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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WILLIAM W. REMMERS, JR., in his own right, and as representative of all similarly situated citizens and residents of the State of Hawaii,)	CIVIL NO.
)	
Plaintiff,)	COMPLAINT; DEMAND FOR JURY TRIAL; SUMMONS
)	
vs.)	
)	
DWAYNE D. YOSHINA, Chief Election Officer of the Office of Elections, State of Hawaii; GENEVIEVE G. WONG, City Clerk, City and County of Honolulu; TED I. SAKAI, Director of Department of Public Safety, State of Hawaii; EDWIN SHIMODA, Department of Public Safety Institutions Division Administrator;)	
CLAYTON FRANK, Warden of the Oahu Community Correctional Center; SERNA (first name unknown), Sergeant, Oahu Community Correctional Facility; JOHN MANUMALEUNA, Chief of Security, Oahu Community Correctional Center; FRANCIS X. SEQUIERA, Acting Warden, Oahu)	

Community Correctional Center; JOHN)
DOES 1-10, in their individual and official)
capacities,)
)
Defendants.)
)

COMPLAINT

Plaintiff WILLIAM REMMERS, JR., in his own right and as representative of all similarly situated citizens and residents of the State of Hawaii, brings this civil rights complaint by and through his undersigned counsel and alleges as follows:

Preliminary Statement

1. This is a civil rights class action for damages and declaratory and injunctive relief against defendants above-named who, in their individual and/or representative capacities, interfered and continue to interfere with plaintiffs' right to vote in general elections. This action is brought pursuant to the Fourteenth Amendment to the United States Constitution and 42 United States Code (U.S.C.) §§ 1983 and 1988.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), 2201, and 2202.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b), because Defendants above-named reside in this district and in the State of Hawaii.

4. The various acts and/or omissions alleged herein were engaged in and carried out by the individual defendants while defendants were employed by the State of Hawaii, the City and County of Honolulu, the Office of Elections, and/or the Department of Public Safety. All of the various acts and/or omissions alleged herein were engaged in and carried out by individual defendants under color of state law.

5. The various acts and omissions alleged herein were engaged in and carried out by officials of the State of Hawaii and/or the City and County of Honolulu acting by and through their employees and officials, pursuant to government policy statement, ordinance, regulation, or decision officially promulgated by that governmental units' officers, and/or pursuant to government custom, practice and policy which was so permanent and well-settled that it constituted practice or policy which had the force of law.

Parties

6. Plaintiff WILLIAM REMMERS, JR. (Remmers) is at least 18 years of age, a United States citizen, registered voter and resident of the City and County of Honolulu, State of Hawaii. At the time of the federal and state election held on November 7, 2000, Remmers was registered to vote and was a pretrial detainee being held at Oahu Community Correctional Center (OCCC).

7. Defendant DWAYNE D. YOSHINA (Yoshina) is the appointed Chief Election Officer of the Office of Elections for the State of Hawaii. At all times relevant hereto, Yoshina was acting in his capacity as Chief Election Officer and under color of state law. Yoshina is sued in his individual and official capacities. Yoshina is charged with carrying out the duties and responsibilities entrusted to the Office of Elections. Under HRS § 11-2, Yoshina is charged with the following duties: (1) supervise all state elections; (2) maximize the registration of eligible electors throughout the State; (3) maintain data concerning registered voters, elections, apportionment, and distracting, (4) provide public education with respect to voter materials; and (5) adopt rules governing elections.

8. Defendant GENEVIEVE G. WONG (Wong) is the appointed City Clerk for the City and County of Honolulu. At all times relevant hereto, Wong was acting in her capacity as City Clerk and under color of state law. Wong is sued in her individual and official capacities. Wong is responsible for registering all voters and conducting all elections in the City and County of Honolulu. Pursuant to HRS Chapter 15 and Hawaii Administrative Rules Chapter 53, Wong is charged with issuing absentee ballots to registered voters who request to vote absentee.

9. Defendant TED I. SAKAI (Sakai) is the appointed Director of the Department of Public Safety for the State of Hawaii. At all times relevant hereto, Sakai was acting in his capacity as Director of Public Safety and under color of state law. Sakai is sued in his individual and official capacities. Sakai is charged with carrying out the duties and responsibilities entrusted to the Department of Public Safety. Pursuant to HRS Chapter 353C and § 26-14.6, Sakai is responsible for ensuring that correctional facilities, including OCCC, and correctional services meet the present and future needs of persons committed to the Department of Public Safety and for the administration and maintenance of all public or private correctional facilities and services in the State of Hawaii.

10. Defendant EDWIN SHIMODA (Shimoda) is an individual employed as the Institutions Division Administrator for the Department of Public Safety. At all times relevant hereto, Shimoda was acting in his capacity and under color of state law. Shimoda is sued in his individual and official capacities.

11. Defendant CLAYTON FRANK (Frank) is an individual currently employed as the Warden of OCCC. At all times relevant hereto, Frank was acting in

his capacity as Warden and under color of state law. Frank is sued in his individual and official capacities. Frank is an employee of the Department of Public Safety and is charged with supervising the operations of OCCC.

12. Defendant SERNA (first name unknown) (Serna) is an individual who is employed by the Department of Public Safety as a Sergeant at OCCC. At all times relevant hereto, Serna was acting in that capacity and under color of state law. Serna is sued in his individual and official capacities.

13. Defendant JOHN MANUMALEUNA (Manumaleuna) is an individual who is employed by the Department of Public Safety as Chief of Security at OCCC. At all times relevant hereto, Manumaleuna was acting in that capacity and under color of state law. Manumaleuna is sued in his individual and official capacities.

14. Defendant FRANCIS X. SEQUIERA (Sequiera) is an individual who at all times relevant hereto was an employee of the Department of Public Safety assigned to work at OCCC. At all times relevant hereto, Sequiera was the Acting Warden of OCCC and acting in his official capacity and under color of state law. Sequiera is sued in his individual and official capacities.

15. The names JOHN DOES 1-10 (John Doe defendants) represent all other defendants, who are unknown to plaintiffs. John Doe defendants were employees of the City and County of Honolulu and/or the State of Hawaii and/or acted under color of state law. John Doe defendants participated in the unconstitutional acts or omissions of defendants. Plaintiffs will move the court to amend this complaint to name such defendants once their identities are ascertained.

Class Action Allegations

16. Plaintiff Remmers brings this action on his own behalf and on behalf of a class of all persons similarly situated pursuant to Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

17. The class which Plaintiff Remmers seeks to represent consists of all pretrial detainees and all other prisoners incarcerated in Hawaii, who are otherwise eligible to vote, are registered voters or take steps to register as voters, seek to vote in a general election, and are denied an equal opportunity to vote and have their votes counted in that election, by actions, policies and practices of the above-named defendants, in violation of the Fourteenth Amendment of the United States Constitution and/or 42 U.S.C. § 1983 (hereinafter the “Class”). The Class consists of (1) former pretrial detainees and eligible prisoners whose right to vote was denied and whose claims are not barred by the applicable statute of limitations, (2) current pretrial detainees and eligible prisoners who plan to vote in future elections, and (3) future pretrial detainees and eligible prisoners who plan to vote in future elections.

18. The members of the Class are so numerous as to make it impracticable to bring them all before the Court. The exact number of individuals in the Class is not known by plaintiffs, but is known by defendants.

19. There are questions of law and fact common to the Class. The common questions include whether the defendants’ failure to develop and implement a plan to ensure Class members their right to vote while they are under the custody and supervision of the Department of Public Safety violates the Fourteenth Amendment of the United States Constitution.

20. The claims of Plaintiff Remmers are typical of the claims of the Class. Remmers was otherwise eligible to vote in the November 7, 2000 general election, was registered to vote in that election, sought to vote in that election, and was denied an equal opportunity to vote and have his vote counted in that election by actions, policies and practices of the defendants.

21. Plaintiff Remmers will fairly and adequately represent the interests of the Class. Remmers has no interests antagonistic to the Class. He seeks declaratory and injunctive relief on behalf of the entire class and such relief will benefit all members of the Class. Remmers further seeks an award of damages, on his own behalf and on behalf of all eligible class members, against individual defendants for past deprivation of civil rights.

22. Remmers is represented by counsel who are competent and experienced in civil rights and class action litigation.

23. Class certification pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3) is warranted because (1) the defendants have acted or failed to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole, and (2) questions of law and/or fact common to members of the Class predominate over questions affecting only individual members. Proceeding by class action in this case is superior to other available methods for the fair and efficient adjudication of this controversy.

Facts

24. Hawaii state law provides that any person registered and otherwise eligible to vote may cast an absentee ballot. HRS § 15-2.

25. Prior to the November 2000 election, Plaintiff Remmers was arrested and detained at OCCC. He was held as a pretrial detainee in Module Three.

26. Prior to the November 2000 election, Defendant Serna and/or other employees of the Department of Public Safety assigned to OCCC announced that a sign-up sheet would be posted in Module Three. Plaintiff Remmers and other inmates, who were eligible to vote, were instructed that if they wanted to vote in the upcoming election by absentee ballot they were to list their names, prisoner identification number and prisoner status on the sign-up sheet. Defendant Serna and/or other Department of Public Safety employees told Plaintiff Remmers and the other inmates that simply filling out the information on the sign-up sheet would secure their right and ability to vote in the upcoming election.

27 The sign-up sheet was posted and Plaintiff Remmers and at least nine other inmates of Module Three listed their names and other identifying information on the sign-up sheet.

28. Plaintiff Remmers and the other inmates of Module Three were not told that an Application for Absentee Voter Ballot was available from the Office of the City Clerk. Plaintiff Remmers and the other inmates of Module Three did not receive an Application for Absentee Voter Ballot. Instead, they were told by Serna and/or other employees of the Department of Public Safety to simply list their names on the sign-up sheet to ensure their ability to vote.

29. Plaintiff Remmers and the other inmates of Module Three did not receive an Absentee Voter Ballot. Plaintiff Remmers and the other inmates of Module Three were not able to vote at the polls as they were not allowed to leave the premises

of OCCC. Plaintiff Remmers and the other inmates of Module Three were denied their right to vote.

30. As a result of defendants Yoshina, Wong, Sakai, Shimoda, Manumaleuna, Serna and Sequiera's failure to develop and implement a plan to ensure that Plaintiff Remmers and other Class members could exercise their right to vote, Plaintiff Remmers and the other inmates of Module Three were deprived of their right to vote in the November 2000 election.

31. On or about November 7, 2000, Plaintiff Remmers filed an Inmate Complaint/Grievance form with the Department of Public Safety, alleging that he had been deprived of his right to vote.

32. On or about November 11, 2000, Defendant Manumaleuna responded that Plaintiff Remmers and the other inmates were denied the right to vote by absentee ballot because there were no certified officials present at OCCC to monitor the absentee ballots.

33. On or about December 8, 2000, Plaintiff Remmers filed an appeal of his Inmate Complaint/Grievance with the Department of Public Safety, again alleging that the actions, omissions, policies and/or procedures of the Department of Public Safety deprived him of his right to vote.

34. On or about December 21, 2000, Defendant Sequiera responded that Plaintiff Remmers and the other inmates were given an opportunity to register to vote and that all voter registration applications were forwarded to City and County of Honolulu voting officials. Defendant Sequiera maintained that OCCC was not responsible for distributing absentee ballots to inmates.

35. On or about December 26, 2000, Plaintiff Remmers filed a further appeal with the Department of Public Safety, again asserting that the actions, omissions, policies and/or procedures of the Department of Public Safety deprived him of his right to vote.

36. On or about February 26, 2001, Defendant Shimoda responded that the Department of Public Safety did not have a deputized volunteer at OCCC authorized to accept and collect inmate absentee ballots. According to Shimoda, Defendant Wong and/or the Office of the City Clerk informed OCCC that without a deputized volunteer all absentee ballots from OCCC would be void. Defendant Shimoda suggested that Plaintiff Remmers address his concerns to Defendant Wong.

37. As a direct result of the Department of Public Safety's policy statement, ordinance, regulation, official decision, custom, practice and/or policy, as developed and/or implemented by Defendants Sakai, Shimoda, Manumaleuna, Serna, and Sequiera, Plaintiff Remmers and members of the Class were deprived of their constitutional right to vote, in violation of their civil rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States, rendering defendants liable under 42 U.S.C. § 1983.

38. As a direct result of the Office of the City Clerk's policy statement, ordinance, regulation, official decision, custom, practice and/or policy, as developed and/or implemented by Defendant Wong, Plaintiff Remmers and members of the Class were deprived of their constitutional right to vote, in violation of their civil rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States, rendering defendants liable under 42 U.S.C. § 1983.

39. As a direct result of the Office of Elections' policy statement, ordinance, regulation, official decision, custom, practice and/or policy, as developed and/or implemented by Defendant Yoshina, Plaintiff Remmers and members of the Class were deprived of their constitutional right to vote, in violation of their civil rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States, rendering defendants liable under 42 U.S.C. § 1983.

40. Acting under color of state law, defendants Yoshina, Wong, Sakai, Sequiera, and Frank knowingly deprived and/or continue to deprive Plaintiff Remmers and other members of the Class of their constitutional right to vote by failing to adopt, incorporate and enforce such rules, regulations, policies and procedures as would ensure Class members' right and ability to vote while Class members are under the custody and supervision of the Department of Public Safety.

41. Unless enjoined by this Court, defendants acts and/or omission will deprive current and future Class members of their right to vote.

42. By reason of the foregoing unlawful and deliberate acts and/or omissions of defendants, Plaintiff Remmers and other Class members have been damaged in an amount to be determined.

42. Because of the continuing nature of the foregoing unlawful and deliberate acts and/or omissions of defendants, Plaintiff Remmers and Plaintiff Class have no adequate and sufficient remedy at law with which to address the wrongs alleged herein and will continue to suffer the deprivation of their constitutional rights from the conduct of the defendants unless Plaintiff Remmers and Plaintiff Class are granted the equitable relief prayed for herein.

WHEREFORE, Plaintiff Remmers and Plaintiff Class pray for relief as follows:

1. That this Court determine and enter judgment declaring that the acts and/or omissions of the defendants, as set forth above, violate rights secured by the Fourteenth Amendment to the Constitution of the United States;

2. That upon hearing, the Court issue a preliminary and permanent injunction prohibiting the defendants from denying Plaintiff class their right to vote and ordering defendants to develop and implement a plan to ensure Plaintiff Class their right to vote while Plaintiff Class are under the custody and supervision of the Department of Public Safety;

3. That the Court award damages to Plaintiff Remmers and any other eligible Class members;

4. That defendants be required to pay the legal costs and expenses herein, including reasonable provision for attorney's fees;

5. That the Court grant such further and additional relief as is appropriate herein.

DATED: Honolulu, Hawaii, _____.

JOHN S. EDMUNDS
RONALD J. VERGA

Attorneys for Plaintiff

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FOR THE DISTRICT OF HAWAII

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right, and as representative of all similarly)	
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Plaintiff,)	
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Officer of the Office of Elections, State of)	
Hawaii; GENEVIEVE G. WONG, City)	
Clerk, City and County of Honolulu; TED I.)	
SAKAI, Director of Department of Public)	
Safety, State of Hawaii; EDWIN)	
SHIMODA, Department of Public Safety)	
Institutions Division Administrator;)	
CLAYTON FRANK, Warden of the Oahu)	
Community Correctional Center; SERNA)	
(first name unknown), Sergeant, Oahu)	
Community Correctional Facility; JOHN)	
MANUMALEUNA, Chief of Security, Oahu)	
Community Correctional Center; FRANCIS)	
X. SEQUIERA, Acting Warden, Oahu)	
Community Correctional Center; JOHN)	
DOES 1-10, in their individual and official)	
capacities,)	
)	
Defendants.)	
)	

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable herein.

DATED: Honolulu, Hawaii, _____.

JOHN S. EDMUNDS
RONALD J. VERGA
Attorneys for Plaintiff

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DOES 1-10, in their individual and official)	
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)	
Defendants.)	
)	

SUMMONS

TO: THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to file with the Clerk of
this Court and serve upon Plaintiff's attorneys:

JOHN S. EDMUNDS, ESQ.
RONALD J. VERGA, ESQ.
Edmunds Maki Verga & Thorn
841 Bishop Street, Suite 2104
Honolulu, HI 96813
Tel: (808) 524-2000

an answer to the complaint which is herewith served upon you, within _____ days
after service of this summons upon you, exclusive of the day of service. If you fail to do
so, judgement by default will be taken against you for the relief demanded in the
complaint.

CLERK

DATE

BY DEPUTY CLERK