FOR PUBLICATION

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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CITIZENS FOR EQUITABLE AND RESPONSIBLE GOVERNMENT, a Hawai'i nonprofit corporation; BRENDA J. FORD; STANLEY A. BOREN; FLOYD H. LUNDQUIST; MARLENE E. LUNDQUIST; RONALD C. PHILLIPS, Plaintiffs-Appellants

and

BEVERLY BYOUK and SANDRA W. SCARR, Plaintiffs-Appellees

vs.

COUNTY OF HAWAI'I; COUNTY CLERK, COUNTY OF HAWAI'I; LLOYD VAN DE CAR, CHAIRMAN, COUNTY OF HAWAI'I 2001 REAPPORTIONMENT COMMISSION, Defendants-Appellees

NO. 25614

MOTION FOR RECONSIDERATION
(CIV. NO. 01-1-0092)

SEPTEMBER 22, 2005

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR RECONSIDERATION
(By: Levinson, Acoba, and Duffy, JJ.;
With Nakayama, J., Dissenting, With Whom Moon, C.J., Joins)

Plaintiffs-Appellants Citizens for Equitable and Responsible Government, Brenda J. Ford, Stanley A. Boren, Floyd H. Lundquist, Marlene E. Lundquist, and Ronald C. Phillips (collectively, Appellants) filed a motion for reconsideration (the motion) of this court's July 22, 2005 published opinion (the

opinion), in which a majority of this court affirmed the decision of the circuit court of the third circuit (the court) to uphold the reapportionment plan of the County of Hawaii 2001 Reapportionment Commission (the Commission). Citizens for Equitable & Responsible Gov't, No. 25614, slip op. at 25 (Haw. July 22, 2005).

I.

In the motion, Appellants argue that (1) this court cannot substitute its findings for that which the Commission and the court should have, but did not, make, (2) this court cannot refer to the public testimony of Julie Jacobson, a person who is not a member of the Commission, as evidence of the Commission's unarticulated intent, (3) this court's substituted justification for deviations in excess of 10% is no justification at all, (4) lack of good faith and honesty was subsumed in Appellants' assignment of error, (5) the plan is invalid if the plan is constitutionally defective, and (6) this court's conclusion that the court and the Commission erred in using the wrong population base, means that it should simply reverse the court's judgment. Accordingly, Appellants request that this court (1) strike any reference to Jacobson's testimony, (2) strike all references to the purported justification of the Commission for offering a plan with deviations in excess of 10%, (3) reverse the court's judgment, and (4) invite the parties to submit further pleadings as may be appropriate to the amended decision. For the reasons discussed herein, the motion for reconsideration is granted in

part as to the reference to the Jacobson testimony, but denied in all other respects.[1]

II.

Addressing first Appellants' second point, the challenge to Jacobson's testimony, Appellants maintain that this court "relie[d] upon the testimony of a person who is NOT a member of the Commission[, Jacobson,] to justify the . . . Commission's action below" and that "[s]uch reliance is inconsistent with" Dines v. Pacific Insurance Co., 78 Hawai'i 325, 893 P.2d 176 (1995). (Capitalization and emphasis in original.) However, the opinion does not state that Jacobson was a member of the Commission, but identifies her as a Hawai'i County Councilmember. It may be assumed that Jacobson's testimony apprised the Commission of how using a total population base can achieve inclusiveness and equal representation. The opinion refers to Jacobson's testimony as follows:

> [W]e cannot say that no rational basis underlay the 10.89% deviation because, akin to the approach exemplified by the commission member's testimony in Riley, the Commission in the instant case, by using "total" population, evidenced an intent to achieve inclusiveness and equal representation.
> . . .
> For at the second meeting of the Commission, Hawai'i County Councilmember Julie Jacobson testified in favor of "using the population as the basis for the districting," stating that,
>
> > each human being has needs for the government serves [sic] and it doesn't matter if you're one day old, if you're 99 years old, if you vote or don't vote, or any other of those variables . . . each person needs to be considered and I think especially with the complexity

[1] Hawai'i Rules of Appellate Procedure Rule 40(b) (2005) provides that a motion for reconsideration "shall state with particularity the points of law or fact that the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised."

> of infrastructure issues, that we deal with, that's why it's important.

Opinion at 22.[2]

Also, Appellants state for the first time in the motion that Jacobson later retracted the statement quoted in the opinion by rejecting the Commission's plan. It should be noted that Appellants did not challenge Jacobson's testimony in their reply brief, even though Defendants-Appellees, County of Hawai'i, County Clerk, County of Hawai'i, and Lloyd Van De Car, Chairman of the Commission (collectively, County Appellees), cited to Jacobson's testimony in their answering brief. Appellants, therefore, failed to raise Jacobson's supposed retraction of the quoted statement that they tardily do now.

However, it appears that Jacobson had recanted the quoted statement. Appellants state that at the Commission's final meeting on December 18, 2001, Jacobson "rejected her own statement." (Emphasis in original.) Upon review of the record on appeal, it appears that Jacobson's December 18, 2001 testimony was never made part of the record.[3] Appellants have since attached the subsequent Jacobson testimony to their motion as Appendix 32, as well as a declaration by their attorney, which certifies that the attached minutes "are public documents . . .

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[2] Appellants attach Jacobson's June 22, 2001 testimony to their motion as Appendix 31, but the testimony is already part of the record.

[3] County Appellees attached excerpts from the December 18, 2001 transcripts to their memorandum in opposition to Appellants' motion for change of venue, but Jacobson's testimony on pages 9-13 was not included.

that are found on the County of Hawaii website at Hawaii-county.com." Although the subsequent Jacobson testimony need not be considered by this court, see Orso v. City & County of Honolulu, 55 Haw. 37, 38, 514 P.2d 859, 860 (1973) ("[A] question involving evidence not in the record cannot be reviewed on appeal.") (citation omitted), in light of the fact that Jacobson retracted her statement, a fact only now raised by Appellants, this court grants Appellants' request to strike any reference to the Jacobson testimony.[4] In doing so we observe that it is a fundamental and elementary proposition that counsel is obligated to present an accurate record on appeal.

III.

In their first point, Appellants argue that it is the "Commission's constitutional obligation, not this [c]ourt's burden, to offer evidence that justifies a plan that contains deviations in excess of 10%, that favor pre-existing [c]ounty [c]ouncil districts and that 'fractures' the judicial district of Puna."[5] (Emphasis in original.) Appellants maintain that this court "overlook[ed] . . . that officials in Riley[v. Baxter

[4] In their response to the motion, County Appellees maintain that Jacobson's testimony "was given at an earlier meeting of the Commission before any particular plan was before it. She later spoke in support of a particular plan but did not specifically address the population issue. What she was clearly recanting was the plan she herself submitted to the Commission to consider." To remove any doubt regarding this matter, however, we believe the better course is to excise such testimony.

[5] The argument that the redistricting plan "fractures" the judicial district of Puna is addressed infra, Part IV.

County Election Commission, 843 S.W.2d 831 (Ark. 1992),] actually testified to the court to explain their reason for offering a plan that contained deviations in excess of 10% [and that] . . . [n]either the trial court nor the appellate court in Riley searched through the record to fathom the basis for official action."

To the contrary, this court did not "overlook" the fact that the commission member in Riley "actually testified" inasmuch as the opinion expressly states that "[a]t the hearing before the trial court, a commission member testified that 'the overriding principle' followed by the commission in redistricting 'was equal representation.'" Slip op. at 21 (quoting Riley, 843 S.W.2d at 833) (emphasis added). The rule extrapolated from Riley was that a redistricting plan survives equal protection scrutiny where its variation is "only slightly over the acceptable 10% variation[,]" and "the commission's 'systematic approach . . . reveal[s] a rational policy of redistricting.'" Id. (quoting Riley, 843 S.W.2d at 833) (emphasis added).

The opinion agrees with Appellants that "the Commission did not address the deviation question because it was working from the 'total' as opposed to 'resident' population base, which presented only an 8.62% deviation." Id. at 22. But, it was decided that similar to Riley, "the 10.89% total deviation of the Commission's plan is 'only slightly over the acceptable 10% variation[,]" id. at 21, and "akin to the approach

exemplified by the commission member's testimony in Riley, the Commission in the instant case, by using a 'total' population, evidenced an intent to achieve inclusiveness and equal representation." Id. at 22 (emphasis added).

Even without the Jacobson testimony, which is stricken, Commissioner Mark Van Pernis's "motion to 'include all people,'" which was "put to a vote and carried, evidenc[ed] that the Commission was motivated by inclusiveness, as opposed to a discriminatory purpose." Id. Moreover, the opinion cites to three additional criteria for redistricting as mandated by section 3-17(f) of the Charter of the County of Hawaii (the Charter). See id. at 23. As the opinion notes, "Appellants [did] not contend that the Commission failed to consider [these] other redistricting criteria under the Charter or that such criteria would not support a slightly greater deviation than the 10% prima facie threshold." Id.

Additionally, County Appellees, in their memorandum in opposition to the motion for reconsideration, now identify parts of the record as evidence that the Commission was guided by these other Charter-mandated criteria. First, the reapportionment plan itself reflects the Commission's consideration of the "permanent and easily recognizable features" criterion, Charter § 3-17(f)(3), inasmuch as the written descriptions of each of the designated council districts refer to streams, shorelines, and other geographical features.

Second, at their final meeting on December 18, 2001, the commissioners made statements that evidence serious consideration of all four criteria. One commissioner related the Commission's task of balancing the equal representation criterion with the other three criteria:

> Since the Big Island population is not equally spread out geographically throughout the Island, obviously the districts cannot be geographically equal in size, in addition to being numerically equal. That is why argument and controversy can result. Some people or groups want a council district which serves their interest in a particular geographical area or a plan which serves their particular or geographical or political interest. But these localized special interests don't give adequate consideration to the rest of the Island.
>
> The Commission needs to consider all of the Island and all of its people in making the best plan. Such plans would spread around more fairly the benefits and detriments of equal numbers but on equal geography.

(Emphasis added.) Another commissioner expressed the Commission's motivation to adopt a plan ensuring that, consistent with the provisions of Charter sections 3-17(f)(1) and (2), "[n]o district shall be drawn to unduly favor or penalize a person or political faction" and that districts would be "contiguous and compact":

> I have no doubt in my mind that we did the very best we could with creating, you know, as compact and as contiguous districts as possible. . . .
>
> So we did as a Charter mandate, we did the very best we could wherever possible to create a [sic] compact and contiguous districts as we could. We made concerted efforts to keep communities and subdivisions together. Again, here and there, there [sic] wasn't absolutely do-able because of the census tracts and numbers and all the other issues. But I have no doubt in my mind that we did our very, very best.
>
> . . . .
>
> I have no doubt in my mind that no specific group was penalized, and no specific group was favored, we did the very best we could, all of the Island and all the communities.

(Emphases added.) Pursuant to Riley, these statements, made by the Commission members themselves, justify the slightly greater

than 10% deviation.[6] Accordingly, this court did not "overlook" or "misapprehend" the Riley holding.[7]

IV.

In their third point, Appellants argue that while the Commission's reliance on the total population base "reflects the underlying principle of the one man - one vote doctrine, it does not describe a rational state policy" inasmuch as it "allows an apportioning body to create legislative districts under which pre-existing districts (and the incumbents therein) are favored and [to] 'fracture' well-known communities of interests because of administrative convenience[.]"[8] (Emphasis in original.)

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[6] Hence, as County Appellees maintain, "it would be a futile exercise to remand to ask commissioners for a reason which they have already expressed in the vote on the motion at the June 22, 2001 meeting."

[7] Inasmuch as the reapportionment plan and the commissioners' testimony are part of the record, this court may rely on these grounds to affirm the court's judgment. See Delos Reyes v. Kuboyama, 76 Hawai'i 137, 140, 870 P.2d 1281, 1284 (1994) ("This court may affirm a grant of summary judgment on any ground appearing in the record, even if the circuit court did not rely on it.").

[8] Appellants argue as follows:

> In offering its justification for the County Reapportionment Commission's plan (in substitution of the Commission's omission), this Court states that the Commission's purpose must have been to use a total population base that would give every man, woman, child, incarcerated felon, soldier, dependent of a soldier, resident alien and others "representation."
>
> While this statement reflects the underlying principle of the one man - one vote doctrine, it does not describe a rational state policy. Nor does it explain how that state policy is in fact legitimately advanced by a plan that is prima facie unconstitutional because it violates that one man - one vote doctrine of keeping populations as equal as possible to avoid the danger of diluting votes.
>
> The extension of this statement is that the one man - one vote principle allows an apportioning body to create legislative districts under which pre-existing districts (and the incumbents therein) are favored and that "fracture" well-known communities of interests because of

(continued...)

Appellants' motion attempts to clarify what was obviously ambiguous in their appellate briefs -- the possibly problematic effect of the redistricting plan on "communities of interest."[9] According to the motion, the redistricting plan allegedly "fractures" the "judicial" district of Puna:

> [T]he judicial district of Puna with 31,307 countable people is "fractured" by assigning portions of "upper" Puna along with portions of the adjoining judicial district of South Hilo to County Council District #3 and by assigning other portions of "upper" Puna along with all of the adjoining judicial district of Ka'u and portions of the non-adjoining, distant judicial district of South Kona to County Council District #6. As a result, residents of Puna have one resident councilor and must "share" two councilors with other adjoining districts who may or may not be a resident of Puna. This is a classic example of vote dilution of residents of one district in favor of residents of other districts.
>
> As a result, residents of the "upper" Puna, whose population may justify a single councilor of its own, find their interests submerged into the adjoining and distant judicial districts of South Hilo, Ka'u, and South Kona. More significantly, Council Districts #1, 2, 3, and 4 are denominated by "Hilo interests," with a statistically

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[8](...continued)
administrative convenience, the only articulated reason found in the County Reapportionment Commission's records. No court has ever subscribed to such a conclusion.

(Emphases in original.) It should be noted that the opinion did not reference "every man, woman, child, incarcerated felon, soldier, dependent of a soldier, resident alien and others," as Appellants imply in the quote above. The opinion did not employ such a list. Indeed, Appellants stated as a point of error that "the 2001 County Reapportionment Commission should have used a population base that excluded nonresident military personnel and their dependents and nonresident students," (emphases added), groups which the opinion did discuss.

[9] Appellants contend that "*Table Two*, reproduced in Opening Brief, Appendix 25, shows how the judicial district of Puna with 31,307 countable people is 'fractured.'" (Emphasis in original.) But Table Two, without explanation, does not convey the specific contention that Puna was "fractured." In fact, Appellants did not utilize Table Two for this proposition. Appellants referenced Table Two on three occasions in their opening brief. The first and second references, stating that "[t]he consequence of not excluding these persons from the population base is set forth in Table One and Table Two," and that "[t]he statistical significance of the 810 nonresidents who are located in the District of South Hilo is shown in Table Two," were cryptic at best. In the third reference, Appellants utilized Table Two to "show[] the number of persons who fall below or above the ideal mean for each council district," not to point out that Puna was being "fractured."

> significant number of non-resident students (who should have been excluded) in the judicial district of South Hilo.

(Emphasis in original.)

While this explanation may have raised a concern, Appellants withdrew these arguments in the January 6, 2003 stipulation to amend first amended complaint and for entry of judgment. The stipulation stated:

> Plaintiffs and Defendants herein stipulate to the amendment of the First Amended Complaint filed here on March 6, 2002 as follows:
>
> 1. Plaintiffs withdraw and delete Paragraphs 12.a to 12.f;
>
> 2. Plaintiffs withdraw and delete Paragraphs 12.j to 12.n.
>
> The effect of the deletions is to withdraw Plaintiffs' allegations that the County of Hawaii 2001 Reapportionment Commission failed to use a "rational or objective methodology" (¶¶ 12.a to 12.f) and wrongfully submerged communities of interest into larger districts (¶¶ 12.j to 12.n) but not Plaintiffs' allegations as to the population base that the County of Hawaii 2001 Reapportionment Commission used (¶¶ 12.g to 12.i and 12.o to 12.p).
>
> As a result, the Order for Summary Judgment entered herein on the population base that the County of Hawaii 2001 Reapportionment Commission used disposes of all issues herein leaving no other issues left for decision.

(Emphasis added.) Specifically, the stipulation withdrew, inter alia, the following allegations:

> *No Rational or Objective Methodology*
>
> 12.e. When the public provided information and recommendations on the assignment of communities of interest to specific Council Districts that differed from the 1991 Council District boundaries and the Commission's fixed geographical "starting points," the Commission rejected the public's input and recommendations, continued to rely upon the existing 1991 Council District boundaries and its arbitrar[il]y fixed geographical "starting points" and justified its adoption of the 2001 Reapportionment Plan by using arbitrary and inconsistent criteria.
>
> 12.f. As a consequence, the Commission's 2001 Reapportionment Plan (1) keeps incumbents in Council Districts based on the 1991 Council District boundaries, despite changes in the population for the County of Hawaii since 1991, (2) fractures existing communities of interest, and (3) dilutes the representative power of some communities of interest while inflating the representative power of other communities of interest.
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> . . . .

Submergence of Communities of Interests into Larger Districts Where Different Socio-Economic Interests Predominate

12.j. For more than 100 years, governmental units in Hawaii have used the traditional land districts of the Island of Hawaii, now known as the judicial districts, to organize government agencies and to administer government programs. . . .

12.k. These traditional land districts, or judicial districts, are the Districts of North Hilo, South Hilo, Puna, Ka'u, South Kona, North Kona, South Kohala, North Kohala and Hamakua[.]

12.l. Furthermore, distinct communities of interest have developed and exist within these traditional land districts, or judicial districts.

12.m. Although the reapportionment principles in Articl IV, Section 6 of the Hawaii State Constitution state that a reapportioning body shall avoid "[w]here practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate," the Commission did not identify or consider the socio-economic interests of communities that could be determined from public sources available to the Commission on subjects such as education, employment and poverty levels, or the effect of including communities of differing socio-economic interest into designated Council Districts.

12.n. As a consequence, even though reasonable and practicable alternatives existed and even though the public had provided the Commission with background information on the differing socio-economic interest of communities, the Commission rejected such alternatives and information and, using its arbitrary geographical "starting points" and 1991 Council District boundaries, submerged communities of interest in certain areas into a larger district wherein substantially different socio-economic interest predominate. This consequence is reflected in the Commission's action that:

(1) divided communities in the upper (or northern) portion of the Puna judicial district and assigned those divided communities to two (2) separate Council Districts where substantially different socio-economic interest predominate[.]

(Some emphases added and some in original.) As observed in the opinion, "[t]he effect of the parties' stipulation . . . was 'to withdraw Appellants' allegations that the . . . Commission failed to use a 'rational or objective methodology' . . . and wrongfully submerged communities of interest into larger districts but not Appellants' allegations as to the population base that the . . . Commission used." Slip op. at 5 n.3 (brackets omitted) (emphasis

added).

Appellants' withdrawal of the argument that the redistricting plan submerges communities of interests into larger districts where different socio-economic interests predominate precludes a resurrection of that argument on appeal, especially on a motion for reconsideration. See Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114, 839 P.2d 10, 27 (1992) ("The purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion."); Briggs v. Hotel Corp., 73 Haw. 276, 287 n.7, 831 P.2d 1335, 1342 n.7 (1992) ("We again remind litigants that a motion for reconsideration is not the time to relitigate old matters."). Hence the alleged "vote dilution" of Puna residents is not properly before this court, having been withdrawn by stipulation. This court, then, did not "overlook" the "fracturing" of the judicial district of Puna because it was not a part of the appeal.

As to Appellants' contention that "the only articulated reason found in the County Reapportionment Commission's records" was "administrative convenience," as discussed supra, it must be reiterated that (1) Commissioner Van Pernis's "motion to 'include all people,'" which was "put to a vote and carried, evidenc[ed] that the Commission was motivated by inclusiveness as opposed to a discriminatory purpose[,]" slip op. at 22, and (2) the opinion cites to three additional criteria for redistricting mandated by

section 3-17(f) of the Charter required to be considered by the Commission. See id. at 23. Moreover, the "administrative convenience" argument was not presented as a discernible legal argument in Appellants' briefs[10] and, hence, need not have been addressed. Norton v. Admin. Dir. of the Court, 80 Hawai'i 197, 200, 908 P.2d 545, 548 (1995) (disregarding a particular contention for lack of a "discernible argument in support of that position, in violation of Rule 28(b)(7) of the Hawai'i Rules of Appellate Procedure").

V.

In their fourth point, Appellants disagree with this court's statement that "Appellants do not argue, nor point to evidence in the record, that the Commission did not 'make an honest and good faith effort to construct districts . . . of equal population as is practicable[.]'" Slip op. at 24 (citation omitted). Appellants assert in the motion that the lack of good faith and honesty argument was "subsumed" in their assignment of error and incorrectly assert that they "argued in their Opening

[10] At the end of their reply brief, Appellants stated that "[c]onvenience, not substantive law, dictated the outcome of the final Redistricting Plan." This statement did not establish that the Commission was guided by administrative convenience in creating legislative districts. Again, Appellants did not assert that the Commission failed to consider the other valid criteria as mandated under the Charter. As the opinion observes, "related objections were apparently waived when Appellants stipulated to withdraw the claims that the Commission failed to use a 'rational or objective methodology' and 'wrongfully submerged communities of interest into larger districts,' . . . thereby abandoning any claim that the Commission incorrectly applied the other three criteria in Charter section 3-17(f)." Slip op. at 23-24.

Brief[11] . . . [that the Commission] made no effort, even when informed of the risks that it was taking by using the wrong population base, [sic] the Commission proceeded anyway - because of administrative convenience, because it was too difficult and time-consuming to do otherwise."

The fact remains, however, that Appellants did not expressly make a "lack of good faith and honesty" argument. Moreover, even if this court were to accept Appellants' contention that such an argument was "subsumed" in its assignment of error, it would not alter this court's conclusion that "[w]hat remains is Appellants' conclusory statement that the 'Commission's records do not reflect any evidence that justifies the [C]ommission's action to adopt a [r]edistricting [p]lan that has deviations that exceed the ideal mean by more than 10%.'" Slip op. at 24. Indeed, as County Appellees observe, the Commission's inclusion of the deviation charts in the reapportionment plan is "indicative of the good faith effort of the Commission to achieve equal representation by keeping the deviations at no more than five percent."[12] Hence, this point is without merit.

VI.

In their fifth argument, Appellants maintain that

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[11] The term "convenience" first appeared in the reply brief, not the opening brief as Appellants state, and it does not appear Appellants used the term "administrative convenience." See supra note 10.

[12] Using the total population base, the deviation percentage of each district does not exceed 5% and, therefore, does not exceed the 10% threshold.

"[a]lthough this Court states that [Appellants] did not assert that the County Reapportionment Commission's plan is invalid, if the plan is constitutionally defective, the plan cannot be valid." But the opinion, in addition to pointing out that Appellants did not argue that the use of the wrong population base alone invalidated the Commission's plan, also observed that "[e]ven if Appellants had argued that the plan was void for being based on the wrong population, . . . the language of Charter section 3-17(f)(4) would bring us back to the constitutional question." Slip op. at 15. Accordingly, the opinion proceeds to address the question of whether, "when nonresident military personnel, their dependents, and university students are excluded from the population base, 'deviations emerge in the [r]edestricting [p]lan that exceed constitutional limits.'" Id. Thus, the opinion is in agreement with Appellants' contention that if the plan was constitutionally defective, it would be invalid. A majority of this court did "not believe that that [was] the case, however." Id. Such matters, then, were not "overlooked" or "misapprehended."

VII.

Finally, Appellants argue that "[i]n the usual case, this Court would remand the case to the trial court for further proceedings[,]" but because "the trial judge is no longer sitting and the County Reapportionment Commission has been dissolved[,] . . . this Court should simply reverse the trial court's judgment below[, and u]pon such reversal, the parties may then apply to

this Court for further relief as the circumstances may warrant." In light of the disposition herein, these matters need not be addressed, and in any event, appear irrelevant to the decision.

VIII.

Therefore, based on the foregoing,

IT IS HEREBY ORDERED that the motion for reconsideration is granted as to the request to strike the reference to the Jacobson testimony, and, therefore, the paragraph beginning on line 12 from the top of page 22 of the opinion shall be amended by striking the words after "Commission" on line 12 through line 20 and striking the word "then" on line 21, leaving the sentence beginning on line 12 to read:

> For at the second meeting of the Commission, Commissioner Mark Van Pernis made a motion to "include all people": "[A]ll the people that the census counted is included because, whether they vote or not, or whether they're young or old, military or not, they all use county services, they all pay taxes in some form or shape and they all need representations."

The Clerk of the Court is directed to incorporate the foregoing changes in the original opinion and take all necessary steps to notify the publishing agencies of these changes.

IT IS FURTHER ORDERED that the motion is denied in all other respects.

Michael J. Matsukawa, on
the motion for
plaintiffs-appellants.

Patricia K. O'Toole,
Deputy Corporation Counsel,
County of Hawai'i, for
defendants-appellees.