Garza*, 918 F.2d at 775.[2]

[2] Defendants read *Garza* much too narrowly by arguing the Constitution only requires representational equality if state law independently mandates a count of actual population. *See* Opp. at 20 ("*Garza* only means that the Equal Protection Clause does not preclude a court from imposing a reapportionment plan based on total population where that is required by applicable state law."). This argument is

Third, like the NIH residents in *Evans*, there is no dispute that the servicemembers, families, and students extracted by Hawaii by the 2012 Plan "clearly live within the geographical boundaries of the State ... and they are treated as state residents in the census and in determining congressional apportionment." *Evans*, 398 U.S. at 421. Consequently, the Supreme Court held that Maryland's denial of the right to vote violated Equal Protection, and the Court rejected the state's argument it could choose to exclude from voting only particular certain segments of classes of persons (those living on federal land exempt from state tax), because the state did not attempt to treat in a like manner others who were similarly situated. *Id*. at 425 ("However, Maryland does not purport to exclude from the polls all persons living on tax-exempt property, and it could not constitutionally do so."). Here, Hawaii made no effort to extract all persons who might be deemed not to be "permanent residents" (such as aliens, children, prisoners, and federal civilian workers who are "stationed" in Hawaii) but, as it has since statehood, settled on a standard that primarily eliminates military personnel and their families. Hawaii's "tax test" is imposed

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exactly backwards, however, since it is state law that must conform to the Equal Protection Clause and not the other way around.

only on servicemembers, and the state makes no effort to extract others who do not pay Hawaii income tax such as children, prisoners, or the unemployed. The Commission did not even attempt to verify alien statistics in 2011. *See* Rosenbrock Declaration ¶ 8 (explaining that the Office of Elections was told in 2001 that INS does not keep alien statistics—he makes no mention of efforts in 2011). This omission is significant because Hawaii's non-U.S. citizen population hovers around 100,000, approximately the same number of persons extracted by the 2012 Plan. *See* STATE OF HAWAII 2010 DATA BOOK ("Population") (107,692 aliens present in 2008, 94,645 present in 2009).[3] A population standard that is facially neutral and does not expressly exclude classes of "usual residents" fails the close constitutional scrutiny standard when it has discriminatory results, or is part of a long-standing pattern of exclusion. *See*, *e.g.*, *Louisiana v. United States*, 380 U.S. 145, 153 (1965) (invalidating a "constitutional interpretation" test used to prevent voting by African-Americans); *Harper*, 383 U.S. at 666-68 (invalidating poll tax which effectively denied right to vote); *Riley v. Kennedy*, 553 U.S. 406, 437-38 (1992) (Stevens, J., dissenting) (noting

[3] *available at* http://hawaii.gov/dbedt/info/economic/databook/db2010/section01.xls.

history of Alabama's attempt to avoid Fifteenth Amendment violation by using poll tax and literacy test for voting caused number of black voters to plummet from 100,000 to 3,742 in eight years). Defendants now assert that "the Commission was careful in determining the permanent resident population," Opp. at 23, and argue this insulates the 2012 Plan from review. But in the 2012 Plan, the Commission acknowledged that its methodology deviated from the Constitutional norm. 2012 Plan at 18 ("The Commission is aware that federal courts generally review reapportionment and redistricting plans under a different methodology than set forth above."). Moreover, the declarations of advisory council members filed with Defendants' Memorandum reveal the actual goal of the extraction process was not a neutral process geared to insure that only true residents were included, but was expressly targeted at exclusion of military and students because everyone demanded it.

Finally, Defendants' assumptions are not even rational. Defendants' reliance on *Holt*'s conclusion that Hawaii's military-related population "fluctuates violently" and that nothing has changed in the half-century since Hawaii was flooded with servicemembers in Hawaii temporarily on their way to Pacific and Asian battlefields. Opp. at 2. If

this assumption was once correct, it is now demonstrably false, as Hawaii's military-related population is relatively stable, as shown in Table 10.03 of the STATE OF HAWAII DATA BOOK ("Active Duty Personnel, By Service: 1953 to 2011") (attached as Exhibit "J"). A comparison of census years 1980, 1990, 2000, and 2010, shows the military population of Hawaii was 43,313, 41,887, 33,930, and 38,755 respectively. Further, Hawaii's supposedly large population of military personnel is not all that unusual:

> Counties with a large percentage of their population consisting of active-duty members of the military can be found in nearly every State, from populous California and Texas to sparsely populated Wyoming and North Dakota.

U.S. CENSUS BUREAU, CENSUS ATLAS OF THE UNITED STATES 201 (2007) (chapter on "Military Service").[4] Hawaii alone ignores servicemembers unless they pay Hawaii income taxes or are registered to vote in Hawaii. Defendants' suppositions about voting behavior, residency decisions, participation in politics, and payment of state taxes cannot overcome the weighty presumption in favor of inclusion. The 2012 Plan also ignores the rights of military family members, who could be

[4] *available at* http://www.census.gov/population/www/cen2000/censusatlas/pdf/12_Military-Service.pdf.

"associated or attached to an active duty military person who had declared a state of legal residence other than Hawaii." Stip. Facts at 3-4, ¶10. This assumption is parochial, irrational, and overbroad. For example, Plaintiff Jennifer Laster will testify that she is a Hawaii citizen, resident, and voter. But because she is married to Plaintiff Ernest Laster who was on active duty with the U.S. Air Force, she was extracted along with him. Finally, the 2012 Plan considers only students who have met the one-year durational residency requirement to be eligible for equal representation, even if a student might otherwise have met all of Hawaii's other tests for being domiciled here. *See Citizens for Equitable and Responsible Gov't v. County of Hawaii*, 120 P.3d 217, 222 (Haw. 2005). This bootstraps a one-year residency requirement onto the right to equal representation.[5]

[5] A state must show a "substantial and compelling reason" for imposing a durational residency requirement that impacts a fundamental right. *Dunn v. Blumstein*, 405 U.S. 330, 335 (1972). *See also Carrington v. Rash*, 380 U.S. 89 (1965) (invalidating presumption that military personnel were not bona fide state residents).

B. Malapportionment: Hawaii Is Unique, But It Is Not Exempt From The Constitution

Hawaii, Defendants argue, is so politically and geographically insular that the usual constitutional rules that apply elsewhere else simply cannot be applied here. While Hawaii is unique, it is not exempt from the Constitution, and Defendants make little effort to meet their burden to show why, even after discounting Kauai (which it claims is responsible for most of the deviation from statewide population), the 2012 Plan still has overall ranges that exceed the 10% threshold in both houses (10.79% in the Senate, and 10.55% in the House). Opp. at 32.

In an effort to downplay the gross deviations from statewide population norms, Defendants also continue to rely on deviations calculated on a "per legislator" basis (as if Hawaii had a unicameral legislature, which it does not), and not on a "per Senator" and "per Representative" basis, a slight-of-hand this Court expressly rejected in *Travis*. *See Travis*, 552 F. Supp. at 563 ("The state is unable to cite a single persuasive authority for the proposition that deviations of this magnitude can be excused by combining and figuring deviations from both houses."). Opp. at 32.

Defendants' call for this Court to ignore its decision in *Travis* as "mistaken" because it did not consider the state's justification for the deviations is also in error. Opp. at 28. *Travis* did no such thing. Instead, this Court acknowledged that the state asserted its "desire to provide each basic island unit with meaningful representation in the two state houses." *Travis*, 552 F. Supp. at 560. Indeed, the Court concluded that "the state's policy is a rational one." *Id.* Here, there is no dispute that the policy of allocating at least one representative to each county is rational. However, *Travis* concluded that the plan did not serve to advance the policy because Oahu, with its large population and many seats, must have "the smallest deviation possible." The court held that the maximum deviations of 9.18% in Oahu's Senate districts, and 9.54% in Oahu's House districts were not justified by the policy of providing each island with representation. *Id.* at 560-61. The same rationale applies in the present case, and Defendants do not address the Oahu deviations in this case that are very similar to the Oahu deviations struck down in *Travis*. See Plaintiffs' Memo. at 38-39 (Oahu's Senate district overall range is 8.89%, and Oahu's House district overall range is 9.53%). Defendants also do not address the *Travis* Court's final point (*see* Plaintiffs' Memo. at 39), that the state must show that its plan

"approximates the results of a plan based on an appropriate population base." *Travis*, 552 F. Supp. at 565. Defendants have made no attempt to do so here.

II. DEFENDANTS CONCEDE STANDING

This case presents a live controversy. Defendants make a halfhearted standing challenge, conceding that at least several of the Plaintiffs have standing to challenge both the Equal Representation claim (Count I) and the Malapportionment claim (Count II). Opp. at 16-17 ("Thus, except for the Laster Plaintiffs, none of the Plaintiffs have standing to raise Count I." "Thus, only Kostick, Walden, and Veray have standing to raise Count II.").

In any event, all Plaintiffs have standing, as each was injured in fact by the 2012 Plan. As residents of Oahu, Plaintiffs were injured by the extraction of 108,767 "usual residents" most of whom reside on Oahu, even if Plaintiffs were not themselves extracted since their removal shifted a state Senate seat from Oahu to Hawaii, thus skewing the size of every Oahu district, including the districts in which Plaintiffs reside. *Fairley v. Patterson*, 493 F.2d 598 (5th Cir. 1974), does not compel a different result. That case was a challenge to a reapportionment plan that extracted university students from the

population basis. The court held that the plaintiff who resided in the district that was underrepresented by virtue of the extraction of students was injured and had standing. *Id.* at 603-04. Here, every district on Oahu is underrepresented.

III. IT IS NOT TOO LATE TO IMPLEMENT A REMEDY

Defendants object to the remedies proposed, claiming it is already too late to change course, and it is therefore impossible to implement any plan other than the 2012 Plan. It is not too late to implement a plan that eliminates or at least minimizes the 2012 Plan's major constitutional defects.

First, far from being impossible to implement, Defendants are already preparing contingency plans in the event the Court invalidates the 2012 Plan. On April 12, 2012, the day after he filed with this court a list of *Relevant 2012 Election Dates* (CM/ECF doc. 23), Defendant Nago asked the Hawaii Legislature for an appropriation of funds for a new plan in the event this Court orders it, stating "we must be prepared for the possibility that the court may order a new plan to be developed." *See* Exhibit "K." In that letter, Mr. Nago acknowledges that his office is considering "three different scenarios that we thought were possible." These alternatives include: (1) "the complete drafting of a new plan" for

the 2012 election; (2) use of the 2001 lines for the state legislative districts but the 2011 Congressional and council lines; and (3) the Court allowing the 2012 election to proceed on the 2012 Plan, but ordering a plan than complies with the constitution to be in place for the 2014 election. *See* Ex. "K" at 1-2. The second "scenario" is the most revealing since it is the same remedy Plaintiffs proposed as alternative 3 (Plaintiffs' Memo at 43), and shows that far from being impossible as Defendants claim, the Office of Elections can redraw lines in a timely manner. Presumably, if there was no time at all, the Office of Elections should not have proposed it as a possible scenario and should not have sought money to implement it. On May 5, 2012, the legislature approved of the request, specifically to account for any remedy this court may order in the present case. *See* House Bill 2012.[6]

Second, Mr. Nago's claims as to the amount of time needed to implement a plan varies substantially. He testified it took three to 3 1/2 weeks to precinct. Nago Depo. at 30:7-24. Elsewhere, he stated five weeks. CM/ECF doc. 23. Elsewhere, he claimed "months." CM/ECF doc.

[6] *available at* http://www.capitol.hawaii.gov/session2012/Bills/HB2012_CD1_.PDF.

33.9 (Nago Declaration). Finally, in his testimony in support a bill to replace polling places for small precincts with vote-by-mail, Mr. Nago claimed "three months." *See* Exhibit "L." This bill and Mr. Nago's testimony in support also show that a remedy would not be impossible to implement here, since the bill was adopted in anticipation of last-minute redistricting and reprecincting, and will make for an easier and cheaper procedure by eliminating the need to process smaller precincts.

Third, there are but a few hard dates that cannot be adjusted: November 6, 2012 (the general election), 45 days prior (September 22, 2012, the date that ballots must be mailed to overseas voters under the Military and Overseas Voter Empowerment Act). Indeed, the Elections Office could mail such ballots via Federal Express as it was required to do in the 2010 election.

Finally, Defendants assert a "quasi" laches claim. It is only a "quasi" claim because Defendants do not assert reliance or prejudice, an essential element of a real laches claim. Plaintiffs filed the Complaint on April 6, 2012, well before the 45-day statute of repose expired, which means that Defendants could not have considered the 2012 Plan safe until 17 days later. Plaintiffs could not have brought this lawsuit much earlier because no one knew what the extractions would be until the

2012 Plan was issued on March 8, 2012. Defendants also assert Plaintiffs should have filed this lawsuit in October 2011, or should have intervened in *Solomon*. Opp. at 36. The September 2011 Plan, however, extracted far fewer persons (16,458) compared to the 108,767 extracted in the 2012 Plan, and it was only after the Hawaii court ordered extraction of exponentially more people that this challenge became truly ripe.

IV. CONCLUSION

Plaintiffs request this Court grant the preliminary injunction and the declaratory relief requested.

DATED: Honolulu, Hawaii, May 8, 2012.

Respectfully submitted,

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