

FILED

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V. ISHIHARA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

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Attorney for Plaintiffs

IN THE CIRCUIT COURT OF SECOND CIRCUIT

STATE OF HAWAII

| | |
|---|-------------------------------------|
| ROBERT G. BABSON, Jr., ANN C. BABSON,) | Civil No. <u>08-1-0378(2)</u> |
| JOY BRANN, PAULA BROCK, and DANIEL) | (Declaratory Action and Injunction) |
| GRANTHAM,) | |
| Plaintiffs) | COMPLAINT; SUMMONS |
| vs.) | |
| KEVIN CRONIN, Chief Elections Office, State) | |
| of Hawai'i, and STATE OF HAWAII,) | |
| Defendants.) | |

COMPLAINT

Plaintiffs for cause of action against the KEVIN CRONIN, 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 the Plaintiffs reside in this judicial circuit and because the elections affecting Plaintiffs will be conducted within this judicial circuit.
3. Plaintiff ROBERT G. BABSON, JR. is a resident of the island of Maui, State of Hawai'i.
4. Plaintiff ANN C. BABSON is a resident of the island of Maui, State of Hawai'i.

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


Clerk, Second Judicial Circuit

5. Plaintiff JOY BRANN is a resident of the island of Maui, State of Hawai'i.
6. Plaintiff PAULA BROCK is a resident of the island of Maui, State of Hawai'i.
7. Plaintiff DANIEL GRANTHAM is a resident of the island of Maui, State of Hawai'i.
8. Defendant KEVIN CRONIN is the Chief Elections Officer of the State of Hawai'i and is authorized by Chapter 11, Haw. Rev. Stat. to promulgate rules governing elections and is an "agency" within the meaning of Chapter 91, Haw. Rev. Stat.

COUNT ONE – UNLAWFUL RULE-MAKING

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

10. Defendant Kevin Cronin has adopted the "U.S. Election Assistance Commission (EAC) 2005 Voluntary Voting System Guidelines" (hereafter the EAC Guidelines) for use in state and county elections.

11. The EAC Guidelines are rules within the meaning of Chapter 91, Haw. Rev. Stat.

12. The EAC Guidelines were adopted without complying with the procedures in Chapter 91, Haw. Rev. Stat. for promulgating rules.

13. Plaintiffs seek a declaration invalidating the adoption of the EAC Guidelines for use in state and county elections.

COUNT TWO – UNLAWFUL RULE-MAKING

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

15. Defendant transmits or allows to be transmitted the ballot counts and election results for final tabulation over telephone lines or the internet.

16. The use of telephone lines or the internet for transmitting ballot counts and election results for final tabulation are rules within the meaning of Chapter 91, Haw. Rev. Stat.

17. The rule of using telephone lines or the internet for transmitting ballot counts and election results for final tabulation was adopted without complying with the procedures in Chapter 91, Haw. Rev. Stat. for promulgating rules.

18. Plaintiffs seek a declaration invalidating the use of telephone lines or the internet for transmitting ballot counts and election results for final tabulation.

COUNT THREE – UNLAWFUL RULEMAKING

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

20. Defendant transmits or allows to be transmitted the ballot counts and election results for final tabulation over telephone lines or the internet.

21. The use of telephone lines or the internet for transmitting ballot counts and election results for final tabulation are rules within the meaning of Chapter 91, Haw. Rev. Stat.

22. The rule of using telephone lines or the internet for transmitting ballot counts and election results for final tabulation was adopted without complying with the procedures in Chapter 91, Haw. Rev. Stat. for promulgating rules.

23. The use of a rule permitting the transmission over telephone lines or the internet exceeds the statutory authority granted in Chapter 11, Haw. Rev. Stat.

24. Plaintiffs seek a declaration invalidating the use of telephone lines or the internet for transmitting ballot counts and election results exceeds statutory authority.

COUNT FOUR – INJUNCTIVE RELIEF

25. Plaintiffs reaver and reallege as if more fully set forth herein all the allegations set

forth in the preceding paragraphs.

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

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

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

29. 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.

30. 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 in conformance with the EAC Guidelines or transmitting ballot counts and election results by telephone line or the internet.

Wherefore Plaintiffs pray and demand judgment against Defendants declaring the use of the EAC Guidelines for state and county elections invalid, the use of telephone lines or the internet for transmitting ballot counts and elections results for final tabulation invalid, the use of telephone lines or the internet for transmitting ballot counts and elections results for final tabulation exceeds statutory authority, a temporary, preliminary and/or permanent injunctive relief prohibiting Defendants from use the EAC Guidelines and prohibiting Defendants from use of telephone lines or the internet (or alternatively, without first going through proper rule-making procedures) and an award of reasonable attorney's fees and costs.

DATED: Wailuku, Maui, Hawai'i

July 14, 2008



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

IN THE CIRCUIT COURT OF SECOND CIRCUIT

STATE OF HAWAII

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| KEVIN CRONIN, Chief Elections Office, State) | |
| of Hawai'i, and STATE OF HAWAII,) | |
| |) |
| Defendants. _____ | |

SUMMONS

To the Named Defendants:

You are hereby summoned and required to serve upon the Law Office of Lance D. Collins, A Law Corporation, whose address is 2070 W. Vineyard Street, Wailuku, Maui, Hawai'i 96793, an answer to this complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This summons shall not be personally 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.

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

DATED: Wailuku, Maui, Hawai'i

JUL 14 2008

/sgd/ V. ISHIHARA (seal)
CLERK OF THE ABOVE-ENTITLED COURT