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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RICHARD PARTAL II, KRISTINE MARIE
PARTAL, AND ELLEN PARTAL

Plaintiffs,

v.

DAVID Y. IGE, in his official capacity as
Governor of the State of Hawaii; STATE OF
HAWAII; MAYOR HARRY KIM, in his
official capacity as the Mayor of Hawaii
County; and John and/or Jane Does 1-10, in
either official or individual capacities

Defendants.

CIVIL NO. 3CCV-20-0000277
Other Civil Action

**MEMORANDUM IN SUPPORT OF
MOTION**

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INTRODUCTION

This case, and this motion, centers on one question: Whether as a matter of law the automatic termination of emergency orders as stated in Haw. Rev. Stat. § 127A-14(d){ TA \l "Haw. Rev. Stat. § 127A-14(d)" \s "Haw. Rev. Stat. § 127A-14(d)" \c 2 } means that Governor Ige's COVID-19 Emergency Proclamations and orders pursuant thereto ("COVID Orders") automatically terminated on the 60th day after Defendant Governor Ige issued his first COVID-19 Emergency Proclamation on March 4, 2020. Plaintiffs urge that since May 3, 2020 is the 60th day after March 4, 2020, any proclamations issued on or after May 3, 2020 are void. Because Governor Ige's initial COVID-19 Proclamation automatically terminated on May 3, 2020, Governor Ige's continued exercise of purported emergency powers was, and continues to be, unlawful.

While protecting the health and safety of the public during an emergency is critical to everyone—including Plaintiffs—the Governor may not abuse the limits placed on his executive office by the legislative branch's law-making powers under Chapter 127A{ TA \l "Chapter 127A" \s "Haw. Rev. Stat. § 127A" \c 2 }. Rather, it is the duty of the legislature to resume the exercise of their law-making powers, honoring appropriate rights of the public to participate in, and be advised of, the process. Defendant's actions, which ignore the legal limitations on his exercise of emergency powers, infringe on the rights of Plaintiffs and others similarly situated in Hawaii. Plaintiff Richard Partal and Plaintiff Ellen Partal also face criminal charges based on Defendant Mayor Kim's enforcement in July, 2020 of Governor Ige's now expired and unlawful COVID Orders.

FACTS

Haw. Rev. Stat. § 127A-14(d){ TA \s "Haw. Rev. Stat. § 127A-14(d)" } states that a state of emergency automatically terminates sixty days after the issuance of a proclamation or by a separate proclamation, whichever occurs first¹. While the Governor is free to proclaim that a state of emergency is terminated prior to sixty days, he is not free to issue continuous proclamations that go beyond the sixty-day benchmark of the initial March 4, 2020 proclamation. Governor Ige has issued the following twelve COVID-19 Emergency Orders² allegedly pursuant to Haw. Rev. Stat. § 127A{ TA \s "Haw. Rev. Stat. § 127A" }, and has expressly included expiration dates for each proclamation, as set forth below:

COVID-19 Proclamation Name	Issue Date	Expiration Date
Emergency Proclamation, COVID-19	3/4/2020	4/29/2020
Supplementary Proclamation, COVID-19	3/16/2020	5/15/2020
Second Supplementary Proclamation, COVID-19	3/21/2020	5/20/2020
Third Supplementary Proclamation, COVID-19	3/23/2020	4/30/2020
Fourth Supplementary Proclamation, COVID-19	3/31/2020	4/30/2020
Fifth Supplementary Proclamation, COVID-19	4/17/2020	4/30/2020
Sixth Supplementary Proclamation, COVID-19	4/27/2020	5/31/2020
Seventh Supplementary Proclamation, COVID-19	5/6/2020 ³	5/31/2020
Eighth Supplementary Proclamation, COVID-19	5/18/2020	6/30/2020
Ninth Supplementary Proclamation, COVID-19	6/12/2020	7/31/2020
Tenth Supplementary Proclamation, COVID-19	7/17/2020	8/31/2020

¹ Haw. Rev. Stat. § 127A-14(d) provides, “A state of emergency and a local state of emergency shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency or local state of emergency, respectively, or by a separate proclamation of the governor or mayor, whichever occurs first.”

² Each of the first 10 Supplementary Proclamations expressly related back to the March 4, 2020 Proclamation and each of those subsequent proclamations incorporated by reference all of the predecessors back to the March 4, 2020 Proclamation.

³ According to Haw. Rev. Stat. § 127A-14(d) the Governor’s state of emergency proclamation expires May 3, 2020.

Eleventh Supplementary Proclamation COVID-19	8/7/2020	8/31/2020
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Governor Ige issued several proclamations that overlapped stated expiration dates, prohibiting various activities, and even suspended portions of Haw. Rev. Stat. § 127. While Governor Ige issued his March 4, 2020 Emergency Proclamation under Haw. Rev. Stat. § 127A-14{ TA \l "Haw. Rev. Stat. § 127A-14" \s "Haw. Rev. Stat. § 127A-14" \c 2 }, in the Sixth Supplementary Emergency Proclamation issued on April 27, 2020, Governor Ige expressly suspended Haw. Rev. Stat. § 127A-14(b){ TA \l "Haw. Rev. Stat. § 127A-14(b)" \s "Haw. Rev. Stat. § 127A-14(b)" \c 2 } from operation during the emergency authority (stripping the Mayors from independent authority), but notably he did not suspend the operation of Haw. Rev. Stat. § 127A-14(d){ TA \s "Haw. Rev. Stat. § 127A-14(d)" } specifically containing an automatic termination provision for the state of emergencies, the subject of this motion. Haw. Rev. Stat. § 127A-14(d){ TA \s "Haw. Rev. Stat. § 127A-14(d)" } continues in full force and effect.

In Defendant's Second Supplementary Emergency Proclamation issued March 21, 2020, Governor Ige ordered that all travelers to the State of Hawaii shall be subject to mandatory 14-day self-quarantine (except those exempted by Governor Ige's Director of Emergency Management) pursuant to administrative rules proclaimed by Governor Ige (without the citizen oversight afforded by Haw. Rev. Stat. § 91{ TA \l "Haw. Rev. Stat. § 91" \s "Haw. Rev. Stat. § 91" \c 2 }); he also ordered that any person violating the rules relating to quarantine shall be guilty of a misdemeanor, and upon conviction, the person shall be fined not more than \$5,000, or imprisoned not more than one year, or both. After this March 21, 2020 order, the interstate travel quarantine portion was unlawfully extended in Governor Ige's Sixth Supplementary Emergency Proclamation issued April 27, 2020, just one week before the May 3, 2020 automatic termination of Governor Ige's emergency powers pursuant to Haw. Rev. Stat. § 127A-14(d){ TA \s "Haw. Rev.

Stat. § 127A-14(d)" } It is evident that Governor Ige was ignoring the automatic termination provisions of Haw. Rev. Stat. § 127A-14(d).{ TA \s "Haw. Rev. Stat. § 127A-14(d)" }

From the May 6, 2020 Seventh Supplementary Proclamation through the July 17, 2020 Tenth Supplementary Emergency Proclamation, Governor Ige continued to unlawfully order that non-exempted travelers from the mainland to Hawaii quarantine for 14 consecutive days immediately upon deplaning. On August 7, 2020, Governor Ige issued his Eleventh Supplementary Emergency Proclamation requiring inter-island travelers to also quarantine for 14 days. Failing to properly quarantine when required subjected the alleged violator to a criminal misdemeanor charge, punishable by up to one year in prison and/or fined up to \$5,000.00. Some travelers, like Plaintiff Richard Partal, were granted exemptions from the quarantine requirements; others, like Plaintiffs Kristine Marie Partal and Ellen Partal were not and were required to quarantine.

If valid (which it is not), the Ninth Supplementary Proclamation issued on June 12, 2020 (well after Governor Ige's emergency powers automatically terminated) and lasting until the Tenth Supplementary Proclamation issued on July 17, 2020, would be the Proclamation allegedly violated by Plaintiffs. During that period, on July 6, 2020, Plaintiff Richard Partal returned to Hawaii from Oregon and on July 7, 2020 Plaintiffs Kristine Marie Partal and Ellen Partal arrived in Hawaii from Oregon with Kristine and Richard's two-year old child.

On or about July 10, 2020, Plaintiffs received a telephone call from Mayor Kim's civil defense office reporting concerns that Plaintiffs had violated quarantine. Then, on Saturday, July 11, 2020, at approximately 12:30 pm, two Hawaii County police officers, under the authority of Mayor Kim, knocked on the Partal residence door. The officers presented Plaintiffs Richard Partal and Ellen Partal with separate documents entitled "State of Hawaii Citation for Traffic

Crime(s) Arrest in the District Court of the Third Circuit.” Richard Partal was given Citation No. 3DTC-20-072316 notifying him that he was accused of violating HRS 127A-9 by engaging in prohibited acts (see Exhibit 1 to Richard Partal’s Declaration attached); and Ellen Partal was given Citation No. 3DTC-20-072405 notifying her that she was accused of violating HRS 127A-9 for engaging in prohibited acts (see Exhibit 2 to Ellen Partal’s Declaration attached) (collectively the “Citations”).

Therefore, due to Governor Ige’s unlawful exercise of emergency powers after automatic termination on May 3, 2020, Richard Partal and Ellen Partal have been charged with crimes and now face misdemeanor charges which carry a maximum term of imprisonment of one year and a maximum fine of \$5,000. Their first court dates are September 15, 2020.

The issue for this Motion is whether the Sixth through the Eleventh Supplementary Proclamations had no force or effect on and after May 3, 2020.

LEGAL STANDARD

SUMMARY JUDGMENT IS PROPER IN THIS CASE AS THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND PLAINTIFFS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Summary judgment is appropriate where there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Andrade v. Cty. of Hawaii*{ TA \l "*Andrade v. Cty. of Hawaii*" \s "*Andrade v. Cty. Of Hawaii*, 145 Haw. 265, 451 P. 3d. 1 (Haw. Ct. App. 2019)" \c 1 }, 145 Haw. 265, 451 P.3d 1 (Haw. Ct. App. 2019).

A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence must be viewed in the light most favorable to the non-moving party. In other words, all of the evidence and inferences drawn therefrom must be viewed in the light most favorable to the party

opposing the motion. *Ralston v. Yim*{ TA \l "Ralston v. Yim" \s "Ralston v. Yim, 129, Hawai'i 46, 292 P. 3d 1276 (2013)" \c 1 }, 129 Hawaii 46, 55, 292 P.3d 1276, 1285 (2013).

The sole issue in this motion is whether as a matter of law, Governor Ige's powers under his March 4, 2020 Emergency Proclamation (and all of the subsequent COVID Orders) automatically terminated on May 3, 2020 pursuant to Haw. Rev. Stat. § 127A-14(d).{ TA \s "Haw. Rev. Stat. § 127A-14(d)" } There are no facts, genuine or not, material or not, that need be considered in ruling on this motion. Consequently, Summary Judgment is appropriate under Haw. R. Civ. P. 56{ TA \s "Haw. R. Civ. P. 56" }. If this question of law is answered in Plaintiff's favor, then all of Governor Ige's exercise of emergency powers related to the COVID Orders on and after May 3, 2020 was unlawful and void *ab initio*.

ARGUMENT

GOVERNOR IGE'S EMERGENCY POWERS AUTOMATICALLY TERMINATED AS A MATTER OF LAW, ON THE 60TH DAY AFTER THE MARCH 4, 2020 DATE OF THE FIRST EMERGENCY PROCLAMATION

1. The Hawaii Legislature Jealously Guarded Its Law-Making Constitutional Prerogative by limiting it to 59 days (expiring on the 60th day).

a. Haw. Rev. Stat. § 127A-14(d) and 127A-32.

At issue in this case is whether this court must apply Haw. Rev. Stat. § 127A-14(d){ TA \s "Haw. Rev. Stat. § 127A-14(d)" } and 127A-32{ TA \l "127A-32" \s "Haw. Rev. Stat. § 127A-32" \c 2 }, and issue a declaratory order that on and after May 3, 2020, Governor Ige (and the mayors under his authority) acted unlawfully in continuing to exercise emergency powers. In Haw. Rev. Stat. § 127A-14(d),{ TA \s "Haw. Rev. Stat. § 127A-14(d)" } the legislature provided that any "state of emergency . . . shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency . . . , or by a separate proclamation of the governor . . . whichever occurs first." In addition, Haw. Rev. Stat. § 127A-32{ TA \s "Haw. Rev. Stat. § 127A-32" } provides that

“[a]ll laws inconsistent with the provisions of this chapter . . . shall be suspended during the period of time and to the extent that the emergency or disaster exists” Haw. Rev. Stat. § 127A{ TA \s "Haw. Rev. Stat. § 127A" } provides for no extension under any circumstance for that 60-day limit.

All of Governor Ige’s exercise of emergency COVID-19 powers on and from May 3, 2020 have been absolutely unlawful. Consequently, the COVID-19 violation citations issued in the entire State of Hawaii on and after May 3, 2020 are void *ab initio*.

In authorizing the governor to exercise the legislative law-making prerogative, the delegation was given a strict and unambiguous 59 days of authority. Clearly, the outer time limit for the Governor to exercise the delegated legislative power is 59 days since the statute expressly provides that on the 60th day, the powers automatically terminate. However, Defendant Governor Ige continued on and after May 3, 2020 to enforce existing and to issue new COVID Orders, the latest having been issued on August 7, 2020 which purports to be in force up to September 1, 2020.

b. Statutory Construction:

A statute’s express language is key. If the language is plain and unambiguous, the analysis begins and ends there. As recently summed up by the Hawaii Supreme Court, the:

construction of statutes is governed by well-settled principles. *State v. Carlton*{ TA \l "State v. Carlton" \s "State v. Carlton, 146 Hawai’i 16, 455 P.3d 356 (2019)" \c 1 }, 146 Hawaii 16, 22, 455 P.3d 356, 362 (2019). First, we examine the language of the statute itself. *Jaylo v. Jaylo*{ TA \l "Jaylo v. Jaylo" \s "Jaylo v. Jaylo, 125 Hawai’i 369, 262 P. 3d 245 (2011)" \c 1 }, 125 Hawaii 369, 373, 262 P.3d 245, 249 (2011) (quoting *State v. Silver*{ TA \l "State v. Silver" \s "State v. Silver, 125 Hawai’i 1, 249 P.3d 1141 (2011)" \c 1 }, 125 Hawaii 1, 4, 249 P.3d 1141, 1144 (2011)). Second, if the language is plain and unambiguous, we must give effect to its plain and obvious meaning. *Id*{ TA \s "Jaylo v. Jaylo, 125 Hawai’i 369, 262 P. 3d 245 (2011)" }. Third, implicit in statutory construction is our obligation to ascertain and give effect to the intention of the legislature, which is obtained primarily from the language of the statute itself. *Carlton*{ TA \s "State v. Carlton, 146 Hawai’i 16, 455 P.3d 356 (2019)" }, 146 Hawaii at 22, 455 P.3d at 362

(citing *State v. Choy Foo*{ TA \l "State v. Choy Foo" \s "State v. Foy Choo, 142 Hawai'i 65, 414 P.3d 117 (2018)" \c 1 }, 142 Hawaii 65, 72, 414 P.3d 117, 124 (2018)).

Sakal v. Ass'n of Apt. Owners of Hawaiian Monarch{ TA \l "Sakal v. Ass'n of Apt. Owners of Hawaiian Monarch" \s "Sakal v. Ass'n. of Apt. Owners of Hawaiian Monarch, 466 P. 3d 399 (2020)" \c 1 }, 148 Hawaii, 466 P.3d 399, 405 (2020).

The plain and unambiguous language of Haw. Rev. Stat. § 127A-14(d){ TA \s "Haw. Rev. Stat. § 127A-14(d)" } and 127A-32{ TA \s "Haw. Rev. Stat. § 127A-32" } require that emergency powers end under that chapter on the 60th day – here that date was May 3, 2020. Had the Hawaii legislature intended to permit Governor Ige to repeatedly supplement his March 4, 2020 Proclamation and thereby extend the 60-day automatic termination provision, the legislature could easily have provided for that option. It did not do so and in fact, the legislature did the opposite by providing for the blanket suspension of all laws inconsistent with this 60-day automatic termination.

c. Governor Ige Has Failed to Faithfully Execute the Requirements of Haw. Rev. Stat. § 127A-14(d) and 127A-32

It is elementary constitutional law that the Hawaii Constitution vests the legislative power in the legislature. Article III, section 1{ TA \l "Article III, section 1" \s "Haw. Const. art. III, § 1" \c 7 }. The Hawaii Constitution vests the executive power in the governor who “shall be responsible for the faithful execution of the laws.” Article V, section 5{ TA \l "Article V, section 5" \s "Haw. Const. art. V, § 5" \c 7 }. The faithful execution of Haw. Rev. Stat. § 127A-14(d){ TA \s "Haw. Rev. Stat. § 127A-14(d)" } and 127A-32{ TA \s "Haw. Rev. Stat. § 127A-32" } required the governor to cease acting by May 3, 2020 under the delegated legislative powers provided by Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" }. That initial emergency proclamation was issued March 4, 2020

and the 60th day was May 3, 2020. The Governor has failed to faithfully execute the automatic termination of his emergency powers.

2. Based on Haw. Rev. Stat. § 127A-32, Neither Governor Ige Nor Mayor Kim Can Rely on Any Other Law to Authorize Extending Emergency Powers Beyond the Limit in §127A-14(d).

Emergency management is a serious function of government and for the limited period permitted by Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" }, the constitutional structure of Hawaii's government is altered – for 60 days. Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } delegates comprehensive powers from the legislative branch to the executive branch in order for the governor to prepare for and respond to emergencies or disasters. Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } expressly limits the period of time the delegation can be in effect and §127A-32{ TA \s "Haw. Rev. Stat. § 127A-32" } expressly suspends all laws inconsistent with Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" }, including any other law by which the governor may argue that he has some inherent power to exceed the express limit under Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" }. Therefore, there is no other law the governor may claim to rely on to ignore the limitations in §127A-14(d).

If the 60-day limit provided for by Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } is not enforced, what is to keep Governor Ige from deciding to extend or later renew his COVID Orders for another period of time or even indefinitely? This possibility was not unthinkable to the Hawaii legislature in 2014 when Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } was first enacted.

As could have been known to the Hawaii Legislature in 2014, the New Jersey Supreme Court in 1993 finally ordered the end to the twelve-year, continued exercise of emergency powers begun by the governor in 1981. *County of Gloucester v. State*{ TA \s "County of

Gloucester v. State \s "County of Gloucester v. State, 623 A.2d 763 (N.J. 1993)" \c 1 }, 623 A.2d 763 (N.J. 1993). In New Jersey, unlike in Hawaii, the emergency powers statute did not have an automatic termination date. Due that lack of automatic termination in New Jersey, three successive New Jersey governors issued sixteen consecutive orders over 12 years declaring the continued state of emergency over the same issue and extending all the previous orders back to the first order in 1981.

In judicially declaring the end to the governor's exercise of emergency powers, the New Jersey Supreme Court noted that "unquestionably" the issue continued as a "pervasive problem" from the 1981 condition that led to the initial emergency proclamation. The New Jersey Supreme Court stated that the problem required combined legislative and executive efforts for a solution, rather than an executive order. While the New Jersey legislature could pass a statute conferring powers different from the existing statute, the New Jersey Supreme Court rejected to infer such a legislative intent from mere legislative inaction in the face of the continued exercise of emergency power by the governor. This extreme case in New Jersey should provide caution and this court need not wait any longer to enforce the 60-day limit on Governor Ige's powers under Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" }.

Even if by chance, rather than design to avoid the New Jersey experience, the fact remains that the Hawaii legislature enacted Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } in 2014 with an express 60-day automatic termination provision, and eliminated the use of any other inconsistent law that could operate to avoid the termination of executive power.

Some state emergency management statutes provide for methods to extend initial emergency proclamations. For example, the Wisconsin emergency management statute limited the state of emergency declaration to sixty days, but pursuant to Wis. Stat. Ann. §323.10{ TA \}

"Wis. Stat. Ann. §323.10" \s "Wis. Stat. Ann. §323.10" \c 2 } provided for an extension of the emergency proclamation by joint resolution of the legislature. Another state example, Michigan, authorizes the governor to declare a state of emergency by executive order for a maximum period of only 28 days. The Michigan emergency management statutes require the governor after the 28th day to issue an executive order declaring the state of emergency terminated, unless both legislative houses approve the governor's request for an extension for a specific number of days.

Recently, the Governor of Michigan was found to have violated the 28-day limit on exercise of emergency powers in connection with COVID-19 emergency orders. The State of Michigan Court of Claims, the Honorable Cynthia Diane Stephens, ruled that the 28-day time limit on the governor's exercise of emergency powers is a limit on the amount of time the governor can act independently of the legislature in responding to the emergency. That is precisely the issue in this case.

Attached hereto as Exhibit 15 is a copy of the Opinion and Order in *Michigan House of Representatives and Michigan Senate v Governor Gretchen Whitmer* \TA \I "Michigan House of Representatives and Michigan Senate v Governor Gretchen Whitmer" \s "Michigan House of Representatives and Michigan Senate v. Governor Gretchen Whitmer, No. 20-000079-MZ (Mich. 2020)" \c 1 }, No. 20-000079- MZ, (Mich. 2020). Though not identical in language or procedural posture, this Michigan case is instructive. Faced with the same issue of a time limitation on emergency power, Michigan Judge Stephens properly answered the issue in this case with respect to Haw. Rev. Stat. § 127A-14(d), which provides that every one of Governor Ige's COVID Orders "shall terminate automatically sixty days after the issuance of a proclamation of a state of emergency . . . or by a separate proclamation of the governor . . . whichever comes

first.” The language of the Hawaii statute – “shall automatically terminate” - means nothing more or less than “shall automatically terminate.” In this case that termination date arrived on May 3, 2020.

Haw. Rev. Stat. Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } is obviously an anomaly to the proper operation of state government, and §127A-14(d) and 127A-32{ TA \s "Haw. Rev. Stat. § 127A-32" } limit that anomaly to 59 days. Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } enforces the unambiguous sixty-day, automatic termination of emergency orders with the statutory language of §127A-32{ TA \s "Haw. Rev. Stat. § 127A-32" } which boldly and unequivocally proclaims that any law outside of Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } that is inconsistent with the provisions of Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } shall be suspended. Therefore, Gov. Ige cannot cite other laws to support his unlawful extensions of his emergency COVID Orders.

Cases where extension of emergency powers have been upheld by courts do not have the same statutory language as Haw. Rev. Stat. § 127A-14(d) and 127A-32{ TA \s "Haw. Rev. Stat. § 127A-32" }. In Oregon, the court in *Elkhorn Baptist Church v Brown*{ TA \l "Elkhorn Baptist Church v Brown" \s "Elkhorn Baptist Church v. Brown, 366 Or. 506 (Or. 2020)" \c 1 }, 366 Or. 506 (Or. 2020) upheld the governor’s emergency COVID-19 order because Oregon state law contains more than one emergency powers statute – one emergency powers statute had an automatic termination and another emergency powers statute gave broader power for emergencies over longer emergency periods. The Supreme Court of Oregon ultimately ruled the governor’s orders were issued pursuant to the broader statute that was not subject to the time limitations. Such is not the case here.

Under Pennsylvania law, in *Friends of Danny DeVito v. Wolf*, 227 A.3d 872 (Pa. 2020), the court denied plaintiffs’ requested relief in a challenge to Governor Wolf’s emergency COVID-19 powers but the emergency management statute at issue in that case specifically provided that it was intended to “[s]upplement, without in any way limiting, authority conferred by previous statutes of this Commonwealth” and further declares that it does not intend to “[l]imit, modify or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the Constitution, statutes or common law of this Commonwealth.” *Id.* at 885. Unlike in the Pennsylvania case, Haw. Rev. Stat. Chapter 127A contains no similar language. In fact, Haw. Rev. Stat. § 127A-32 specifies the opposite: that any other law that contradicts Chapter 127A is suspended during the life of the emergency.

Haw. Rev. Stat. Chapter 127A has an absolute 60-day limit on Governor Ige and his mayors’ exercise of emergency powers that automatically terminated on May 3, 2020.

3. Haw. Rev. Stat. § 127A-14(d) and 127A-32 expressly provide numerical time-limits on the Governor’s emergency powers so that constitutionally appropriate lawmaking procedures can be resumed by the proper government branch – the Legislature.

The people of Hawaii have a constitutionally protected political power, and limits on the Governor’s emergency powers is an important protection for Hawaiian residents. The Bill of Rights in the Hawaii Constitution provides at Article I, section 1 that “All political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this

authority.” Therefore, allowing an unchecked exercise of emergency powers by a governor is contrary to the constitutional protection of the inherent political power held by the people. The limitation on the exercise of emergency powers is necessary to maintain appropriate levels of governmental authority under the Constitution of the State of Hawaii. The separation of powers reserves law-making to the legislative branch (each member being duly elected in small districts by a subset of the population) and, with citizen participation, protects the people from authoritarian rule and ensures that they are properly represented by elected officials. Executive decrees ordering quarantine with criminal penalties, along with various other rules that have been enacted with no public input, is contrary to Hawaii’s Constitution.

While Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" } provides a deviation from representative government, such deviation is expressly authorized only for a limited, short-term emergency basis, expiring on the 60th day. Section 127A-11(a){ TA \l "Section 127A-11(a)" \s "Haw. Rev. Stat. § 127A-11(a)" \c 2 } also empowers the governor to delegate any of these powers to other unelected governmental, private-sector, and nonprofit agencies and organizations.

Powers temporarily delegated by the legislature to the governor, who in turn may delegate power to various agencies or administrators only during an emergency period under Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" }, expressly include prescribing rules having the force and effect of law and making allotments of funds appropriated or available for the purposes of Chapter 127A; such a large concentration of power (possibly even by unelected officials due to delegation) are expressly subject to the declaration of state of emergency expiring in the 60th day (or at an earlier date- whichever comes first)Such emergency powers are on loan only, and must be returned to proper governmental position.

Forming the law-making branch, state legislators are elected by the voters who live in their geographically limited, specific legislative districts. As direct representatives of the Hawaiian people, a member of the House of Representatives in Hawaii represents approximately twenty-five thousand residents and a state Senator represents roughly three times that amount. In addition to introducing and passing laws, the Hawaii Constitution requires that the public be given the opportunity to participate in the law-making process by reviewing the proposed legislation before it becomes law and testifying in favor or in opposition to the proposal. The only exception to the proper lawmaking process is the 59-day period under Chapter 127A{ TA \s "Haw. Rev. Stat. § 127A" }, which is to be used only in the case of an emergency, and even then, is limited in time so that the legislature can resume its proper role in proposing and passing laws, with their constituent's input, on the 60th day expiry.

Governor Ige's exercise of law-making powers through his COVID Orders has been and continues to be completely arbitrary and capricious, nearly dictatorial due to the absence of any public discussion of participation in the process and in the absence of proper discussion and vote by state senators and house members. Governor Ige simply proclaimed on twelve different occasions between March 4 and August 7 (averaging one proclamation every other week) new rules, penalties, and requirements for the people of Hawaii with no public or legislative input whatsoever. Due to the Governor's illegal power grab, Plaintiffs Richard Partal and Ellen Partal are now subject to criminal charges, with a fine or imprisonment, resulting from Governor Ige's unconstitutional usurpation of delegated emergency law-making power. By statute, the Governor's emergency powers expired May 3, 2020. The Ninth Supplementary Proclamation, which Plaintiffs were alleged to have violated, was issued on June 12, 2020. Plaintiffs Richard

Partal and Ellen Partal were cited for allegedly violating the Ninth Supplementary Proclamation which was issued long after Governor Ige's delegated power automatically terminated.

CONCLUSION

Plaintiffs respectfully request that this Court grant Plaintiffs' motion for partial Summary Judgment and enter all orders and relief requested by Plaintiffs.

Date: August 14, 2020

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