

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROBERT ITO FARM, INC.; HAWAII ) CIVIL NO. 14-00511 BMK  
FARM BUREAU FEDERATION, )  
MAUI COUNTY; MOLOKAI ) MEMORANDUM IN SUPPORT OF  
CHAMBER OF COMMERCE; ) MOTION  
MONSANTO COMPANY; )  
AGRIGENETICS, INC.; )  
CONCERNED CITIZENS OF )  
MOLOKAI AND MAUI; FRIENDLY )  
ISLE AUTO PARTS & SUPPLIES, )  
INC.; NEW HORIZON )  
ENTERPRISES, INC. DBA MAKOA )  
TRUCKING AND SERVICES; and )  
HIKIOLA COOPERATIVE, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
COUNTY OF MAUI, )  
)  
Defendant. )  
\_\_\_\_\_ )

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... iii

I. INTRODUCTION..... 1

II. FACTUAL BACKGROUND..... 2

A. Movants Exercise The Voter Initiative Power To Place  
The Ordinance On The Ballot For The November 4, 2014  
Election..... 2

B. Maui Voters Approve The Ordinance Based On Critical  
Interests In Protecting Maui’s Natural Resources And  
Public Health..... 5

C. Movants File State Court Action To Declare The Ordinance  
Valid And To Ensure Its Proper Implementation..... 7

III. PROCEDURAL BACKGROUND..... 8

IV. MOVANTS’ APPLICATION TO INTERVENE SHOULD BE  
GRANTED..... 9

A. Movants Are Entitled To Intervene As Of Right..... 9

1. Movants’ Motion Is Timely..... 10

2. Movants Have Significantly Protectable Interests In  
The Enactment Of The Ordinance..... 11

a. Movants have significant protectable interests  
as the original proponents and drafters of the  
Ordinance..... 12

b. Movants have significant protectable interests as  
named Plaintiffs in a substantially similar  
previously filed State Court action regarding the  
legality of the same Ordinance..... 13

3. Disposition Of This Case In Plaintiffs’ Favor Will  
Impair Movants’ Interests..... 14

4. The County Does Not Adequately Represent Movants’  
Interests..... 15

B.	At A Minimum, Movants Are Entitled To Permissive Intervention.....	19
1.	Movants’ Interests Share Common Questions Of Law And Fact With Plaintiffs’ Claims.....	19
2.	Movants’ Motion Is Timely.....	20
3.	This Court Has An Independent Basis For Jurisdiction Over Movants’ Claims.....	20
V.	CONCLUSION.....	21

**TABLE OF AUTHORITIES**

**FEDERAL CASES**

Donnelly v. Glickman, 159 F.3d 405 (9th Cir. 1998).....19

Jackson v. Abercrombie, 282 F.R.D. 507 (D. Haw. 2012).....12, 14

Nw. Forest Res. Council v. Glickman, 82 F.3d 825  
(9th Cir. 1996).....10, 12

Perry v. Proposition 8 Official Proponents, 587 F.3d 947  
(9th Cir. 2009).....16

Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006).....10, 14

Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810  
(9th Cir. 2001).....11, 15

Syngenta Seeds, Inc. v. County of Kaua’i, 2014 U.S. Dist. LEXIS  
117820, 2014 WL 4216022 (D. Haw. Aug 25, 2014).....17

Trbovich v. United Mine Workers, 404 U.S. 528 (1972).....15

United States v. City of Los Angeles, 288 F.3d 391  
(9th Cir. 2002).....10

WildEarth Guardian v. U.S. Forest Serv., 573 F.3d 992  
(10th Cir. 2009) .....18

Wilderness Soc’y v. U.S. Forest Serv., 630 F.3d 1173  
(9th Cir. 2011).....9, 10, 11

**STATE CASES**

Nat’l Ass’n of Home Builders v. San Joaquin Valley Unified Air  
Pollution Dist., 2007 U.S. Dist. LEXIS 73292,  
2007 WL 2757995 (E.D. Cal. Sept. 20, 2007).....16

Pickup v. Brown, 2012 U.S. Dist. LEXIS 172027, 2012 WL 6024387  
(E.D. Cal. Dec. 4, 2012).....12

STATE STATUTES

Haw. Rev. Stat. § 46-1.5(13).....5

FEDERAL RULES

FRCP Rule 24.....passim

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Courts in the Ninth Circuit have long recognized the right of supporters of a law to intervene in legal challenges to the law. On November 4, 2014, Maui County voters passed into law the Ordinance, Maui County’s first-ever voter initiative attempt since the Charter of the County of Maui (2013) (the “Charter”) granted voters this initiative power in 1983. The Ordinance establishes a temporary moratorium on the growth, testing, and cultivation of GMOs until an industry funded and independently administered Environmental and Public Health Impacts Study analyzing the key environmental and health effects of GMO operations and practices is completed. The Ordinance gives Maui County residents, the environment, the public health, and Public Trust resources greater protection from potential irreparable harm resulting from GMO operations and practices. Plaintiffs in this case seek to invalidate the Ordinance.

Movants are entitled to intervene as of right. First, Movants’ application for intervention is timely. Second, Movants have significantly protectable interests in ensuring the Ordinance’s implementation. Movants drafted the Ordinance, vigorously supported and voted in favor of the Ordinance, and actively participated in the legislative process to ensure its passage. Furthermore, Movants are the Plaintiffs in a substantially related previously filed State Court

action seeking to declare the Ordinance valid and to have the Ordinance properly administered. Third, failure to allow Movants to intervene will significantly impair Movants' interests in ensuring the implementation of the Ordinance. Finally, the County does not share, and will not adequately represent, Movants' interests in defending the Ordinance's validity and ensuring its proper administration.

Alternatively, the Court should permit Movants to permissively intervene in this action. Common questions of law and fact exist between Movants' previously filed State Court action and this proceeding—the Ordinance's validity. The Court also has an independent basis for jurisdiction over Movants' claims, as Movants have asserted an interest in the challenged Ordinance through their dedicated outreach efforts to educate the community about the potentially harmful effects of GMO operations and practices, and by presenting defenses and arguments responding to Plaintiffs' claims. Accordingly, the Court should grant Movants' timely Motion to Intervene pursuant to FRCP Rule 24.

## II. FACTUAL BACKGROUND

### A. Movants Exercise The Voter Initiative Power To Place The Ordinance On The Ballot For The November 4, 2014 Election

Pursuant to Article 11 of the Charter, attached hereto as Exhibit B, the voters of Maui have the power to propose ordinances to the Maui County Council ("Council"). If the Council does not adopt a proposed ordinance, the voters may adopt the same proposed ordinance at the polls, which is known as the initiative

power. Charter § 11-1(1). Any five qualified voters may commence initiative proceedings by filing an affidavit with the County Clerk and setting out the full text of the proposed ordinance. Charter § 11-2. After the affidavit is filed, the County Clerk will issue petition blanks to the group of five qualified voters who commenced the initiative proceedings, known as the petitioner's committee. Id.

The petitioner's committee for the Ordinance at issue in this case consisted of the named individual Movants in this matter: Alika Atay, Lorrin Pang, Mark Sheehan, Bonnie Marsh, and Lei'ohu Ryder, citizens of Maui County who reside and work where GMO operations and practices take place. Savitt Dec. ¶ 5. On April 7, 2014, the petitioner's committee submitted the proposed Ordinance to the County Clerk. Id. at ¶ 6. The Ordinance addressed concerns regarding the immediate safety and long term effects of potentially hazardous health effects, contamination, loss of diversity, environmental, and other potentially harmful impacts from GMO operations and practices threatening Maui County's cultural heritage, agricultural economy, public health, environment, and Public Trust resources. Id. at ¶ 7.

Once a petition has been determined sufficient by the County Clerk, the Council is required to "promptly consider the proposed ordinance" within 60 days after the date that the petition is finally determined sufficient. Charter § 11-6(1). If the Council does not pass the ordinance as written, the County Clerk must



submit the proposed ordinance to the voters, and the voters must decide the outcome of the proposed ordinance at the next general election. Id.

On June 6, 2014, the County Clerk determined that the proposed Ordinance was sufficient. Savitt Dec. ¶ 8. On June 30, 2014 and July 1, 2014, the Policy and Intergovernmental Affairs Committee of the Council (“Committee”) heard public testimony on the Ordinance. Id. at ¶ 9. Movant SHAKA Movement’s Board of Directors, the five individually named Movants, and other supporters of the Ordinance maintained a strong presence for the entirety of the public hearings, showing their support and urging the Council to vote in favor of the Ordinance. Id. at ¶ 10. The Committee then determined that it would take no action on the Ordinance. As it was required to do, the County Clerk then submitted the Ordinance to the voters at the general election held on Tuesday, November 4, 2014. Id. at ¶ 11.

If a majority of the qualified electorate voting on the proposed ordinance vote in its favor, the proposed ordinance will be considered enacted upon certification of the election results. Charter § 11-7. Proposed ordinances that are enacted under the voter initiative power will be published and will take effect as prescribed for ordinances generally. Charter § 11-8.

B. Maui Voters Approve The Ordinance Based On Critical Interests In Protecting Maui's Natural Resources And Public Health

Under the Public Trust Doctrine, the State and the County are obligated to conserve and protect Hawaii's natural resources:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals, energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.

Haw. Const. art. XI, § 1. Similarly, Hawai'i Revised Statutes § 46-1.5(13) grants county governments "the power to enact ordinances deemed necessary to protect health, life, and property . . . of the county and its inhabitants . . ." Haw. Rev. Stat. § 46-1.5(13). Moreover, Public Law 103-150 (the "Apology Resolution"), a Joint Resolution of the United States Congress adopted in 1993, recognizes:

[T]he health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land; . . . the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people; . . . the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions[.]

S.J. Res. 19, 103d Cong. (1993).

The Ordinance was advanced due to the rapid and unregulated growth in the testing, cultivation, and development of GMOs and related test crop

experimentation, endangering the stability and growth of Maui County's public health, environment, and Public Trust resources. Savitt Dec. ¶ 12. The Apology Resolution recognizes the magnitude and importance of the issue of land, health, and well-being of Native Hawaiians. The Ordinance's validity and enforceability is not a regulatory issue, but rather is an area of human activity with potentially devastating irreversible harms on the land, health, and well-being of all Hawai'i residents if GMO operations and practices continue to go unregulated.

In a grassroots effort to emphasize the potential harmful impacts of GMO operations and practices, Movants devoted what limited resources they had to educate the community on the importance of the Ordinance in light of the Public Trust Doctrine and their interests in preserving Maui's natural resources. Savitt Dec. ¶ 13. These efforts entailed actively reaching out to Maui County residents through community events featuring various speakers, two marches, door-to-door campaigning, radio and television advertising, educational mailings, the use of social media networks, and volunteers working thousands of hours in order to raise awareness and support for the Ordinance. Id. at ¶ 14.

Maui County Mayor Alan Arakawa made statements before the Ordinance's approval, stating that the Ordinance is impractical and that it would be

almost impossible to administer.<sup>1</sup> Mayor Arakawa also made opinionated misstatements concerning the Ordinance, stating that the Ordinance “would be a nightmare in this community” and that the County would “have to create a ‘papaya police’ . . . going through virtually everybody’s backyard.”<sup>2</sup> The Mayor’s public statements underscored his strong desire to discourage support of the Ordinance. Notwithstanding the County’s dismissive and inaccurate statements regarding the Ordinance and aggressive campaigning of pro-GMO agribusiness companies such as Monsanto Company (“Monsanto”) and Dow AgroSciences LLC (“Dow”), on November 4, 2014, Maui County voters passed the Ordinance into law.

C. Movants File State Court Action To Declare The Ordinance Valid And To Ensure Its Proper Implementation

---

On November 12, 2014, in order to protect their significant interests in ensuring the implementation of the Ordinance, Movants filed a Complaint for Declaratory Relief in Civil No. 14-1-0638(2) in the Circuit Court of the Second Circuit of the State of Hawai‘i (“State Court action”). The County of Maui, Monsanto, and Dow are named Defendants in the State Court action. See Exhibit C (“State Court Complaint”). Movants initiated the State Court action to assure that the Ordinance would be properly administered, that Movants be permitted to

---

<sup>1</sup> *Arakawa: GMO initiative would be ‘impractical’*, The Maui News, <http://mauinews.com/page/content.detail/id/590420/Arakawa--GMO-initiative-would-be--impractical-.html?nav=10> (October 3, 2014). A copy of the article is attached hereto as Exhibit “D.”

<sup>2</sup> *Lawsuit planned after Maui County voters approve temporary GMO ban*, Hawaii News Now, <http://www.hawaiinewsnow.com/story/27299202/lawsuit-planned-after-maui-county-voters-approve-temporary-gmo-ban> (November 5, 2014). A copy of the article is attached hereto as Exhibit “E.”

have a role in the process given their unique standing, and that the Ordinance be declared valid and legal, and not otherwise preempted by State law.

### III. PROCEDURAL BACKGROUND

On Thursday, November 13, 2014, Plaintiffs commenced this lawsuit in federal court after Movants had already filed their State Court action, seeking to address the same subject matter as the State Court action. See Comp., CM/ECF No. 1. One of the principal Plaintiffs in this action, Monsanto, is also a Defendant in the State Court action. Id. The County is a Defendant in both actions. Id. The Complaint in this case seeks to invalidate the Ordinance in federal court, notwithstanding that these issues are already pending in State Court. Id.

On Thursday, November 13, 2014, Plaintiffs also filed a Motion for Temporary Restraining Order and Preliminary Injunction (“Motion for TRO”), seeking to enjoin the County from enacting and enforcing the law. See Mot. for TRO and Prelim. Inj., CM/ECF No. 5. Four days later, on Monday, November 17, 2014, the parties entered into a Stipulation Regarding County of Maui Ordinance (“Stipulation”), stipulating that the County is enjoined from “enacting, effecting, implementing, executing, applying, enforcing, or otherwise acting upon” the Ordinance until March 31, 2015. Order, CM/ECF No. 26. Moreover, the County agreed to have the same Magistrate Judge who has previously ruled against other

GMO regulations in Hawai‘i decide this case, which further demonstrates the County’s unwillingness to actively defend the Ordinance.

IV. MOVANTS’ APPLICATION TO INTERVENE SHOULD BE GRANTED

As set forth below, Movants have met all four requirements warranting intervention as of right pursuant to FRCP Rule 24(a)(2). Alternatively, Movants also meet the requirements for permissive intervention under FRCP Rule 24(b). Accordingly, this Court should grant Movants’ timely Motion to Intervene.

A. Movants Are Entitled To Intervene As Of Right

Pursuant to FRCP Rule 24(a)(2), Movants are entitled to intervene as of right. FRCP Rule 24(a) provides:

*Intervention of Right.* On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a).<sup>3</sup> The Ninth Circuit Court of Appeals “construe[s] the Rule broadly in favor of proposed intervenors” in an analysis that is guided by “practical and equitable considerations.” Wilderness Soc’y v. U.S. Forest Serv., 630 F.3d 1173, 1179 (9th Cir. 2011) (citations and internal quotations omitted). The Ninth Circuit’s “liberal policy in favor of intervention serves both efficient resolution of

---

<sup>3</sup> Pursuant to FRCP Rule 24(c), attached hereto as Exhibit “A” is a copy of Movants’ Proposed Answer.

issues and broadened access to the courts.” Id. (citations and internal quotations omitted).

The Ninth Circuit utilizes a four-part test to determine whether intervention as a matter of right is warranted:

(1) the motion must be timely; (2) the applicant must have a “significantly protectable” interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant’s interest must be inadequately represented by the parties to the action.

Id. at 1177 (citations and quotations omitted). “[T]he requirements for intervention are broadly interpreted in favor of intervention.” Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006). “[A]llowing parties with a *practical* interest in the outcome of [the case] to intervene” reduces and eliminates “future litigation involving related issues[,]” and enables “an additional interested party to express its views before the court.” United States v. City of Los Angeles, 288 F.3d 391, 397-98 (9th Cir. 2002) (citations and internal quotations omitted). Movants satisfy each of the four requirements for intervention as of right.

1. Movants’ Motion Is Timely

The Ninth Circuit evaluates the timeliness of a motion to intervene under three criteria: (1) the stage of the proceedings; (2) potential prejudice to other parties; and (3) the reason for any delay in moving to intervene. See Nw. Forest Res. Council v. Glickman, 82 F.3d 825, 836-37 (9th Cir. 1996).

This case is still in its initial stage. On Thursday, November 13, 2014, Plaintiffs commenced the present lawsuit in federal court. Comp., CM/ECF No. 1. This Motion is being filed eight days later on Friday, November 21, 2014. To eliminate any potential delay or prejudice to existing parties, Movants are submitting a Proposed Answer concurrently with this Motion. Thus, no prejudice, delay, or inefficiency will result from allowing Movants to intervene at this time.

2. Movants Have Significantly Protectable Interests In The Enactment Of The Ordinance

A party has a sufficient interest for intervention as of right if “it will suffer a practical impairment of its interests as a result of the pending litigation.” Wilderness Soc’y, 630 F.3d at 1179 (citations omitted). No specific legal or equitable interest is required; an interest is “significantly protectable” so long as it is “protectable under some law” and “there is a relationship between the legally protected interest and the [plaintiffs’] claims.” Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 818 (9th Cir. 2001) (citations omitted). Movants not only have unique personal interests in the protections guaranteed by the Ordinance, but they also have pending litigation regarding the same subject matter presented before this Court in the State Court action.



- a. Movants have significant protectable interests as the original proponents and drafters of the Ordinance

Movants' drafting and placement of the Ordinance on the ballot, active participation in the legislative process, and vigorous support of the Ordinance's approval are more than sufficient to satisfy the "significantly protectable interest" prong for intervention as of right. The Ninth Circuit has held that public interests groups are entitled to intervene as a matter of right where they were directly involved in the enactment of the law out of which the litigation arose. Nw. Forest Res. Council, 82 F.3d at 837-38; see also Jackson v. Abercrombie, 282 F.R.D. 507, 514-16 (D. Haw. 2012) (holding that nonprofit organization that actively supported the ratification of a constitutional amendment, devoted time and energy to public outreach and education regarding the amendment, and encouraged voters to vote in support of the amendment had demonstrated a significantly protectable interest warranting intervention as of right under FRCP Rule 24(a)); Pickup v. Brown, 2012 U.S. Dist. LEXIS 172027, 2012 WL 6024387, at \*6 (E.D. Cal. Dec. 4, 2012) (finding public interest group that sponsored and lobbied for challenged bill prior to its passage has a significantly protectable interest in the case).

Movants also actively participated in support of the Ordinance during the legislative process in order to get the Ordinance on the ballot. See Savitt Dec. ¶ 15. SHAKA's Board of Directors, the five individually named Movants, and



are already pending in the State Court action. Moreover, the parties in this action entered into a Stipulation, enjoining the County from “enacting, effecting, implementing, executing, applying, enforcing, or otherwise acting upon” the Ordinance until March 31, 2015. See Order, CM/ECF No. 26. As named Plaintiffs in the State Court action, Movants have significant protectable interests in confirming the legality of the Ordinance. Therefore, Movants have satisfied the second prong for intervention as of right under FRCP Rule 24(a).

3. Disposition Of This Case In Plaintiffs’ Favor Will Impair Movants’ Interests

Under the third prong of the FRCP Rule 24(a) intervention test, an applicant for intervention as of right must be “so situated that disposing of the action may as a practical matter impair or impeded the movant’s ability to protect its interest.” Prete, 438 F.3d at 954 n.7 (quoting FRCP 24(a)(2)). “[A]fter determining that the applicant has a protectable interest, courts have ‘little difficulty concluding’ that the disposition of the case may affect such interest.” Jackson, 282 F.R.D. at 517 (internal quotations omitted). If, in this case, the Court were to rule in Plaintiffs’ favor, it would severely impair Movants’ ability to protect its interests in the enforcement of the Ordinance.

Movants have a substantial interest in the outcome of this litigation, as they were (1) the drafters who successfully placed the Ordinance on the ballot; (2) supporters of the Ordinance despite significant opposition; (3) residents dedicated

to protecting public health and the environment under the Public Trust Doctrine; (4) parties who are seeking the converse ruling in the State Court action to the relief requested in Plaintiffs' Complaint; and (5) representatives of the majority of Maui County residents who voted for the Ordinance to be adopted as law.

Plaintiffs have requested that this Court issue a declaratory judgment that the Ordinance is illegal and invalid and grant injunctive relief enjoining the County from enforcing the provisions of the Ordinance. See Comp., CM/ECF No. 1. The Court's resolution of the Ordinance's legality will directly affect Movants' ability to protect their health and property, and their interest in insulating the public health and environment from the detrimental impacts of GMO operations and practices. Moreover, because the State Court action regarding the validity of the Ordinance is still pending, this Court's disposition of this case will impair Movants' interests, because the relief requested in Plaintiffs' Complaint is directly in conflict with the relief that Movants are currently seeking in the State Court action.

4. The County Does Not Adequately Represent Movants' Interests

The burden of showing inadequate representation is minimal, and the movant need only show that representation of its interests by existing parties "may be' inadequate." Sw. Ctr. for Biological Diversity, 268 F.3d at 823 (quoting Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972)). A court considers the following factors in assessing adequate representation:

(1) whether the interest of a present party is such that it will *undoubtedly* make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

Perry v. Proposition 8 Official Proponents, 587 F.3d 947, 952 (9th Cir. 2009)

(emphasis added) (citations omitted). Although a general presumption exists that the government adequately represents the interests of the public at large, this presumption is overcome where the proposed intervenors have "more narrow, parochial interests" than the existing parties. Nat'l Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Dist., 2007 U.S. Dist. LEXIS 73292, at \*11, 2007 WL 2757995, at \*4 (E.D. Cal. Sept. 21, 2007). Movants have met their burden of demonstrating the County's inadequate representation.

First, the County's actions and statements preceding and following the approval of the Ordinance make plain that the County does not—and is unlikely to—adequately represent Movants' interests in defending the Ordinance's validity. From the beginning, Mayor Arakawa made negative statements before the Ordinance's approval, indicating a reluctance or unwillingness to support the Ordinance.<sup>4</sup> Mayor Arakawa also made opinionated misstatements concerning the Ordinance, stating that it "would be a nightmare in this community" and that the

---

<sup>4</sup> *Arakawa: GMO initiative would be 'impractical'*, The Maui News, October 3, 2014, <http://mauinews.com/page/content.detail/id/590420/Arakawa--GMO-initiative-would-be--impractical-.html?nav=10> A copy of the article is attached hereto as Exhibit "D."

County would “have to create a ‘papaya police’ . . . going through virtually everybody’s backyard.”<sup>5</sup>

After the Ordinance was passed, on November 17, 2014, the County entered into a Stipulation with Plaintiffs to prohibit the enactment and enforcement of the Ordinance. See Order, CM/ECF No. 26. Moreover, Plaintiffs admittedly brought this case in federal court in an attempt to rely on the Court’s decision in Syngenta Seeds, Inc. v. County of Kaua’i, 2014 U.S. Dist. LEXIS 117820, 2014 WL 4216022 (D. Haw. Aug 25, 2014) (“Syngenta Seeds”). See Comp., CM/ECF No. 1, p. 3. Rather than allowing a different Judge to decide the case, or moving to dismiss the case to state court given the pending State Court action in which the County is a named Defendant, the County stipulated to Plaintiffs’ position and agreed to have Magistrate Judge Kurren, who decided Syngenta Seeds, hear this case.

Movants have no confidence that the County’s defense of this lawsuit will vigorously assert every appropriate argument, where the Mayor, the County’s chief executive, has already declared the ordinance indefensible, and where the County has already submitted to Plaintiffs’ arguments in this case by voluntarily agreeing not to enforce the Ordinance and stipulating to have the case heard in

---

<sup>5</sup> *Lawsuit planned after Maui County voters approve temporary GMO ban*, Hawaii News Now, <http://www.hawaiinewsnow.com/story/27299202/lawsuit-planned-after-maui-county-voters-approve-temporary-gmo-ban> (November 5, 2014). A copy of the article is attached hereto as Exhibit “E.”

front of a Magistrate Judge who has previously ruled against GMO regulations in Hawai'i.

Second, Movants, as citizens of Maui County who reside and work where GMO operations and practices take place, have interests that are narrower and far more personal than the County's general accountability for the varied business and economic interests of Maui County, so the County cannot make all of Movants' arguments. Movants and the County do not even share a general interest in upholding the validity of the Ordinance. Thus, Movants' personal interests are sufficiently narrower and distinct from the County's general interests to overcome the presumption of adequate representation.<sup>6</sup>

Third, Movants offer unique elements to the present litigation not shared with, and in fact neglected by, the County. Defending the Ordinance to protect the public health, environment, and Public Trust resources will require knowledge of the public health and potential environmental harms and negative impacts associated with GMO operations and practices. As the drafters of the Ordinance, Movants provide expertise regarding such harms and impacts specifically in Maui County and generally. Movants' familiarity with the Ordinance ensures that they will advance a more comprehensive and better informed analysis than the County is willing or capable of offering.

---

<sup>6</sup> See WildEarth Guardian v. U.S. Forest Serv., 573 F.3d 992, 996 (10th Cir. 2009) (“[T]he government’s representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public merely because both entities occupy the same posture in the litigation.”).

In sum, all four factors for determining adequacy of representation of existing parties weigh in favor of Movants. Accordingly, Movants have satisfied all of the requirements for intervention as of right pursuant to FRCP Rule 24(a), and this Court should grant Movants' Motion to Intervene.

B. At A Minimum, Movants Are Entitled To Permissive Intervention

Movants also satisfy the requirements for permissive intervention under FRCP Rule 24(b). The Ninth Circuit instructs that permissive intervention should be granted so long as an applicant establishes that: "(1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant's claims."

Donnelly v. Glickman, 159 F.3d 405, 412 (9th Cir. 1998) (citations omitted).

Movants meet all three criteria for permissive intervention.

1. Movants' Interests Share Common Questions Of Law And Fact With Plaintiffs' Claims

First, Movants' arguments in defense of the Ordinance's legality address common questions of law and fact raised by Plaintiffs in this lawsuit.

The phrase "common question of law or fact" should be given its plain meaning and read in the disjunctive. A showing of either a question of law or a question of fact in common between the main action and the applicant's claim or defense is all that is needed to vest judicial discretion to grant permissive intervention.

Moore's Federal Practice, § 24.11 at 24-61 (emphasis in original). In this case, there is no dispute that common questions of law or fact exist between Plaintiffs'



claims against, and Movants' arguments in defense of, the legality of the Ordinance. Plaintiffs contend that the Ordinance is illegal and invalid. See Comp., CM/ECF No. 1. Movants contend that it is lawful and enforceable and have asserted so in their State Court action. See Exhibit B. Accordingly, the crux of Plaintiffs' lawsuit contains questions of law and fact that are common to Movants' arguments in defense of the very same Ordinance.

2. Movants' Motion Is Timely

Next, Movants' Motion to Intervene is timely. As discussed in the previous section, since the present action has yet to proceed past the initial stages, intervention by Movants will not unduly delay or prejudice the adjudication of the rights of Plaintiffs or the County. To the contrary, Movants' involvement will promote judicial economy and avoid duplicative litigation and inconsistent rulings.

3. This Court Has An Independent Basis For Jurisdiction Over Movants' Claims

---

Finally, Movants, through their active participation in the passage of the Ordinance and dedicated efforts to educate the Maui community about the potentially harmful effects of GMO operations and practices, have asserted an interest in the challenged litigation to establish an independent basis for jurisdiction for the purpose of permissive intervention. Thus, should this Court find that Movants are not entitled to intervention as of right, this Court should nonetheless allow Movants to intervene permissively under FRCP Rule 24(b).

V. CONCLUSION

Based on the foregoing, Movants respectfully request that this Court permit Movants to intervene in this matter pursuant to FRCP Rule 24.

DATED: Honolulu, Hawai'i, November 21, 2014.

/s/ Michael C. Carroll

KARIN L. HOLMA  
MICHAEL C. CARROLL  
SHARON A. LIM

Attorneys for Movants  
ALIKA ATAY, LORRIN PANG, MARK  
SHEEHAN, BONNIE MARSH, LEI'OHU  
RYDER, AND SHAKA MOVEMENT