

DAVIS LEVIN LIVINGSTON GRANDE

ANNE L. WILLIAMS 1662
MICHAEL K. LIVINGSTON 4161
400 Davis Levin Livingston Grande Place
851 Fort Street
Honolulu, Hawaii 96813
Telephone: (808) 524-7500
Facsimile: (808) 545-7802
Email: awilliams@davislevin.com

AMERICAN CIVIL LIBERTIES UNION
OF HAWAII FOUNDATION

LOIS K. PERRIN 8065
P.O. Box 3410
Honolulu, Hawaii 96801
Telephone: (808) 522-5900
Facsimile: (808) 522-5909
Email: lperrin@acluhawaii.org
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KEVIN R. WALSH, BLANE M.)	Civil No. 05-378 DAE/LEK
WILSON, STEVEN M.)	
ANNARELLI, and LYDIA R. HILL,)	[CLASS ACTION]
as individuals and on behalf of all)	
others similarly situated,)	THIRD AMENDED COMPLAINT
)	FOR DECLARATORY AND
Plaintiffs,)	INJUNCTIVE RELIEF; EXHIBITS
)	A-H
v.)	
)	
CITY AND COUNTY OF)	
HONOLULU, et al,)	
)	
Defendants.)	

**THIRD AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Hawaii is world-renowned for its spirit of aloha, which is described by Defendant City and County of Honolulu (“City and County”) as “Hawaii’s gift to the world and the glue which holds our diverse people together in harmony.” *See* <http://www.co.honolulu.hi.us/menu/ecodev/whyhawaii/whyhawaii.htm>. Hawaii is fortunate to have had the lowest unemployment rate in the nation for at least nine of the last fourteen months, and it is actively seeking to position itself as a global power in the Asia/Pacific region. Its public and private sector leaders have spent enormous sums of money and time fostering Hawaii as a center for world-class research in areas such as software, telecommunications and biochemistry. Indeed, the City and County of Honolulu actively promotes these efforts, stating for example, “[i]n the new millennia, high-tech industries can relocate almost anywhere. Because of our quality of life, political stability, and communication capabilities, Hawaii is an excellent choice for global businesses that must be able to deal on the same day with markets on both sides of the Pacific Rim.” *See id.* Yet, at the very same time, the Aloha State has undercut and belied its efforts to become a vibrant leader in a world without walls by maintaining and enforcing an antiquated, provincial and patently unconstitutional law that bars individuals (such as the named Plaintiffs and the members of the class and subclass that they

represent) irrespective of their talent, experience and vision, from even applying for government jobs unless they are already residents of the State.

2. Plaintiff Kevin R. Walsh is an American citizen who lives on the mainland. Plaintiff Walsh is a non-resident of the State of Hawaii who has applied for jobs with Defendant City and County with the hope of not just visiting but living and working in this beautiful state. Plaintiff Walsh has had each of his three job applications promptly and summarily rejected by the City and County's Department of Human Resources ("CCH DHR"), solely on the basis of Plaintiff Walsh's non-residency in the State of Hawaii at the time of application.

3. Plaintiff Blane M. Wilson is an American citizen who currently resides on Oahu. While Plaintiff Wilson was a non-resident of the State of Hawaii, he applied for jobs with the Defendant City and County and with the State of Hawaii with the hope of obtaining employment on Oahu while his wife serves active duty in the United States military on Oahu. Plaintiff Wilson has had one of his job applications promptly and summarily rejected by the CCH DHR, solely on the basis of Plaintiff Wilson's non-legal residency in the State of Hawaii at the time of application. Additionally, Plaintiff Wilson has had one of his job applications promptly and summarily rejected by the State of Hawaii's Department of Human Resources Development, specifically by its State Recruiting Office (collectively referred to herein as "DHRD"), based, at least in part, on Plaintiff

Wilson's non-resident status in the State of Hawaii at the time of application. (For purposes of this Third Amended Complaint ("TAC"), the term "non-resident" means both non-residents and non-legal residents unless otherwise clearly noted.)

4. Plaintiff Steven M. Annarelli is an American citizen who lives on the mainland. Plaintiff Annarelli is a non-resident of the State of Hawaii who has applied for jobs with both Defendant City and County and the State of Hawaii with the hope of not just visiting but living and working in this beautiful state. Plaintiff Annarelli has had two of his job applications promptly and summarily rejected by the CCH DHR and the State of Hawaii solely on the basis of Plaintiff Annarelli's non-residency in the State of Hawaii at the time of application.

5. Plaintiff Lydia R. Hill is an American citizen who lives on the mainland. Plaintiff Hill is a non-resident of the State of Hawaii who would like to apply for jobs with both Defendant City and County and the State of Hawaii with the hope of not just visiting but living and working in this beautiful state. Plaintiff Hill would like to apply for one of the positions with the City and County of Honolulu and State of Hawaii, such as the Planner positions, but has been and is currently deterred from applying because she does not meet the residency requirement at the time of application.

6. The City and County's and State's residency policies and persistent practices of rejecting applications from non-residents penalize the fundamental

constitutional right to interstate travel of Plaintiffs Walsh, Wilson, Annarelli, and Hill (hereinafter “Plaintiffs”) and the members of the class and subclass that they represent and unduly infringe upon their right to practice their occupations or common callings. In addition, the City and County’s and State’s policies and practices treat non-residents differently from residents and former residents in violation of the Equal Protection Clause. Finally, the City and County’s and State’s vague, arbitrary and informal residency “waiver” procedures violate the Plaintiffs’ rights to procedural due process.

7. On their own behalf and on behalf of others similarly situated, Plaintiffs bring this action to have the City and County’s and State’s policies and persistent practices pertaining to residency at the time of application declared unconstitutional and for an order enjoining their enforcement by Defendants. In addition, Plaintiffs seek to have H.R.S. § 78-1(c), the statute upon which the City and County and State relied in part in adopting their illegal policies and persistent practices and which, on information and belief, is currently enforced by the CCH DHR and DHRD, respectively, declared unconstitutional and for an order enjoining its enforcement statewide.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction in this case pursuant to 28 U.S.C. §§ 1331 and 1343.

9. This Court is authorized to order declaratory and injunctive relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

10. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of law, of rights secured by the United States Constitution.

11. Venue properly lies before this Court under 28 U.S.C. § 1391(b). The act or omissions giving rise to the claims of Plaintiffs and the class and subclass that they represent have occurred or will occur in this district.

III. PARTIES

12. Plaintiff Kevin R. Walsh is a natural person, a citizen of the United States and a resident of the State of Florida. Plaintiff Walsh is not and has never been a resident of the State of Hawaii.

13. Plaintiff Blane M. Wilson is a natural person, a citizen of the United States who resides on Oahu but has been and is a legal resident of the State of Florida. Although Plaintiff Wilson took some initial affirmative steps to establish Hawaii as his legal state of residence in order to qualify for the privilege of applying for government employment positions, Plaintiff Wilson's intent is to maintain his legal residence in the State of Florida.

14. Plaintiff Steven M. Annarelli is a natural person, a citizen of the United States and a resident of the State of New Jersey. Plaintiff Annarelli is not and has never been a resident of the State of Hawaii.

15. Plaintiff Lydia R. Hill is a natural person, a citizen of the United States and a resident of the State of Massachusetts. Plaintiff Hill is not and has never been a resident of the State of Hawaii.

16. Defendant City and County is a municipal corporation in Hawaii and the local governing body for the City and County of Honolulu, Hawaii.

17. Defendant Mark J. Bennett is a resident of and the Attorney General of the State of Hawaii. As the Attorney General, Defendant Bennett is the chief legal officer of the State of Hawaii and has the ultimate responsibility for enforcement (or preventing enforcement) of laws of statewide application, including H.R.S. § 78-1(c). The State of Hawaii, by and through the Attorney General, is authorized to and has sued to enforce the statewide public employment laws set forth in H.R.S. § 78-1. Defendant Bennett is sued in his official capacity only.

18. Defendant Marie Laderta is Director of the DHRD. Her appointment is subject to Senate confirmation. Upon information and belief, Defendant Laderta is a resident of the State of Hawaii. Upon information and belief, the Director ultimately has final decision-making authority for determining whether an

applicant for a job with State of Hawaii possesses the requisite qualification of legal residency at the time of application. Defendant Laderta is sued in her official capacity.

IV. FACTUAL ALLEGATIONS

A. The Statute, H.R.S. § 78-1(c)

19. H.R.S. § 78-1(c) provides:

All persons seeking employment with the government of the State or in the service of any county shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States, and residents of the State at the time of their application for employment and as a condition of eligibility for continued employment.

“Resident” means a person who is physically present in the State at the time the person claims to have established the person’s domicile in the State and shows the person’s intent is to make Hawaii the person’s permanent residence. In determining this intent, the following factors shall be considered:

- (1) Maintenance of a domicile or permanent place of residence in the State;
- (2) Absence of residency in another state; and
- (3) Former residency in the State.

B. The City and County's Residency Hiring Policies and Persistent Practices

20. Based in part on H.R.S. § 78-1(c), the City and County adopted and continues to enforce its own residency policies and persistent practices.

21. The City and County's residency policies are prominently displayed on the City and County's job opportunities webpage at <http://agency.governmentjobs.com/honolulu/default.cfm?action=jobs>. Until nearly two months after the original Complaint in this action was filed, the City and County's website provided:

APPLICATIONS WILL ONLY BE ACCEPTED FROM
INDIVIDUALS WHO ARE RESIDENTS OR FORMER
RESIDENTS OF THE STATE OF HAWAII. If the residency
requirement has been waived for a particular position, it will be
noted on the job bulletin. **CLICK HERE** for more information on
WHO CAN APPLY.

(emphasis in original).

22. The link for "WHO CAN APPLY," at <http://www.co.honolulu.hi.us/hr/eps.htm#1>. Until nearly two months after the original Complaint in this action was filed, the City and County's website provided:

WHO CAN APPLY?

Applications can only be accepted from individuals who are residents or former residents of the State of Hawaii; and who are citizens, nationals, or permanent resident aliens of the United States. A non-citizen with employment authorization from the United States Citizenship and Immigration Services (USCIS) may also apply. You may be asked to provide proof of eligibility to apply during the application process.

The residency requirement is mandated by state law and can be waived only for special circumstances. If the residency requirement has been waived for a particular position, it will be noted on the job bulletin.

Note: Resident means a person who is physically present in the State and who intends to make Hawaii the person's permanent residence. Further information about the citizenship and residency requirements can be found in the Hawaii Revised Statutes Chapter 78-1.

23. According to the City and County's website at www.co.honolulu.hi.us/hr/eps.htm#5, applicants who meet the qualification requirements, including residency, are placed on an eligible list that is effective for at least one year.

24. Upon information and belief, placement on the eligible list can lead to consideration for City and County jobs other than the job for which an application was originally submitted — all without submitting a further application.

25. Non-residents such as Plaintiffs are denied all the advantages of placement on the City and County eligible list.

26. The City and County residency policies and its persistent practices differ from H.R.S. § 78-1(c) in a number of material respects, including: (1) requiring a resident to be physically present in the State at the time of application for employment; (2) allowing either residents or former residents (while barring all others) to apply for City and County jobs; (3) prominently placing its residency requirements in red font on its employment related websites; (4) failing to include a formal mechanism for waiving the residency requirement and providing no information on any informal policy the City may have to waive certain jobs from its residency policies and persistent practices; and (5) barring non-residents from its “eligible list,” even though this list may later be used to fill jobs to which the residency policies have been waived.

27. The City and County’s residency policies and persistent practices make no distinction between Hawaii residents who are employed and those who are not employed. Thus, the policies and persistent practices have no substantial

relationship to solving any material unemployment in the City and County of Honolulu.

28. In or about 1985, the State of Hawaii, by and through its-then Attorney General, Corinne Watanabe, sued John E. Hirten, in his official capacity as Director of Transportation Services, City and County of Honolulu, and the City and County of Honolulu, Hawaii Supreme Court No. 10887 (“the *Hirten* action”), alleging that Mr. Hirten’s hiring violated the residency hiring requirement in H.R.S. § 78-1(b).

29. In defending the *Hirten* action, the City and County took the position that the residency requirement of H.R.S. § 78-1(b) violated several provisions of both the United States and Hawaii Constitutions.

C. Use of the City and County’s Hiring Policies to Reject and Deter Non-Residents From Applying for City and County Jobs

30. On or about March 15, 2005, Plaintiff Walsh submitted electronic applications for employment to the City and County’s Department of Human Resources. Plaintiff Walsh applied for the following positions: (a) Data Processing Systems Analyst III (SR-24); (b) Data Processing Systems Analyst II (SR-22); and (c) Computer Programmer II (SR-18).

31. While Plaintiff Walsh is currently a resident of Florida, he has a desire to travel to, live, and practice his profession in Hawaii. Plaintiff Walsh has never yet lived in Hawaii.

32. Question number 4 of Plaintiff Walsh's electronic application for employment reads, "RESIDENCY REQUIREMENT: The Hawaii public employment law requires that applicants be current or former legal residents of Hawaii at the time of application. The response you provide on the following questions will be taken into consideration (together with any other information submitted with your application) in determining whether you have acquired or maintained legal residency in Hawaii, or in verifying that you were formerly a legal resident of Hawaii."

33. Plaintiff Walsh responded to question 4 by stating, "I am not a legal resident of the State of Hawaii."

34. On or about March 25, 2005, Plaintiff Walsh received three separate rejection letters dated March 17, 2005, for each of the three positions for which he had applied. Plaintiff Walsh was rejected from these positions solely because of his status as a non-resident at the time of application. Each of the rejection letters stated, "[y]our application cannot be accepted because you are not a resident of the State of Hawaii, which is required for this position. Hawaii State law requires that applicants be current or former residents of Hawaii at the time of application."

35. True and correct copies of these rejection letters are attached to this TAC as Exhibits "A" – "C." The letters have been redacted to remove Plaintiff Walsh's home address.

36. All of the three positions for which Plaintiff Walsh applied have been posted by Defendant City and County since October 20, 2003 and remain unfilled.

37. On or about May 20, 2005, Plaintiff Wilson submitted an electronic application for employment to the City and County's Department of Human Resources for the Police Evidence Specialist position (SR-18).

38. At the time of his application, Plaintiff Wilson was a legal resident of Florida even though he had already moved to Hawaii on or about April 1, 2005, to accompany his wife, who is on active duty in the United States Military on Oahu. Plaintiff Wilson has a desire to practice his professional calling in Hawaii.

39. Question number 4 of Plaintiff Wilson's electronic application for employment reads, "RESIDENCY REQUIREMENT: The Hawaii public employment law requires that applicants be current or former legal residents of Hawaii at the time of application. The response you provide on the following questions will be taken into consideration (together with any other information submitted with your application) in determining whether you have acquired or maintained legal residency in Hawaii, or in verifying that you were formerly a legal resident of Hawaii."

40. Plaintiff Wilson responded to question 4 by stating, "I am not a legal resident of the State of Hawaii."

41. On or about June 7, 2005, Plaintiff Wilson received *at his Kailua, Hawaii address* a rejection letter dated June 6, 2005, for the position for which he had applied. Plaintiff Wilson was rejected from this position solely because of his status as a non-legal resident at the time of application. Specifically the rejection letter stated, "[y]our application cannot be accepted because you are not a resident of the State of Hawaii, which is required for this position. Hawaii State law requires that applicants be current or former residents of Hawaii at the time of application."

42. A true and correct copy of this rejection letter is attached to this TAC as Exhibit "D." The letter has been redacted to remove Plaintiff Wilson's home address.

43. The position for which Plaintiff Wilson applied has been posted by Defendant City and County since October 20, 2003 and remained unfilled until late 2005.

44. On October 2, 2005, Plaintiff Annarelli submitted a written application for employment to the City and County's Department of Human Resources. Plaintiff Annarelli applied for the position of Liquor Control Administrator.

45. While Plaintiff Annarelli is currently a resident of New Jersey, he has a desire to travel to, live, and practice his profession in Hawaii. Plaintiff Annarelli has never yet lived in Hawaii.

46. In late November, 2005, Plaintiff Annarelli received a rejection letter for the City and County position for which he had applied. Plaintiff Annarelli was rejected from this position solely because of his status as a non-resident at the time of application. The rejection letter stated, “[y]our application cannot be accepted because you are not a legal resident of the State of Hawaii. Hawaii State law requires that applicants be residents of Hawaii at the time of application.”

47. True and correct copy of this rejection letter, which is a duplicate of the original letter sent in November of 2005, is attached to this TAC as Exhibit “E”. The letter has been redacted to remove Plaintiff Annarelli’s home address.

48. While Plaintiff Hill is currently a resident of Massachusetts, she has a desire to travel to, live, and practice her profession in Hawaii. Plaintiff Hill spent several weeks in Hawaii during the summer of 1997.

49. Plaintiff Hill is a graduate of Brown University and is currently a Technical Assistance Project Manager with the Massachusetts Department of Revenue. Plaintiff Hill periodically peruses the City and County of Honolulu job postings and has considered applying for available positions in her field, such as

Planner positions, but has been deterred from doing so due to the pre-employment residency requirement.

50. Upon information and belief, nearly two months after the original Complaint herein was filed, Defendant City and County began removing the language exempting former Hawaii residents from its residency policies from its various websites and job postings. Additionally, upon information and belief, after the original Complaint herein was filed, Defendant City and County began the administrative process to repeal the portion of the City and County's resident hiring policy that exempted former residents.

51. The March 17, 2005 rejection letters to Plaintiff Walsh, the June 6, 2005 rejection letter to Plaintiff Wilson, and the November, 2005 rejection letter to Plaintiff Annarelli, which are on the City and County's Department of Human Resource's letterhead, make no mention of Plaintiffs' talents, abilities or other qualifications.

52. Based on these categorical rejections due solely because Plaintiffs are not nor have they ever been Hawaii residents, Plaintiffs Walsh, Wilson and Annarelli have been and remain deterred from applying for further positions with the City and County of Honolulu.

53. Based on these categorical rejections due solely because Plaintiffs are not nor have they ever been Hawaii residents, Plaintiffs have been denied all

benefits resulting from placement for one year on the City and County's eligible list.

D. The State of Hawaii's Residency Policies and Persistent Practices

54. At the time of its rejection of Plaintiff Wilson's job application at least in part on the basis of non-residency, the DHRD, in enforcing H.R.S. § 78-1(c), broadcast on its job search website, "[f]or most jobs, you must be a legal resident of the State of Hawaii at the time of application. Former legal residents may also apply." See <http://pahoehoe.ehawaii.gov/dhrd/statejobs/exe/jobSearch.cgi>.

55. The State of Hawaii's hiring residency policies were prominently displayed. For example, the DHRD website provided (and still provided as of August 22, 2005) in its "How to Apply" section at <http://www.ehawaii.gov.org/dhrd/statejobs/html/howto.html#LEGAL:>

BASIC PUBLIC EMPLOYMENT REQUIREMENTS

Residence Requirement

You must be a legal resident of the State of Hawaii at the time you apply for a job. Former legal residents may also apply. The residence requirement may be waived for some jobs and will be stated on the job announcement.

If there is a question regarding your residence status, it is your responsibility to provide documentary evidence of abandonment of your previous residence and/or

establishment of Hawaii residence, or evidence of former legal residence in the State of Hawaii (*i.e.*, filing State income tax returns as a resident of Hawaii, registering to vote in Hawaii's elections, and so on.) If you are unsure about your residence status, please complete a residence questionnaire and submit it with your application.

56. The State's residency hiring policies are also set forth in each job announcement for which the residency requirement has not been waived.

57. The State's residency policies differed from H.R.S. § 78-1(c) in a number of material respects, including, most significantly, a blanket exception for former residents of the State. The State's residency policies and persistent practices make no distinction between Hawaii residents who are employed and those who are not employed. Thus the policies and persistent practices have no substantial relationship to solving any material unemployment in the State of Hawaii.

58. Upon information and belief, after the original Complaint herein was filed, the State of Hawaii began removing the language exempting former Hawaii residents from its residency policies from its various websites and job postings. In addition, on or about July 29, 2005, the State DHRD, by and through then Director Kathleen N.A. Watanabe, gave public notice of the proposed repeal of Section 14-

3.01-4, Hawaii Administrative Rules, which states in pertinent part: “Applicants shall be residents or former residents of the State ... at the time of application.”

E. Use of the State’s Residency Hiring Policies to Reject and Deter Non-Residents From Applying for State Jobs

59. On or about June of 2004, Plaintiff Wilson’s wife was informed by military orders of her transfer to Oahu. Plaintiff Wilson thus began a search from his residence in Pensacola, Florida to obtain employment prior to moving to Oahu. On or about late February of 2005, Plaintiff Wilson applied for the position of Public Health Administrative Officer IV (Recruitment No. 204245) with the State of Hawaii. Plaintiff Wilson also submitted several other job applications for positions with the State of Hawaii.

60. On or about March 20, 2005, Plaintiff Wilson received a rejection letter on DHRD’s letterhead dated March 15, 2005, for the Public Health Administrative Officer IV position for which he had applied. Plaintiff Wilson was rejected from this position at least in part because he had failed to demonstrate that he was “a legal resident of the State of Hawaii as required by our public employment law.”

61. A true and correct copy of this rejection is attached to this TAC as Exhibit “F”. The letter has been redacted to remove Plaintiff Wilson’s home address.

62. The Public Health Administrative Officer position has been posted by the State of Hawaii since November 28, 2004 and remains unfilled.

63. Because of the conspicuously displayed residency requirement of H.R.S. § 78-1(c), because Plaintiff Wilson had already been rejected from one State position at least in part due to his non-resident status, and because of the delay in processing Plaintiff Wilson's outstanding applications, which on information and belief is due to his non-legal residency status, Plaintiff Wilson is deterred from applying for any other positions with the State of Hawaii.

64. In March of 2005, there were several postings for jobs with the State of Hawaii for which Plaintiff Walsh was professionally qualified to apply for including several in the computer technology area.

65. Because of the conspicuously displayed residency requirement of H.R.S. § 78-1(c) Plaintiff Walsh had already been rejected from three positions with Defendant City and County solely on the basis of his out-of-state residency at the time of application, Plaintiff Walsh was and remains deterred from applying for any position with the State of Hawaii.

66. On April 29, 2005, Plaintiff Annarelli submitted a written application for employment to the State of Hawaii, Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office (RICO). Plaintiff Annarelli applied for the position of Investigator IV (Honolulu).

67. Investigator Ronald R. Nicholas, RICO Investigations Manager, contacted Plaintiff Annarelli to arrange a telephonic interview. The interview was conducted on Monday, June 6, 2005. Later that evening, Mr. Nicholas contacted Plaintiff and advised him that he had interviewed well and requested that he forward a photograph of himself to RICO for identification purposes. Plaintiff Annarelli submitted the photograph and a thank you letter to RICO via electronic mail on June 7, 2005.

68. On June 29, 2005, Investigator Nicholas informed Plaintiff Annarelli that another candidate had been selected, but that RICO (Hilo) would have openings for similar positions in the fall of 2005. He encouraged Plaintiff Annarelli to apply again at that time.

69. Plaintiff Annarelli received a formal rejection letter dated August 3, 2005 for the State of Hawaii Investigator IV (Honolulu) position referenced in paragraph 66 above.

70. A true and correct copy of this rejection letter is attached to this TAC as Exhibit "G". The letter has been redacted to remove Plaintiff Annarelli's home address.

71. On September 9, 2005, Plaintiff Annarelli submitted an application to the State of Hawaii Department of Commerce and Consumer Affairs RICO for the position of Investigator IV (Hilo).

72. On or about October 15, 2005, Plaintiff Annarelli received a rejection letter dated October 10, 2005 for the State of Hawaii Investigator IV (Hilo) position for which he had applied. Plaintiff Annarelli was rejected from this position solely because of his status as a non-resident at the time of application. The rejection letter stated, "Current State Law, Chapter 78 of the Hawaii Revised Statutes, requires applicants be residents of the State of Hawaii at the time of their application for employment. As you do not appear to be a resident of the State of Hawaii at this time, we are unable to consider you for this position."

73. A true and correct copy of this rejection letter is attached to this TAC as Exhibit "H". The letter has been redacted to remove Plaintiff Annarelli's home address.

74. Since April of 2005, there have been and continue to be several postings for jobs with the State of Hawaii for which Plaintiff Annarelli was and is professionally qualified to apply for including several in the investigation field.

75. Because of the residency requirement of H.R.S. § 78-1(c), the fact that Plaintiff Annarelli is not nor has ever been a Hawaii resident, and because Plaintiff Annarelli has already been rejected from one position with the State and one position with Defendant City and County solely on the basis of his out-of-state residency at the time of application, Plaintiff Annarelli is now deterred from

applying for any additional positions with the State of Hawaii and the City and County of Honolulu.

76. There have been and continue to be several postings for jobs with the State of Hawaii (and with the City and County of Honolulu) for which Plaintiff Hill was and is professionally qualified to apply including several in the field of government planning.

77. Because of the conspicuously displayed residency requirement of H.R.S. § 78-1(c) and because Plaintiff Hill is not nor has ever been a Hawaii resident, Plaintiff Hill has been and remains deterred from applying for any position with the State of Hawaii or with the City and County of Honolulu.

V. CLASS ACTION ALLEGATIONS

78. Pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2) the named Plaintiffs bring this action on behalf of themselves and the class consisting of those other persons who are non-residents of the State of Hawaii and who have applied, who are now applying, or who will in the future apply for employment with the City and County and/or the State of Hawaii and whose applications have been or will be rejected in whole or in part on the basis of their non-resident status at the time of application.

79. Plaintiffs also bring this action on behalf of the subclass consisting of those who have been, are, or will be discouraged from applying for any job with

the City and County and/or the State of Hawaii because of the residency hiring requirement as set forth in H.R.S. § 78-1(c), and/or the City and County's residency hiring policies and/or the State's residency policies, which will result in the rejection in whole or in part on the basis of their non-resident status at the time of application.

80. Upon information and belief, the class and subclass of Plaintiffs are so numerous that joinder of all members is impracticable.

81. In addition, there are questions of law and fact common to the members of the Plaintiff class and subclass. These include the legality and constitutionality of the City and County's residency policies and persistent practices, which are based in part on H.R.S. § 78-1(c), and the City and County's failure to adopt any formal policy for waiving this bar to employment even when jobs have not been filled by resident applicants. These issues also include the legality and constitutionality of the State's residency hiring policies and of H.R.S. § 78-1(c).

82. Upon information and belief, Defendant City and County imposes the residency policies and persistent practices challenged in this action through the CCH DHR so that the claims of Plaintiffs are typical of those of the class.

83. Upon information and belief, the State imposes its residency policies on job applicants through Defendant Laderta, Director (and her predecessors) and

the DHRD, including its subdivision, the State Recruiting Office, so that the claims of Plaintiffs are typical of those of the class.

84. Defendants City and County and Laderta (and her predecessors) conspicuously post their respective residency policies on their websites in several locations to deter non-residents such as Plaintiffs and members of the Plaintiff subclass from even applying for posted jobs so that the claims of Plaintiffs are typical of those of the subclass.

85. Plaintiffs will fairly and adequately represent the interests of the class and the subclass. Plaintiffs possess the requisite personal interest in the subject matter of the lawsuit. Counsel experienced in class action litigation and in constitutional issues represent them. Undersigned counsel have prior experience with civil rights and class action litigation. The attorneys of the ACLU of Hawaii and Davis Levin Livingston Grande have extensive litigation experience in federal court.

86. Defendants have acted and continue to act in a manner generally applicable to the class and the subclass, thereby making appropriate final injunctive and declaratory relief with respect to the Plaintiff class and subclass as a whole.

VI. DECLARATORY AND INJUNCTIVE RELIEF

87. An actual and immediate controversy has arisen and now exists between Plaintiffs and the members of the class and subclass that they represent and Defendants. The parties have genuine and opposing interests that are direct and substantial.

88. The policies and persistent practices of Defendant City and County as described herein, which are based in part on H.R.S. § 78-1(c), violate the United States Constitution for at least the reasons set forth in this TAC. In addition, the State's residency hiring policies and H.R.S. § 78-1(c) violates the United States Constitution for at least the reasons set forth in this TAC. Plaintiffs and the members of the class and subclass that they represent are thus entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such a declaratory judgment.

89. Plaintiffs and the members of the class and subclass that they represent have no adequate remedy at law. Unless enjoined by the Court, Plaintiffs and the members of the class and subclass that they represent will continue to be arbitrarily and categorically rejected and/or deterred from exercising their right to travel interstate by applying for jobs with Defendant City and County and any other branch of government within the State that are within their chosen callings or professions. This threat of injury to Plaintiffs and the members of the class and

subclass that they represent denies them their civil rights and requires permanent injunctive relief.

90. Defendants have acted and continue to act in a manner generally applicable to the class and subclass, thereby making appropriate final injunctive relief and injunctive relief with respect to the class and subclass each as a whole. In addition, the injuries suffered by Plaintiffs and the members of the class and subclass that they represent are capable of repetition, yet may evade review, thereby making class relief appropriate.

FIRST CAUSE OF ACTION

Violation of the Privileges and Immunities Clause of Art. IV, Section 2 of the United States Constitution, Actionable Pursuant to 42 U.S.C. § 1983 (Against Defendants Laderta and City and County)

91. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 90, above.

92. The City and County's and State's policies and persistent practices of as described herein impermissibly deprive Plaintiffs and the members of the class and subclass that they represent of their rights secured under the Privileges and Immunities Clause of Article IV, Section 2 of the United States Constitution.

SECOND CAUSE OF ACTION

Violation of the Privileges and Immunities Clause of Art. IV, Section 2 of the United States Constitution, Actionable Pursuant to 42 U.S.C. § 1983 (Against All Defendants)

93. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 92, above.

94. H.R.S. § 78-1(c) impermissibly deprives Plaintiffs and the members of the class and subclass that they represents of their rights secured under the Privileges and Immunities Clause of Article IV, Section 2 of the United States Constitution.

THIRD CAUSE OF ACTION

Violation of the Fourteenth Amendment of the United States Constitution, Actionable Pursuant to 42 U.S.C. § 1983 (Against Defendants Laderta and City and County)

95. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 94 above.

96. The right to interstate travel is a crucial part of the liberty interests constitutionally protected through substantive due process and infringement of that right is subject to constitutional scrutiny pursuant to the Fourteenth Amendment.

97. The City and County's and State's policies and persistent practices as described herein impermissibly infringe on the fundamental right to travel of Plaintiffs and the members of the class and subclass that they represent.

FOURTH CAUSE OF ACTION

***Violation of the Fourteenth Amendment of the United States Constitution,
Actionable Pursuant to 42 U.S.C. § 1983
(Against All Defendants)***

98. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 97 above.

99. The right to interstate travel is a crucial part of the liberty interests constitutionally protected through substantive due process and infringement of that right is subject to constitutional scrutiny pursuant to the Fourteenth Amendment.

100. H.R.S. § 78-1(c) impermissibly infringes on the fundamental right to travel of Plaintiffs and the members of the class and subclass that they represent.

FIFTH CAUSE OF ACTION

***Violation of the Equal Protection Clause of the Fourteenth Amendment of
the United States Constitution, Actionable Pursuant to 42 U.S.C. § 1983
(Against Defendants Laderta and City and County)***

101. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 100 above. Defendants Laderta and City and County discriminated against Plaintiffs and the members of the class and subclass solely on the basis of their non-residency at the time of application.

102. The City and County's and State's policies and persistent practices as described herein unduly infringe upon the rights of Plaintiffs and the members of

the class and subclass that they represent, which are protected by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

SIXTH CAUSE OF ACTION

Violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, Actionable Pursuant to 42 U.S.C. § 1983 (Against All Defendants)

103. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 102 above.

104. H.R.S. § 78-1(c) discriminates against Plaintiffs and the members of the class and subclass that they represent based on their non-resident status at the time of application. Additionally, both the City and County's and State's policy of exempting former residents from the reach of H.R.S. § 78-1(c) discriminate against Plaintiffs and the members of the class and subclass that they represent based on the fact that they have never yet been residents of Hawaii.

105. H.R.S. § 78-1(c) unduly infringes upon the rights of Plaintiffs and the members of the class and subclass that they represent, which are protected by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

SEVENTH CAUSE OF ACTION

Violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution, Actionable Pursuant to 42 U.S.C. § 1983 (Against All Defendants)

106. Plaintiffs reallege and incorporate by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 105 above.

107. The City and County's and State's residency policies and persistent practices are devoid of any formal procedures to challenge an ineligibility determination based on non-residency at the time of application. Although the City and County apparently has a "waiver" policy, such policy is inherently vague and thus applied arbitrarily, if at all.

108. The lack of procedural protections constitutes a violation of the Due Process Clause of the Fourteenth Amendment.

WHEREFORE, Plaintiffs and the members of the class and subclass that they represent pray for the following relief:

(a) A certification of this case as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure

(b) A judgment declaring that the policies and persistent practices of Defendants pertaining to residency at the time of application as described herein, violate the United States Constitution on its face and as applied to Plaintiffs and the members of the class and subclass that they represent;

(c) A judgment declaring that the policies and persistent practices of Defendants exempting former residents from the reach of H.R.S. § 78-1(c) violate the United States Constitution on its face and as applied to Plaintiffs and the members of the class and subclass that they represent;

(d) A judgment declaring that H.R.S. § 78-1(c) violates the United States Constitution on its face and as applied to Plaintiffs and the members of the class and subclass that they represent;

(e) A preliminary and permanent injunction enjoining Defendants (and their divisions, officers, servants, employees, attorneys, agents and representatives, successors-in-office and all persons acting or purporting to act in concert or in cooperation with Defendants or pursuant to Defendants' authority) from enforcing H.R.S. § 78-1(c) and any policies and/or practices that are based in whole or in part on H.R.S. § 78-1(c), including the City and County's and State's residency policies and persistent practices including the blanket exemption of former residents as described herein;

(f) An award of reasonable attorneys' fees, costs, and other expenditures incurred as a result of bringing this action, pursuant to 42 U.S.C. § 1988, and other applicable laws; and

(g) Such other relief as this Court deems just and proper.

DATED: Honolulu, Hawaii, March 13, 2006.

Respectfully submitted,

DAVIS LEVIN LIVINGSTON GRANDE
ACLU OF HAWAII FOUNDATION

/s Lois K. Perrin
LOIS K. PERRIN

Attorneys for Plaintiffs