

U.S. District Court
District of Hawaii (Hawaii)
CIVIL DOCKET FOR CASE #: 1:20-cv-00273-JAO-WRP

Carmichael v. Ige
Assigned to: JUDGE JILL A. OTAKE
Referred to: MAGISTRATE JUDGE WES REBER PORTER
Cause: 28:2201 Constitutionality of State Statute(s)

Date Filed: 06/15/2020
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Holly Carmichael

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Plaintiff

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Plaintiff

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Plaintiff

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V.

Defendant

David Y. Ige

in his official capacity as Governor of the State of Hawaii

represented by **Craig Y. Iha**

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Interested Party

The United States of America

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Date Filed	#	Docket Text
06/15/2020	1	COMPLAINT <i>For Declaratory and Injunctive Relief</i> against David Y. Ige (Filing fee \$ 400 receipt number 0975-2383269.), filed by Holly Carmichael. (Attachments: # 1 Civil Cover Sheet)(Hochberg, Lloyd) (Entered: 06/15/2020)
06/15/2020	2	MOTION for Pro Hac Vice <i>Harmeet K. Dhillon</i> Filing fee \$ 300, receipt number 0975-

		2383284.Lloyd James Hochberg, Jr appearing for Plaintiff Holly Carmichael (Hochberg, Lloyd) (Entered: 06/15/2020)
06/15/2020	3	MOTION for Pro Hac Vice <i>Mark P. Meuser</i> Filing fee \$ 300, receipt number 0975-2383292.Lloyd James Hochberg, Jr appearing for Plaintiffs Holly Carmichael, Timothy Aaron Carmichael, Russell Hirsch, Brooke McGowan (Hochberg, Lloyd) (Entered: 06/15/2020)
06/15/2020	4	Summons (Proposed) (Hochberg, Lloyd) (Entered: 06/15/2020)
06/15/2020	5	NOTICE of Case Assignment: Please reflect Civil case number CV 20-00273 JAO-WRP on all further pleadings. (emt,) (Entered: 06/15/2020)
06/15/2020	6	Summons Issued as to David Y. Ige, in his official capacity as Governor of the State of Hawaii. (emt,) (Entered: 06/15/2020)
06/15/2020	7	Order Setting Rule 16 Scheduling Conference is set for 09:00AM on 8/10/2020 before MAGISTRATE JUDGE WES REBER PORTER - Signed by CHIEF JUDGE J. MICHAEL SEABRIGHT on 6/15/2020. (Attachments: # 1 Memo from Clerk Re: Corporate Disclosure Statements) ATTACH THE SCHEDULING ORDER TO THE INITIATING DOCUMENT (COMPLAINT/NOTICE OF REMOVAL). THE SCHEDULING ORDER AND MEMO RE: CORPORATE DISCLOSURES MUST BE SERVED WITH THE DOCUMENT. (emt,) (Entered: 06/15/2020)
06/15/2020	8	CIVIL Waiver of Service Packet ~ Notice to Parties Regarding Service Pursuant to Rule 4 of the Federal Rules of Civil Procedure. (Attachments: # 1 AO 398 Notice of Lawsuit and Request to Waive Service of Summons, # 2 AO 399 Waiver of Service of Summons) (emt,) (Entered: 06/15/2020)
06/16/2020	9	ORDER GRANTING MOTION TO APPEAR PRO HAC VICE AS TO HARMEET K. DHILLON re 2 - Signed by MAGISTRATE JUDGE WES REBER PORTER on 6/16/2020. (emt,) (Entered: 06/16/2020)
06/16/2020	10	ORDER GRANTING MOTION TO APPEAR PRO HAC VICE AS TO MARK P. MEUSER re 3 - Signed by MAGISTRATE JUDGE WES REBER PORTER on 6/16/2020. (emt,) (Entered: 06/16/2020)
06/16/2020	11	EO: The parties are directed to review the General Civil Case Procedures Before Judge Otake on the court's website. (JUDGE JILL A. OTAKE)(shm) (Entered: 06/16/2020)
06/17/2020	12	EX PARTE APPLICATION for a Temporary Restraining Order and for Order to Show Cause Why Preliminary Injunction Should Not Issue ; Memorandum of Points and Authorities Mark P. Meuser appearing for Plaintiffs Holly Carmichael, Timothy Aaron Carmichael, Russell Hirsch, Brooke McGowan (Attachments: # 1 Declaration James Hochberg, # 2 Exhibit Exhibits to Hochberg Declaration, # 3 Declaration Joel Hay, # 4 Exhibit Hay Ex. 1, # 5 Exhibit Hay Ex. 2, # 6 Exhibit Hay Ex. 3, # 7 Declaration Holly Carmichael, # 8 Declaration Brooke McGowan, # 9 Declaration Russell Hirsch)(Meuser, Mark) Modified on 6/18/2020 to unrestrict document and correct filing event. Note: This document is signed "/s/ James Hochberg" but is e-filed by Mark Meuser, Esq. (emt,). (emt,). (Entered: 06/17/2020)
06/17/2020	13	NOTICE of Appearance by Craig Y. Iha [<i>Ewan C. Rayner, William M. Levins, Nicholas M.</i>

		<i>McLean</i>] on behalf of David Y. Ige on behalf of David Y. Ige. (Iha, Craig) Modified on 6/18/2020 to add additional attorneys referenced on Notice of Appearance(emt,). (Entered: 06/17/2020)
06/17/2020	14	[RESPONSE] <i>Letter addressed to Judge Jill A. Otake from Craig I. Iha, Deputy Attorney General, Re: Ex Parte Application for TRO</i> filed by David Y. Ige. (Iha, Craig) Docket text modified on 6/18/2020 (emt,). (Entered: 06/17/2020)
06/17/2020	15	CERTIFICATE OF SERVICE by Holly Carmichael, Timothy Aaron Carmichael, Russell Hirsch, Brooke McGowan re 12 EX PARTE Application for a Temporary Restraining Order (Meuser, Mark) Modified on 6/18/2020 Note: Document is signed "/s/ James Hochberg"(emt,). (Entered: 06/17/2020)
06/17/2020	16	EO: On 6/17/20, Plaintiffs filed an 12 Ex Parte Application for Temporary Restraining Order and for Order to Show Cause Why Preliminary Injunction Should not Issue. Plaintiffs' counsel represents that he notified the Department of the Attorney General about this Ex Parte Application, but he has not explained why Plaintiffs could not submit a public motion. Local Rule 7.10 ("Any ex parte application must include a declaration that states why a... motion could not be submitted and sets forth the positions of other parties with respect to the request, if known."). Because Plaintiffs should not have filed the Application ex parte, the Court directs the clerk's office to remove the ex parte designation and convert the Application to a motion. (JUDGE JILL A. OTAKE)(otake1) (Entered: 06/17/2020)
06/18/2020		ADVISORY ENTRY. Incorrect Attorney Filer- Please be advised that Documents 12 APPLICATION for Temporary Restraining Order and for Order to Show Cause Why Preliminary Injunction Should Not Issue and 15 Certificate of Service filed by Plaintiffs Holly Carmichael, Timothy Aaron Carmichael, Russell Hirsch, Brooke McGowan, were signed by an attorney other than the one identified as the e-filer. The name of the CM/ECF User under whose login and password the document is being electronically filed must correspond to the signature of the attorney signing the CM/ECF filed document. The filing party shall use its discretion should they feel the necessity to re-submit corrected filings. (emt,) (Entered: 06/18/2020)
06/18/2020		ADVISORY ENTRY. Exhibits Not Attached as Separate PDFs - Please be advised that exhibits to the Declaration of James Hochberg included in Document 12 APPLICATION for Temporary Restraining Order and for Order to Show Cause Why Preliminary Injunction Should Not Issue filed by Plaintiffs Plaintiffs Holly Carmichael, Timothy Aaron Carmichael, Russell Hirsch, Brooke McGowan, are comprised of several exhibits that were not submitted as separate pdf attachments. See Section 5.0 Exhibits , of the <u>CM/ECF Procedures Guide</u> , for additional instructions on how to file exhibits as separate attachments to the main document. (emt,) (Entered: 06/18/2020)
06/18/2020	17	EO: A Status Conference is SET for Monday, June 22, 2020 at 11:00 AM before DISTRICT JUDGE JILL A. OTAKE. Pursuant to the June 1, 2020 Temporary General Order Regarding District of Hawaii Response to COVID-19 Emergency, the hearing will be conducted telephonically using AT&T Connect Audio Conference. Instructions for telephonic appearance are as follows: All participants must connect to the conference at least ten minutes before the scheduled start time for the hearing. All participants shall mute their lines until directed to speak by the Court. All attorneys participating in the hearing are directed to refrain from using speaker phones. The Court reminds all participants that they are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion. PARTICIPANT INSTRUCTIONS:

		<ol style="list-style-type: none"> 1. Dial 1-888-636-3807. 2. Enter your Access Code (1450662) when prompted followed by the pound (#) sign. 3. Message will say "To join the conference as the host press star (*) otherwise press pound (#)." 4. Press pound (#). Message will say "The host has not yet arrived, please standby." 5. You will hear "At the tone state your name." You will then be connected to the Conference. <p>Any parties or members of the public or media wishing to attend the hearing in person are directed to the court's website for instructions on how to request permission to enter the courthouse.</p> <p>(JUDGE JILL A. OTAKE)(shm) (Entered: 06/18/2020)</p>
06/18/2020	18	<p>EO: The Status Conference set for 6/22/2020 at 11:00 AM is ADVANCED TO 6/19/2020 at 11:00 AM before DISTRICT JUDGE JILL A. OTAKE. Pursuant to the June 1, 2020 Temporary General Order Regarding District of Hawaii Response to COVID-19 Emergency, the hearing will be conducted telephonically using AT&T Connect Audio Conference. Instructions for telephonic appearance are as follows:</p> <p>All participants must connect to the conference <i>at least ten minutes</i> before the scheduled start time for the hearing. All participants shall mute their lines until directed to speak by the Court. All attorneys participating in the hearing are directed to refrain from using speaker phones. The Court reminds all participants that they are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion.</p> <p>PARTICIPANT INSTRUCTIONS:</p> <ol style="list-style-type: none"> 1. Dial 1-888-636-3807. 2. Enter your Access Code (1450662) when prompted followed by the pound (#) sign. 3. Message will say "To join the conference as the host press star (*) otherwise press pound (#)." 4. Press pound (#). Message will say "The host has not yet arrived, please standby." 5. You will hear "At the tone state your name." You will then be connected to the Conference. <p>Any parties or members of the public or media wishing to attend the hearing in person are directed to the court's website for instructions on how to request permission to enter the courthouse.</p> <p>(JUDGE JILL A. OTAKE)(shm) (Entered: 06/18/2020)</p>
06/18/2020	19	<p>SUMMONS Returned Executed by Russell Hirsch, Timothy Aaron Carmichael, Holly Carmichael, Brooke McGowan. David Y. Ige served on 6/17/2020. (Meuser, Mark) (Entered: 06/18/2020)</p>
06/19/2020	20	<p>NOTICE by Holly Carmichael, Timothy Aaron Carmichael, Russell Hirsch, Brooke McGowan <i>of related case: 1-20-cv-00268</i> Holly Carmichael, Timothy Aaron Carmichael, Russell Hirsch, Brooke McGowan. (Meuser, Mark) (Entered: 06/19/2020)</p>
06/19/2020	21	<p>NOTICE by David Y. Ige re 20 Notice (Other) <i>of Related Case</i> David Y. Ige. (Iha, Craig) (Entered: 06/19/2020)</p>
06/19/2020	22	<p>EP: Status Conference was conducted by telephone conference.</p> <p>Discussion held re: Notice of Related Case. Defendant wishes to consolidate this case with</p>

		<p>Civil No. 20-00268-DKW-RT, <u>For Our Rights, et al. v. David Y. Ige, et al.</u> Plaintiffs object to consolidation. Any motion to consolidate shall be filed by noon on 6/23/2020 in Civil No. 20-00268-DKW-RT.</p> <p>The hearing on <u>12</u> Motion for Temporary Restraining Order and for Order to Show Cause Why Preliminary Injunction Should Not Issue is SET for 7/2/2020 at 11:00 a.m. before the Honorable Jill A. Otake. Defendant's Opposition is due by noon on 6/25/2020, Plaintiffs Reply is due by noon on 6/29/2020.</p> <p>The Court orders the parties to meet and confer regarding the format of the hearing. A joint letter shall be submitted to Otake_Orders@hid.uscourts.gov no later than 5:00 p.m. on 6/23/2020.</p> <p>(Court Reporter Ann Matsumoto.) (JUDGE JILL A. OTAKE)(shm) (Entered: 06/19/2020)</p>
06/22/2020	23	<p>EO: The parties are directed to provide courtesy copies of all relevant filings in conformance with Local Rule 10.3.</p> <p>(JUDGE JILL A. OTAKE)(shm) (Entered: 06/22/2020)</p>
06/23/2020	<u>24</u>	<p>Joint Letter addressed to Judge Jill A. Otake from James Hochberg, Esq. and Craig Iha, Deputy Attorney General, dated June 23, 2020. (emt,) (Entered: 06/23/2020)</p>
06/23/2020	25	<p>EO: The Court grants the parties' <u>24</u> request to conduct the hearing on the <u>12</u> Motion for Temporary Restraining Order and for Order to Show Cause Why Preliminary Injunction Should Not Issue, currently set for 7/2/2020 at 11:00 AM, by video conference.</p> <p>The courtroom manager will provide participants with instructions and information to connect by video prior to the scheduled video conference.</p> <p>Participants must connect to the video conference at least ten (10) minutes prior to the scheduled start time of the hearing.</p> <p>All participants shall mute their lines until directed to speak by the Court.</p> <p>All attorneys participating in the hearing are directed to refrain from using speaker phones.</p> <p>The public may attend this conference (audio only) with the information provided below:</p> <ol style="list-style-type: none"> 1. Dial 1-650-479-3207. 2. Enter your Access Code (1607265019) <p>The Court reminds all participants that they are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion.</p> <p>(JUDGE JILL A. OTAKE)(shm) (Entered: 06/23/2020)</p>
06/23/2020	<u>26</u>	<p>STATEMENT re <u>12</u> APPLICATION for Temporary Restraining Order and for Order to Show Cause Why Preliminary Injunction Should Not Issue <i>STATEMENT OF INTEREST ON BEHALF OF THE UNITED STATES</i> filed by The United States of America. (Spector, Sydney) (Entered: 06/23/2020)</p>
06/23/2020	27	<p>EO: On 6/23/20, the United States filed a <u>26</u> Statement of Interest pursuant to 28 U.S.C. § 517, asking the Court to "hold that the Hawaii Governor's sweeping 14-day self-quarantine mandate, which effectively discriminates against out-of-state residents, likely violates Article IV's Privileges and Immunities Clause." ECF No. 26 at 17. Section 517 authorizes</p>

the United States to attend to its interests "in a suit pending in a court of the United States," 28 U.S.C. § 517, and "submit a statement... expressing its views on relevant issues in which it has an interest." *Wortman v. All Nippon Airways*, 854 F.3d 606, 617 (9th Cir. 2017). The Ninth Circuit has compared a § 517 statement to an amicus brief. *See M.R. v. Dreyfus*, 697 F.3d 706, 735 (9th Cir. 2012). Notably, non-parties must seek leave to file amicus briefs and courts do not ordinarily consider arguments raised only by amici. *See, e.g., Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1043 (9th Cir. 2007) ("Generally, we do not consider on appeal an issue raised only by an amicus." (internal quotations omitted) (citations omitted)); *California v. U.S. Dep't of the Interior*, 381 F. Supp. 3d 1153, 1164 (N.D. Cal. 2019) ("The scope of amicus briefs, however, should be limited to the issues raised by the parties." (citation omitted)). In addition, motions are briefed in accordance with Local Rule 7.2, which prohibits further or supplemental briefing without leave of court.

With these principles in mind, the United States is ordered to: (1) explain why it should be allowed to submit briefing without leave of court in this expedited matter; (2) identify whether it has an interest in this litigation beyond a general desire to protect its citizens' constitutional rights and, if not, whether the law supports its involvement under such circumstances; and (3) articulate why its involvement is proper when it seeks to expand the scope of this litigation. Indeed, Plaintiffs have not presented a Privileges and Immunities Clause argument in either the Complaint or the Motion for Temporary Restraining Order. The United States' response, not to exceed three (3) pages, is due by 4:00 p.m. on 6/24/20. Plaintiffs and Defendant may submit responses regarding the propriety of the United States' Statement of Interest, subject to the same deadline and page limitation.

(JUDGE JILL A. OTAKE)(otake1) (Entered: 06/23/2020)

06/24/2020	28	RESPONSE <i>TO THE COURT'S JUNE 23 EO (DKT. 27)</i> filed by David Y. Ige. (Attachments: # 1 Certificate of Service)(McLean, Nicholas) (Entered: 06/24/2020)
06/24/2020	29	RESPONSE re 27 Link,,,,,,,,,, <i>United States' Response to Court's June 23, 2020 Order</i> filed by The United States of America. (Spector, Sydney) (Entered: 06/24/2020)
06/24/2020	30	RESPONSE re 27 Link,,,,,,,,,, 26 Statement, filed by Holly Carmichael, Timothy Aaron Carmichael, Russell Hirsch, Brooke McGowan. (Meuser, Mark) (Entered: 06/24/2020)

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