

NO. 10-17280  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JIMMY YAMADA, RUSSELL  
STEWART, AND A-1 A-ELECTRICIAN,  
INC.

Plaintiffs-Appellees,

v.

PAUL KURAMOTO, in his official  
capacity as chair and member of the  
Hawaii Campaign Spending Commission;  
STEVEN OLBRICH, in his official  
capacity as vice chair and member of the  
Hawaii Campaign Spending Commission;  
GINO GABRIO, DEAN ROBB and  
MICHAEL WEAVER, in their capacities  
as members of the Hawaii Campaign  
Spending Commission,

Defendants-Appellants.

ON APPEAL FROM THE  
UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF  
HAWAII

D.C. No. CV-10-00497 JMS/LEK

PRELIMINARY INJUNCTION  
APPEAL FROM THE ORDER  
FILED October 7, 2010

J. MICHAEL SEABRIGHT,  
JUDGE

DEFENDANTS-APPELLANTS' MOTION TO VOLUNTARILY  
DISMISS THEIR APPEAL (Presently Scheduled for Argument June 15)

DECLARATION OF DEIRDRE MARIE-IHA

CERTIFICATE OF SERVICE

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**DEFENDANTS-APPELLANTS' MOTION TO VOLUNTARILY  
DISMISS THEIR APPEAL  
(Presently Scheduled for Argument June 15)**

Paul Kuramoto, Chairperson, and member of the Hawaii Campaign Spending Commission, and Steven Olbirsch, Gino Gabrio, Dean Robb, and Michael Weaver, members of the Hawaii Campaign Spending Commission, Defendant-Appellants (collectively, the Commission) respectfully move to dismiss their appeal from the district court's grant of a preliminary injunction in this case. The case is currently scheduled to be heard this Wednesday, June 15, 2011, in Honolulu. This motion is made pursuant to Federal Rules of Appellate Procedure (FRAP) 27 and 42. FRAP 42(a) contemplates voluntary dismissal of an appeal on appellant's motion. The Commission respectfully requests that the parties each bear their own costs on appeal.

Undersigned counsel attempted to contact opposing counsel (both local counsel (James Hochberg) and the counsel from Indiana (Randy Elf) who is scheduled to represent the Plaintiffs at oral argument). Decl. of D. Marie-Iha, attached. Undersigned counsel was unable to reach local counsel by telephone, and did not receive any response within thirty minutes to the e-mail sent at 4:58 p.m. today. Id. The e-mail was also sent to Randy Elf. Id. Given the six-hour time difference between Hawaii and Terre Haute, Indiana, it seemed unlikely that Mr. Elf would respond to the e-mail, and he did not. Id. Argument is scheduled

in a few days, and undersigned counsel therefore thought it imprudent to delay in filing this motion. However, opposing counsel presumably would have no objection to the Commission's withdrawal of the appeal, since Plaintiffs prevailed on the issue presented on appeal before the district court.<sup>1</sup>

Under FRAP 42(a), Defendants-Appellants respectfully request that this Court accept their motion to voluntarily withdraw their appeal, with each party to bear its own costs on appeal.

DATED: Honolulu, Hawaii, June 9, 2011.

Respectfully submitted,

/s/ Deirdre Marie-Iha

Deirdre Marie-Iha

*Deputy Solicitor General*

Attorney for Defendants-Appellants

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<sup>1</sup> It is possible that opposing counsel would object to the Commission's request that each party bear its own costs on appeal. As noted above, however, since argument is scheduled for only six days away, undersigned counsel thought it best to prevent any further use of judicial resources on an appeal the Commission no longer intends to pursue.

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**DECLARATION OF DEIRDRE MARIE-IHA**

I, Deirdre Marie-Iha, do declare and would competently testify as follows.

1. I am a deputy solicitor general, employed by the Department of the Attorney General's Appellate Division. I am assigned to represent Paul Kuramoto, chair of the Hawaii Campaign Spending Commission, along with his fellow Commissioners, Defendants-Appellants, in this appeal.

2. This case is scheduled for argument on Wednesday, June 15, 2011.
3. On June 9, 2011, at about 5:10 p.m., I attempted to call James Hochberg, the local counsel for Plaintiffs. I was unable to speak to him, but left a message asking that he return my call right away.
4. On June 9, 2011, at 4:58 p.m., I sent an e-mail to James Hochberg and Randy Elf, counsel from Indiana. Mr. Elf is currently scheduled to represent the Plaintiffs at oral argument on June 15, 2011.
5. The e-mail outlined the Defendants-Appellants' intent to immediately move to withdraw our appeal and inquired if they would object. The e-mail requested that they respond immediately, given the need to promptly inform this Court that Appellants no longer wish to pursue their appeal.
6. By 5:30 p.m. on June 9, 2011, I had received no return call from Mr. Hochberg, and no return e-mail from Mr. Hochberg or Mr. Elf.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Honolulu, Hawaii, June 9, 2011.

/s/ Deirdre Marie-Iha  
Deirdre Marie-Iha

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: Honolulu, Hawaii, June 9, 2011.

/s/ Deirdre Marie-Iha  
DEIRDRE MARIE-IHA  
Deputy Solicitor General

Attorney for Defendants-Appellants