

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 28 2011
at 11 o'clock and 40 min. A.M.
SUE BEITIA, CLERK

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

EMMANUEL TEMPLE, THE HOUSE)
OF PRAISE; CARL E. HARRIS;)
LIGHTHOUSE OUTREACH CENTER)
ASSEMBLY OF GOD; JOE HUNKIN,)
JR.)

CIVIL NO. CV 11 00790 JMS KSC

Plaintiffs,

vs.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF;
SUMMONS

NEIL ABERCROMBIE, in his official)
capacity as Governor of the State of)
Hawaii; LORETTA J. FUDDY, in her)
official capacity as Director of Health of)
the State of Hawaii; STATE OF)
HAWAII,)

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES the Plaintiffs, EMMANUEL TEMPLE, THE HOUSE OF PRAISE, CARL E. HARRIS, LIGHTHOUSE OUTREACH CENTER ASSEMBLY OF GOD; and JOE HUNKIN, JR. by and through their attorney, Shawn A. Luiz, Esq., and complaining of the Defendants, and alleges and says:

NATURE OF CLAIMS

1. This is a civil action for declaratory and injunctive relief and attorney fees and costs. Plaintiffs bring this action under the Civil Rights Act of 1871, 42 U.S.C. § 1983, the 1st, 5th and 14th Amendments to the U.S. Constitution to correct and remedy unlawful infringement of Plaintiffs' federal constitutional rights as citizens of the United States of America. The Hawaii State statute, Act 1, is unconstitutional in its present form. The STATE OF HAWAII, through its agents is attempting to infringe and interfere with the Plaintiffs' federal constitutional rights by enacting a state statute infringing on said rights. Alternatively, the statute has an adverse impact infringing and interfering with the Plaintiffs' federal constitutional rights by enacting a state statute infringing and interfering with said rights.

2. Plaintiffs seek a declaration from this court that the Defendants' acts, as more particularly set forth in this complaint, violates their rights under the foregoing constitutional provisions.

3. Plaintiffs further seek a permanent injunction, ordering the Defendants to cease and desist from continuing in the foregoing violations of law.

PARTIES

4. Plaintiff EMMANUEL TEMPLE, THE HOUSE OF PRAISE is a Domestic Nonprofit Corporation whose purpose is to advance and promote the worship of God; to engage in and promote the study of the Holy Scriptures; and to advance the gospel of Jesus Christ. Plaintiff, CARL E. HARRIS at all times relevant to the matters alleged here, is a Bishop and Pastor of Emmanuel Temple, House of Praise and is a resident of Honolulu, Hawaii. Plaintiff LIGHTHOUSE OUTREACH CENTER ASSEMBLY OF GOD is a Domestic Nonprofit

Corporation whose purpose is for religious purposes to worship the Lord, Sunday school, outreach program, day care, men & women ministry assoc.; JOE HUNKIN, JR. is a Pastor of Lighthouse Outreach Center Assembly of God and is a resident of Honolulu, Hawaii.

5. Defendants are the State of Hawaii as the principal and employer of its agents and employees; Defendant NEIL ABERCROMBIE in his official capacity as Governor of the State of Hawaii; As Governor of the State of Hawaii, Defendant NEIL ABERCROMBIE is the final decision maker who signed into law Act 1. Defendants at all times pertinent hereto, were and are located in the District of Hawaii. As a final decision maker, Governor ABERCROMBIE is ultimately

responsible for ensuring compliance with all applicable federal statutory laws, including but not limited to, the First Amendment, Due Process Clause to the Fifth Amendment of the United States Constitution, made applicable upon the states by the Fourteenth Amendment and other federal law referenced above.

6. LORETTA J. FUDDY is sued in her official capacity as Director of Health of the State of Hawaii. As a final decision maker, Director Fuddy is ultimately responsible for ensuring compliance with all applicable federal statutory laws, including but not limited to, the First Amendment, Due Process Clause to the Fifth Amendment of the United States Constitution, made applicable upon the states by the Fourteenth Amendment and other federal law referenced above.

7. At all times relevant hereto, the Defendants, and each of them, were operating under color of law, custom and usage of the State of Hawaii. Each of the Defendants is responsible, and liable, jointly and severally, for the events herein alleged, or in omitting to do those acts as legally required, in that individually and/or collectively, they have caused Plaintiffs a serious deprivation of their rights and serious injury. Each Defendant has acted throughout as an agent for each and all other Defendants.

JURISDICTION AND VENUE

8. This Court has jurisdiction of the federal claims asserted here pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1343; and 42 U.S.C. § 1983.

9. Declaratory and injunctive relief may be granted based upon 28 U.S.C. §§ 2201 and 2202, and Rules 54, 57, 58 and 65 of the Federal Rules of Civil Procedure.

10. The unlawful practices complained of in this complaint occurred, and the records relevant to this matter are maintained and administered, within the District of Hawaii, and venue is proper within this District pursuant to 28 U.S.C. § 1391 (b).

FACTUAL ALLEGATIONS RELATING TO ALL CLAIMS

11. On or about February 24, 2011, Governor Abercrombie signed into law Act 1.

12. Between August and November of 2011, a special task force pursuant to a House Resolution was convened to implement Act 1.

13. Neither Act 1 nor its implementing regulations exempts religious institutions, churches and houses of worship, clergy, officers and members from being subject to the injunctive relief provision and/or fine provisions of HRS 489.

14. Within the last 12 months, private individuals have already initiated complaints with the Hawaii Civil Rights Commission against churches and houses of worship for refusing to rent their facilities for same sex unions and/or marriage ceremonies.

15. The Hawaii Civil Rights Commission's pending investigations (1), have a chilling effect on Plaintiffs' free exercise of religion, and (2), compel Plaintiffs' to hire legal counsel to prepare legal defenses against imminent complaints and lawsuits for a guaranteed Federal Constitutional Right.

16. The actions of the Defendants described in this Complaint constitute willful misconduct. The Defendants have acted wrongfully, oppressively, or with malice, which evidences a spirit of discrimination or criminal indifference to civil obligations.

17. The actions of the Defendants as described in this Complaint were intentional and unreasonable. Alternatively, Act 1 has a disparate impact on churches and houses of worship.

18. This is a cause of action arising at all times in accordance with 42 U.S.C § 1983 and the First; Fifth and Fourteenth Amendments to the U.S. Constitution.

19. Defendants' actions violate Plaintiffs' rights under the First Amendment; Due Process Clause of the Fifth Amendment to the United States Constitution that are made applicable to the states by the Fourteenth Amendment. These violations are actionable under 42 U.S.C. § 1983. Plaintiffs were entitled to freedom of speech, association and religious liberty; Plaintiffs are immediately subject to the imminent threat of Civil Rights Complaints upon Act 1 taking effect

on January 1, 2012; each of the Defendants has ratified the decisions of the other Defendants.

WHEREFORE, the Plaintiffs demand judgment as follows:

- (a) Declaring that the acts and practices complained of here are in violation of the Plaintiffs rights as secured by Section 1983.
- (b) Preliminarily and permanently restraining and enjoining the defendants and their agents from any conduct violating the Plaintiff's rights as secured by Section 1983.
- (c) For the recovery of costs and attorney fees as provided by statute.
- (d) For such other and further relief as the Court may deem just, fit and proper.

DATED: Honolulu, Hawaii, December 28, 2011.


SHAWN A. LUIZ

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

EMMANUEL TEMPLE, THE HOUSE
OF PRAISE; CARL E. HARRIS;
LIGHTHOUSE OUTREACH CENTER
ASSEMBLY OF GOD; JOE HUNKIN,
JR.

CASE NUMBER: _____

SUMMONS IN A CIVIL CASE

Plaintiffs,

vs.

NEIL ABERCROMBIE, in his official
capacity as Governor of the State of
Hawaii; LORETTA J. FUDDY, in her
official capacity as Director of Health of
the State of Hawaii; STATE OF
HAWAII,

Defendants.

SUMMONS IN A CIVIL CASE

TO: ALL NAMED DEFENDANTS

A lawsuit has been filed against you.

Within 21 days after service of this summons upon you (exclusive of the day of service), or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Federal Rule Civil Procedure, Rule 12(a)(2) or (3)-you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

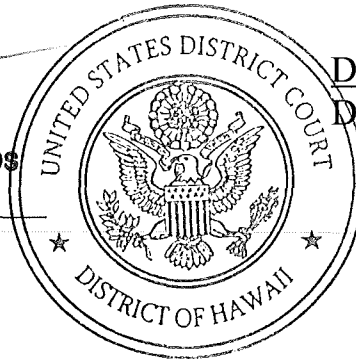
SHAWN A. LUIZ 6855
Attorney at Law
1132 Bishop Street
Suite 1520
Honolulu, Hawaii 96813
Tel. (808) 538-0500
Fax (808) 538-0600
E-mail: attorneyluiz@msn.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the court.

SUE BEITIA
CLERK

/s/ Gary Santos

DEPUTY CLERK



December 28, 2011
DATE

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ORIGINAL

CIVIL COVER SHEET

CV 11 00790 JMS KSC

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Emmanuel Temple, the House of Praise; Carl E. Harris; Lighthouse Outreach Center Assembly of God; Joe Hunkin, Jr.

DEFENDANTS

Neil Abercrombie, in his official capacity as Governor of the State of Hawaii; Loretta J. Fuddy, in her official capacity as Director of Health of the State of Hawaii; State of Hawaii

(b) County of Residence of First Listed Plaintiff Honolulu
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Shawn A. Luiz, 1132 Bishop St., Suite 1520, Honolulu, HI 96813, Tel. No. 538-0500

Attorneys (If Known)
N/A

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC Section 1983
 Brief description of cause:
State enacted Act 1 which violates Plaintiffs' rights under First, Fifth and Fourteenth Amendments to U.S. Const.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 N/A DEMAND \$ N/A CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/28/11 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____