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Attorneys for Federal Defendants UNITED STATES OF AMERICA; CHRISTOPHER C. MILLER, in his official capacity as the Acting Secretary of Defense; FEDERAL VOTING ASSISTANCE PROGRAM; and DAVID BEIRNE, in his official capacity as Director of the Federal Voting Assistance Program

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RANDALL JAY REEVES, *et al.*,

*Plaintiffs,*

v.

SCOTT NAGO, in his official capacity  
as Chief Election Officer for the  
Hawaii Office of Elections, *et al.*,

*Defendants.*

CIVIL NO. 20-00433 JAO-RT

FEDERAL DEFENDANTS' MOTION  
TO DISMISS FOR LACK OF  
SUBJECT-MATTER JURISDICTION

**FEDERAL DEFENDANTS' MOTION TO DISMISS  
FOR LACK OF SUBJECT-MATTER JURISDICTION**

Defendants the United States of America, Christopher C. Miller (in his official capacity as the Acting Secretary of Defense), the Federal Voting Assistance Program, and David Beirne (in his official capacity as Director of the Federal Voting Assistance Program) (collectively the "Federal Defendants") move to dismiss for lack of subject-matter jurisdiction. All of Plaintiffs' claims against the Federal Defendants (and all of Plaintiffs' claims challenging the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA")) should be dismissed for lack of Article III standing.

Pursuant to Local Rule 7.8 and Section II of this Court's General Civil Case Procedures, counsel for each of the parties engaged in a series of lengthy and substantive telephone calls (in addition to exchanging a series of substantive emails), but were unable to eliminate the necessity for this dispositive motion. In particular, counsel for all parties—including various combinations of Stephen M. Pezzi, Dana A. Barbata, Anthony "T.J." Quan, Geoffrey M. Wyatt, Andrew C. Hanson, Lori N.

Tanigawa, Caleb P. Rowe, and Robert M. Kohn—spoke by telephone on December 7, December 1, November 18, and November 16. Counsel estimates that the total duration of these telephone conferences exceeded two hours. And counsel for all parties continued emailing about the relevant issues through December 21.

During these telephonic conferences and email exchanges, counsel for the Federal Defendants identified one curable standing-related defect in Plaintiffs' First Amended Complaint (in addition to other standing arguments that would not be curable by an amended pleading, and that are now the subject of this motion). To resolve that particular curable defect—which related to the requirement that the organizational Plaintiff, Equally American, identify named members of the organization—Plaintiffs agreed (with the consent of all Defendants) to file a Second Amended Complaint. *See* ECF Nos. 72, 73. Accordingly, Federal Defendants have withdrawn that particular argument, which does not appear in the memorandum of law that accompanies this motion.

As for the Federal Defendants' remaining arguments relating to Article III standing, despite extensive and substantive good-faith discussion, the parties were unable to reach any further agreement, thus necessitating the filing of this motion to dismiss for lack of subject-matter jurisdiction.

This motion is made pursuant to Federal Rules of Civil Procedure Rules 7 and 12(b)(1), the Memorandum in Support of Motion, and the records and files of this case.

Dated: January 14, 2021

Respectfully submitted,

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