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* *Admission by pro hac vice*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

**PUBLIC INTEREST LEGAL
FOUNDATION, INC.**

Plaintiff,

v.

SCOTT T. NAGO, in his official
capacity as the Chief Election Officer for
the State of Hawaii

Defendant.

CIVIL NO. CV-23-00389 LEK-WRP

PLAINTIFF'S NOTICE OF
INTENT TO NOT AMEND
COMPLAINT AND/OR
MOTION TO AMEND ORDER
(ECF No. 58)

**PLAINTIFF’S NOTICE OF INTENT TO NOT AMEND COMPLAINT
AND/OR MOTION TO AMEND ORDER (ECF No. 58)**

Plaintiff Public Interest Legal Foundation notifies the Court of its intent to not amend its complaint and moves the Court to amend its order of June 28, 2024 (ECF No. 58). In support of this filing, Plaintiff states the following:

1. On June 28, 2024, the Court issued an order dismissing Plaintiff’s case without prejudice and with leave to amend by October 28, 2024. (ECF No. 58 (“Dismissal Order”).)

2. In *WMX Techs. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997), the Ninth Circuit held that “a plaintiff, who has been given leave to amend, may not file a notice of appeal simply because he does not choose to file an amended complaint. A further district court determination must be obtained.” *See also Sanford v. Motts*, 258 F.3d 1117, 1119 (9th Cir. 2001) (explaining that “an order is not final when a complaint is dismissed with leave to amend”).

3. In *Lopez v. City of Needles*, 95 F.3d 20, 22 (9th Cir. 1996), the Ninth Circuit explained,

Unless a plaintiff files in writing a notice of intent not to file an amended complaint, such dismissal order is not an appealable final decision. In a typical case, filing of such notice gives the district court an opportunity to reconsider, if appropriate, but more importantly, to enter an order dismissing the action, one that is clearly appealable.

See also Pinkert v. Schwab Charitable Fund, 48 F.4th 1051, 1054 n.1 (9th Cir. 2022).

4. Because the Court granted Plaintiff leave to amend its complaint, the

Court's Dismissal Order is not a final, appealable order.

5. Plaintiff hereby notifies the Court that it does not intend to file an amended complaint. *Lopez*, 95 F.3d at 22. Plaintiff intends to stand on its pleadings and the record, including Defendant Nago's admissions. *See Raymond v. Fenumiai*, 580 F. App'x 569, 570 (9th Cir. 2014) (Wallace, J., dissenting) (explaining that a plaintiff may choose to "amend his complaint or indicate to the district court that he prefers to stand on his pleadings, at which point the district court could enter a judgment dismissing the action in its entirety").

6. Plaintiff requests that the Court reconsider its decision and deny Defendant's motion to dismiss. *See Lopez*, 95 F.3d at 22 ("In a typical case, filing of such notice gives the district court an opportunity to reconsider...") The Court previously found that (1) Defendant Nago is Hawaii's Chief Elections Officer, (2) Plaintiff made a request to Defendant Nago for Hawaii's statewide voter file pursuant to the National Voter Registration Act, 52 U.S.C. § 20507(i)(1) ("NVRA"), (3) Defendant Nago, despite having custody and control of the statewide voter file, has not provided Plaintiff the statewide voter file, and (4) Plaintiff complied with the NVRA's pre-litigation notice requirements. Further, Plaintiff prays the Court reconsider and hold that the NVRA pre-empts Defendant Nago's assertion that he may delegate to the counties his statutory requirement to produce the requested record. A state's law that conflicts with the NVRA's Public Disclosure Provision is pre-empted by the United States Constitution's Supremacy Clause. *Arizona v Inter Tribal of*

Arizona, 570 U.S.1, 14-15 (2013); *Pub. Int. legal Found., Inc. v Bellows*, 92 F. 4th 36, 45 (1st Cir. 2024) *Project Vote/Voting for Am. v Long*, 682 F. 3d 331, 339 (4th Cir. 2012). As Plaintiff's claims against Defendant Nago are plausibly stated and ripe, Plaintiff respectfully moves this Court for an order denying Defendant's motion to dismiss.

7. Alternatively, Plaintiff requests that, if the Court chooses to dismiss the case with the understanding that the Plaintiff will not amend its complaint, the Court enter a final, appealable order.

WHEREFORE, Plaintiff requests the Court either reconsider its decision and deny Defendant's Motion to Dismiss or amend its Dismissal Order to make it final.

DATED: July 9, 2024.

/s/ Joseph M. Nixon
Joseph M. Nixon

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2024, I electronically filed the foregoing using the Court's ECF system, which will serve notice on all parties.

/s/ Joseph M. Nixon

Joseph M. Nixon

jnixon@publicinterestlegal.org

Counsel for Plaintiff