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REPRESENTATIVE BOB McDERMOTT,
GARRET HASHIMOTO, WILLIAM E.K.
KUMIA, DAVID LANGDON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

REPRESENTATIVE BOB
McDERMOTT, GARRET
HASHIMOTO, WILLIAM E.K.
KUMIA, DAVID LANGDON,

Plaintiffs,

vs.

GOVERNOR NEIL ABERCROMBIE,
SENATOR DONNA MERCADO KIM,
REPRESENTATIVE JOSEPH SOUKI,
SENATOR CLAYTON HEE,
REPRESENTATIVE KARL RHOADS,

Defendants.

) CIVIL NO. 13-1-2899-10 KKS
)
) PLAINTIFFS' FIRST AMENDED MOTION
) FOR TEMPORARY RESTRAINING ORDER
) AGAINST DEFENDANTS; MEMORANDUM
) IN SUPPORT OF MOTION; DECLARATIONS
) "A" - "C"; *Proposed* ORDER GRANTING PLAINTIFFS'
) FIRST AMENDED MOTION FOR
) TEMPORARY RESTRAINING ORDER
) AGAINST DEFENDANTS; CERTIFICATE OF
) SERVICE
)
) Hearing Date: November 7, 2013 (Thursday)
) Hearing Time: 8:30 a.m.
) The Honorable Karl K. Sakamoto
)
) No Trial Date Has Been Set

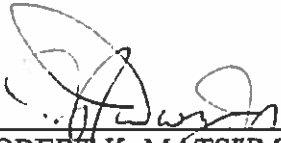
**PLAINTIFFS' FIRST AMENDED MOTION FOR
TEMPORARY RESTRAINING ORDER AGAINST DEFENDANTS**

COMES NOW Plaintiffs BOB McDERMOTT, in his capacity as a member of the State of Hawaii of Representatives and not in his individual capacity, GARRET HASHIMOTO, WILLIAM E.K. KUMIA and DAVID LANGDON (collectively the "Plaintiffs"), by and through their attorneys, the law firms of Robert K. Matsumoto and Dwyer Schraff Meyer & Green, and respectfully move the Honorable Court for a Temporary Restraining Order pending a hearing and disposition of a Motion for Preliminary Injunction to the above-named Defendants, as well as the employees of the State of Hawaii (including the Director of Health), and their respective agents, servants, employees attorneys, and all those persons in active concert or participation with them and enjoining the State of Hawaii, or any of its agents or employees from issuing any marriage license to any same-sex couple, and to maintain the status quo pending a full hearing, so as to prevent irreparable harm that will necessarily follow.

This Motion is being brought on an issue of great public interest, because of the adverse Cultural and Societal Impacts that will be suffered if the State of Hawaii issues a marriage license to a same-sex couple, and is based upon Rules 7(b) and 65(b) of the Hawaii Rule of Civil Procedures and is based on the Memorandum and Declarations attached herewith and/or which will be submitted to this Court, and the records and files of the above-entitled action, all of which are incorporated by this reference, on the grounds that unless the above-named Defendants are so

restrained, enjoined in the matter set forth above, Plaintiffs herein will suffer immediate and irreparable injury, loss and damage.

Dated: Honolulu, Hawaii, November 4, 2013.



ROBERT K. MATSUMOTO

JOHN R. DWYER, JR.

Attorneys for Plaintiffs

REPRESENTATIVE BOB McDERMOTT,
GARRET HASHIMOTO, WILLIAM E.K.
KUMIA, DAVID LANGDON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

REPRESENTATIVE BOB	)	CIVIL NO. 13-1-2899-10 KKS
McDERMOTT, GARRET)	
HASHIMOTO, WILLIAM E.K.)	
KUMIA, DAVID LANGDON,	)	MEMORANDUM IN SUPPORT OF MOTION
	)	DECLARATIONS "A" – "C"
)	
Plaintiffs,)	
)	
vs.)	
)	
GOVERNOR NEIL ABERCROMBIE,)	
SENATOR DONNA MERCADO KIM,)	
REPRESENTATIVE JOSEPH SOUKI,)	
SENATOR CLAYTON HEE,)	
REPRESENTATIVE KARL RHOADS,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION AND FURTHER BACKGROUND

Plaintiffs are residents and citizens of Hawaii and have serious concerns as the negative and immediate impacts of the activity of the current Special Legislative Session and the Executive Branch for the State of Hawaii, all of whom are bound by Section I of the Hawaii State Constitution. (See Declarations "A" – "C" attached hereto).

On or about August, 2013, Governor Abercrombie called a Special Session of the Legislature of the State of Hawaii to consider and to act upon a "marriage equality" Bill, i.e., or "same-sex marriage" Bill. It appears that Governor Abercrombie unilaterally set the start date for the Special Session for the week of October 28, 2013, which special session was expected to last no more than five (5) days. However, a truncated Special Session was scheduled to benefit a select few citizens of Hawaii, who favor "same-sex marriage," over the rights of the general

populace of Hawaii. On or about October 24, 2013, a public announcement was made to the general public announcing the start date and time for public testimony to be heard during the Special Session before the Senate Judiciary and Labor committee headed by Senator Hee with a description of the proposed bill, Senate Bill #1, together with instructions on how to submit written testimony. Those instructions also noted that the deadline for submitting written testimony was 24 hours prior to start of the hearing date and time before the Senate Judiciary and Labor Committee, which commenced at 10:30 a.m., October 28, 2013.

For a significant period of time, Hawaii law (Section 572-1 HRS) has provided in substance that in Hawaii a valid marriage contract “shall be only between a man and a woman.” However, as a result of certain Litigation filed by three same-sex couples to constitutionally invalidate that statute, the Constitution of the State of Hawaii was amended so that the statute would be constitutional. Because of that amendment, Article I, Section 23 of the Hawaii State Constitution now states, “The legislature shall have the power to reserve marriage to opposite sex-couples,” (hereinafter the “Opposite Sex Marriage Constitutional Amendment”). That Opposite Sex Marriage Constitutional Amendment was adopted by the people of Hawaii, who overwhelmingly voted by a greater than 2/3 majority in a Referendum during the General Election of November 3, 1998 so the statute would be constitutionally valid. It should be noted that both houses of the State Legislature had previously approved the proposed Constitutional Amendment for the consideration of citizens of Hawaii.

To explain the purpose and the meaning of the Referendum to the voting citizens of Hawaii, as well as to explain the effects of a “Yes” or “No” vote, the State Legislature first recounted the history of the Litigation filed by the same-sex couples to invalidate the statute. It then succinctly explained what the meaning of a “Yes” or “No” vote would be. The Legislature

finally told the citizens that a “Yes” vote would cause a new provision to be added to the Constitution that would give the Legislature the power to reserve marriage to opposite sex couples only.” That change to the Constitution would effectively resolve the Litigation filed by the same-sex couples, and it would make the existing statute constitutional; in fact it did just that, because the Litigation was then dismissed as moot.

II. DISCUSSION

a) Plaintiffs Are Likely To Prevail On The Merits. The controlling rule of law in Hawaii is actually historical and fundamental Common Law, because interpreting a constitution is different from interpreting the language of a contract or a statute, since a constitution (and any amendments) are adopted by the citizens themselves. Thus, the mere grammatical construction ought not control the interpretation, unless it is warranted by the general scope and object of the provision. *Groves v. Slaughter*, 40 U.S. 449 (S.Ct. 1841). Consequently, the interpretation of a constitution always turns on the intention of the citizens as “determined by the language used and the surrounding circumstances.” *Illinois Cent. R. Co. v. Ihlenberg*, 75 F. 873 (C.A. 6 1896).

The underlying facts here are not in dispute. In 1991, three same-sex couples challenged the existing Hawaii statute (Section 572-1 HRS), because that law prevented them from obtaining marriage licenses from the state.

After years of litigation (including a number of appeals) seeking to invalidate the statute on the basis of the Hawaii Constitution, the litigation was ultimately resolved when the citizens of Hawaii approved the “Opposite Sex Marriage Constitutional Amendment” (i.e., Section 23 of Article I of the Hawaii Constitution). There is no question that Section 23 of the Hawaii Constitution was adopted so that Section 572-1 of the Hawaii Revised Statutes (which prohibited “same-sex” marriages) would not be declared unconstitutional, and that is exactly what it did.

The amendment to the Hawaii Constitution (that became Section 23 provided that the Legislature would have the power to reserve the institution of marriage to opposite-sex couples) was presented to the citizens of Hawaii in the General Election of November 3, 1998. The attempt by same-sex couples to have the existing law declared unconstitutional is part of the “circumstances” surrounding the Constitutional Amendment. However, the “circumstances” also include the formal and written information provided to the citizens of Hawaii by the Legislature to educate and familiarize the voters about the meaning of the Constitutional Amendment and what a “Yes” or “No” vote meant.

Based on nearly ten years of litigation, it is undisputed that the Litigation was designed to constitutionally invalidate the existing Hawaii law; so that the historical culture norms of Hawaii and its understanding of family would be forever changed. To avoid that change, the citizens voted by a very substantial majority to amend the Hawaii Constitution. The obvious intent of the citizens of Hawaii in 1998 was to do exactly what the State’s formal Ballot Information said: to give the Legislature the power “to reserve marriage to opposite-sex couples only,” so that the existing statute would unquestionably be valid.

It is acknowledged that the Attorney General for the State of Hawaii has issued an Opinion (Op. No. 13-1) that tried to explain and rationalize-away that Constitutional Amendment in Article I, Section 23 of the Hawaii Constitution. In that Opinion, the Attorney General argued that because the Amendment said: “The legislature shall have the power to reserve marriage to opposite-sex couples,” the Legislature only:

“possesses the authority to limit marriages to the opposite-sex couples by statute, should it choose to do so.”

We agree; but there is a major fallacy in the conclusion of the Attorney General, because the Legislature had already chosen to do so in Section 572-1 HRS, and it chose not to repeal that

Statute. Simply stated, this specific Constitutional Amendment was intended to, and in fact, validated the existing Hawaii Statute. Plaintiffs will likely prevail on the merits because the language used and all of the surrounding circumstances evidence that intent, and because Section 572-1 had been adopted by the Hawaii Legislature, and it chose not to revoke that Statute. The citizens of Hawaii have spoken by their votes in 1998, so if the Legislature would now like to amend the Statute that was validated by the Hawaii voters, the Legislature must ask the citizens to again amend the Constitution. "Let the people vote."

b) Plaintiffs Will Suffer Irreparable Injury. It is normally wise not to wade into cultural norms for fear of violating what today is referred to as "political correctness" (such as characterizations of being homophobic); but because the damage that will be caused by the Defendants' stated goals or the issuance of a single marriage license to a same-sex couple is so immediate and so severe it is necessary to do so. See, Jackson v. Abercrombie, 884 F.Supp. 2d 1005 (US Dist 2012) which concluded that Hawaii is very different from California, because no same-sex couples have been married in Hawaii so Hawaii's law and Constitution have not taken away any right of same-sex couples in Hawaii. However, the slippery slope being created by the Defendants is obvious, because this "same-sex marriage" bill will become a hammer in the hands of activists to force the practice of homosexuality and other behaviors, such as cross-dressing and transexuality, as norms in Hawaiian society and appropriate behavior.

While supporters of the "same-sex marriage" statutory amendment would have the Legislature and the public believe that it is just a benign amendment, the serious impacts suffered by the citizens of Massachusetts, to their culture, to their families, to their parental rights, and to business and employment in that state suggest otherwise. Such effects here would be disastrous, because many of Hawaii's citizens have strong cultural and religious norms and convictions

regarding family and what is appropriate or inappropriate for schools to teach their children. Those cultural norms and religious convictions ought not be ignored or removed by the Legislature, particularly where the new proposed law only has the support of a small but vocal minority. Once same-sex marriages were approved in Massachusetts, parents there were faced with rulings that the schools had a duty to portray homosexual relationships as normal, and the complaints of parents were ignored. Further, businesses in Massachusetts were faced with equally serious situations involving, for example, disruptions and expenses caused by “testing for tolerance” by homosexual activists.


These damages are immediate and irreparable, because once the “bell is rung,” the sound can be heard and felt in spite of the parents’ cultural norms or religious beliefs, or in spite of the good faith attempts of business owners.

c) The Public Interest Favors Granting The Injunction. The public has a strong vested interest in knowing that the very basis of Hawaii’s cultural norms, the family, which consists of a mother, father and children (and perhaps includes several generations), will be forever changed. To see the depth of that vested interest, one needs to go no further than to consider the thousands and thousands of citizens that met and rallied at the Capitol Building on October 28, 2013 to oppose any change to Section 572-1 that would validate same-sex marriages. These citizens were from every walk of life. They were Hawaiians, Polynesians, Asians, African Americans and Caucasians. They were young and old, and all they wanted was to tell the legislators: “Let the people vote.” There is a cultural norm involved, and a change in that historic cultural norm should not be changed and mandated by a law that is opposed by the vast majority of Hawaii’s citizens. The adverse societal impacts and the great public interest should be obvious to the Court.

III. CONCLUSION

The interests of the vast majority of Hawaii's citizens in Hawaii's cultural norms and beliefs in the fundamental necessity of a marriage between a man and a woman and their responsibility to raise their children are unique and should be carefully protected. Plaintiffs are likely to succeed on the merits of their claims, and urge the Court to grant immediate injunctive relief to prevent the State of Hawaii from issuing any marriage license to any same-sex couple, and to maintain the *status quo* pending a full hearing, so as to prevent irreparable harm that will immediately and necessarily follow.

Dated: Honolulu, Hawaii, November 4, 2013.



ROBERT K. MATSUMOTO
JOHN R. DWYER, JR.
Attorneys for Plaintiffs
REPRESENTATIVE BOB McDERMOTT,
GARRET HASHIMOTO, WILLIAM E.K.
KUMIA, DAVID LANGDON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

REPRESENTATIVE BOB	)	CIVIL NO. 13-1-2899-10 KKS
McDERMOTT, GARRET)	
HASHIMOTO, WILLIAM E.K.	)	DECLARATION OF GARRET T.
KUMIA, DAVID LANGDON,	)	HASHIMOTO
)	
Plaintiffs,)	
)	
vs.)	
)	
GOVERNOR NEIL ABERCROMBIE,)	
SENATOR DONNA MERCADO KIM,)	
REPRESENTATIVE JOSEPH SOUKI,)	
SENATOR CLAYTON HEE,)	
REPRESENTATIVE KARL RHOADS,)	
)	
Defendants.)	

DECLARATION "A"

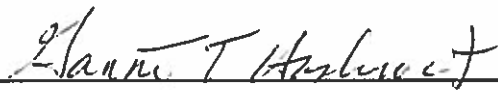
DECLARATION OF GARRET T. HASHIMOTO

My name is Garret T. Hasimoto. I am a kama'aina. I voted in 1998 to amend the Hawaii Constitution which gave the Legislature only power to reserve marriage for opposite-sex couples.

I'm opposed to the Governor calling this Special Session because I understood that an agreement had been reached between the Governor, the Senate, and House leadership to not call a Special Session.

I am concerned with legalizing same-sex marriage in Hawaii especially for our youth who will be taught by teachers that this is all right.

I strongly believe that the voters have the right to decide whether same-sex marriage should be legal or not in Hawaii by requiring the passage of a new Constitutional Amendment.



GARRET T. HASHIMOTO
10/3/2013

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

REPRESENTATIVE BOB	)	CIVIL NO. 13-1-2899-10 KKS
McDERMOTT, GARRET)	
HASHIMOTO, WILLIAM E.K.	)	DECLARATION OF WILLIAM E.K. KUMIA
KUMIA, DAVID LANGDON,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
GOVERNOR NEIL ABERCROMBIE,)	
SENATOR DONNA MERCADO KIM,)	
REPRESENTATIVE JOSEPH SOUKI,)	
SENATOR CLAYTON HEE,)	
REPRESENTATIVE KARL RHOADS,)	
)	
Defendants.)	

DECLARATION "B"

DECLARATION OF WILLIAM E.K. KUMIA

My name is William E.K. Kumia. I am a local native Hawaiian. I voted in 1998 to amend the Hawaii Constitution by adding in new section to only allow marriage in Hawaii to be between one man and one woman.

I spend much of my time being a motivational speaker for our Hawaii youth at all different levels at middle and high schools. I have spoken at Wai`anae, Waipahu and Kapolei. My major theme is GROW standing for Goals, Reality, Options and Willing.

I also meet with men's groups to discuss families particularly the need for both fathers and mothers.

I am opposed to the passage of SB1 – the Marriage Equality Bill because it legalizes same-sex marriage in Hawaii which will have adverse consequences to our youth, adults, and families. If any changes are to be made as to what marriage means in Hawaii it must go back to us the voters by passing a new Constitutional Amendment.

Dated: Honolulu, Hawaii, October 31, 2013.



WILLIAM E.K. KUMIA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

REPRESENTATIVE BOB	)	CIVIL NO. 13-1-2899-10 KKS
McDERMOTT, GARRET)	
HASHIMOTO, WILLIAM E.K.	)	DECLARATION OF DAVID LANGDON
KUMIA, DAVID LANGDON,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
GOVERNOR NEIL ABERCROMBIE,)	
SENATOR DONNA MERCADO KIM,)	
REPRESENTATIVE JOSEPH SOUKI,)	
SENATOR CLAYTON HEE,)	
REPRESENTATIVE KARL RHOADS,)	
)	
Defendants.)	

DECLARATION "C"

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

REPRESENTATIVE BOB
McDERMOTT,

Plaintiff,

VS.

GOVERNOR NEIL ABERCROMBIE,
SENATOR DONNA MERCADO KIM,
REPRESENTATIVE JOSEPH SOUKI,
SENATOR CLAYTON HEE,
REPRESENTATIVE KARL RHOADS,

Defendants.

) CIVIL NO. _____

DECLARATION OF DAVID LANGDON

DECLARATION OF DAVID LANGDON

My name is David Langdon. I am a long time resident of Hawaii. In 1998, I voted for our Hawaii Constitution being amended with the understanding that this would make same-sex marriages illegal under our Constitution.

I am a grandfather with numerous children and grandchildren. My wife and I presently have responsibility for raising an eight year old granddaughter.

I do not want the Hawaii law changed to allow same-sex marriages. This will cause schools that my granddaughter attends, and will be attending, to impose and justify moral standards far from what she presently believes. I do not want her to grow up facing this way of life.

Dated: Honolulu, Hawaii, October 31, 2013.


DAVID LANGDON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

REPRESENTATIVE BOB	)	CIVIL NO. 13-1-2899-10 KKS
McDERMOTT, GARRET)	
HASHIMOTO, WILLIAM E.K.)	
KUMIA, DAVID LANGDON,	)	ORDER GRANTING PLAINTIFFS' FIRST
	)	AMENDED MOTION FOR TEMPORARY
	)	RESTRAINING ORDER AGAINST
Plaintiffs,	)	DEFENDANTS
)	
vs.)	
)	
GOVERNOR NEIL ABERCROMBIE,)	
SENATOR DONNA MERCADO KIM,)	
REPRESENTATIVE JOSEPH SOUKI,)	
SENATOR CLAYTON HEE,)	
REPRESENTATIVE KARL RHOADS,)	
)	
Defendants.)	

proposed **ORDER GRANTING PLAINTIFFS'
FIRST AMENDED MOTION FOR TEMPORARY
RESTRAINING ORDER AGAINST DEFENDANTS**

The Court, having considered *Plaintiffs' First Amended Motion for Temporary Restraining Order Against Defendants*, the memorandum and declarations attached therewith, and the opposition memorandum and argument of opposing counsel, and good cause appearing therefore,

IT IS HEREBY ORDERED that the above-named Defendants show cause before the Honorable Karl K. Sakamoto, Judge of the above-entitled Court, in the Courtroom of said Judge at 777 Punchbowl Street, Kaahumanu Hale, Honolulu, Hawaii 96813, on Thursday, November 7, 2013 at 8:30 a.m., or as soon thereafter as counsel can be heard, why a preliminary injunction should not issue enjoining the above-named defendants, their agents, servants, employees and

attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action,

IT IS HEREBY FURTHER ORDERED that the above-named defendants, their officers, agents, servants, employees, attorneys and all those persons in active concert or participation with them, be and they are hereby enjoined and restrained from issuing any marriage license to any same-sex couple, and to maintain the *status quo* pending a full hearing, so as to prevent irreparable harm that will necessarily follow.

IT IS HEREBY FURTHER ORDERED that this Temporary Restraining Order shall issue on _____, 2013 at _____.m. and shall expire ten days thereafter unless within such time the order for good cause showing is extended for a like period, or unless the above-named defendants consent that it may be extended for a longer period;

IT IS FURTHER ORDERED that service of this *Order Granting Plaintiffs' First Amended Motion for Temporary Restraining Order Against Defendants*, together with the papers attached hereto, upon the David M. Louie, Esq., the Attorney General for the State of Hawaii, on or before _____, 2013, at _____.m., be deemed sufficient service.

DATED: Honolulu, Hawaii, _____.

Judge of the above-entitled Court

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

REPRESENTATIVE BOB	)	CIVIL NO. 13-1-2899-10 KKS
McDERMOTT, GARRET)	
HASHIMOTO, WILLIAM E.K.)	
KUMIA, DAVID LANGDON,	)	CERTIFICATE OF SERVICE
)	
Plaintiffs,)	
)	
vs.)	
)	
GOVERNOR NEIL ABERCROMBIE,)	
SENATOR DONNA MERCADO KIM,)	
REPRESENTATIVE JOSEPH SOUKI,)	
SENATOR CLAYTON HEE,)	
REPRESENTATIVE KARL RHOADS,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PLAINTIFFS' FIRST AMENDED MOTION FOR TEMPORARY RESTRAINING ORDER AGAINST DEFENDANTS; MEMORANDUM IN SUPPORT OF MOTION; DECLARATIONS "A" – "C"; ORDER GRANTING PLAINTIFFS' FIRST AMENDED MOTION FOR TEMPORARY RESTRAINING ORDER AGAINST DEFENDANTS; CERTIFICATE OF SERVICE was duly served upon the following by hand delivery on November 4, 2013.

David M. Louie, Esq.
Attorney General for the State of Hawaii
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813
Attorney for Defendants

Dated: Honolulu, Hawaii, November 4, 2013.



ROBERT K. MATSUMOTO

JOHN R. DWYER, JR.

Attorneys for Plaintiffs

REPRESENTATIVE BOB McDERMOTT,

GARRET HASHIMOTO, WILLIAM E.K.

KUMIA, DAVID LANGDON