IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ALIKA ATAY; LORRIN PANG; MARK SHEEHAN; BONNIE MARSH; LEI'OHU RYDER; and SHAKA MOVEMENT, Plaintiffs, vs. COUNTY OF MAUI; MONSANTO COMPANY; DOW AGROSCIENCES LLC; ROBERT ITO FARM, INC.; HAWAII FARM BUREAU FEDERATION, MAUI COUNTY; MOLOKAI CHAMBER OF COMMERCE; AGRIGENETICS, INC.; CONCERNED CITIZENS OF MOLOKAI AND MAUI; FRIENDLY ISLE AUTO PARTS & SUPPLIES, INC.; NEW HORIZON ENTERPRISES, INC. DBA MAKOA TRUCKING AND SERVICES; HIKIOLA COOPERATIVE; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; and DOE GOVERNMENTAL ENTITIES 1-10, Defendants.	CIVIL NO. 14-00582 SOM-BMK MEMORANDUM IN SUPPORT OF MOTION

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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

This case involves a dispute over the validity of a local ordinance (the "Ordinance"), attached hereto as Exhibit "A," which seeks to place a temporary moratorium on the growth, testing, and cultivation of genetically engineered organisms ("GMOs") within the County of Maui. On November 12, 2014, Plaintiffs, the original drafters and proponents of the Ordinance, initiated a lawsuit in State Court, seeking a declaratory ruling that the Ordinance is not preempted by state law and that the County should properly implement the law. One day later, in an attempt to forum shop, pro-GMO agribusinesses and companies (collectively, "Monsanto Defendants") initiated a Federal Court action against the County of Maui ("County"), seeking to enjoin certification of the election results and implementation of the Ordinance.

Despite Plaintiffs' having properly filed their action in State Court, Monsanto Defendants, in collaboration with the County, now attempt to remove this case to Federal Court in the hopes of obtaining a more favorable outcome. This Court should abstain from adjudicating this action involving important state issues and remand the case to State Court, on the grounds that: (1) Plaintiffs' First Amended Complaint ("Complaint") presents solely issues of state law, and therefore this Court has no subject matter jurisdiction; (2) the narrow exception for

"complete preemption" does not apply here, as Congress has not expressed an intent to convert any of the state law claims into federal question claims; and (3) even if this Court determines that it has jurisdiction pursuant to the Federal Declaratory Judgment Act, the Court's exercise of jurisdiction is purely discretionary, and such discretion should not be exercised under the Brillhart factors outlined by the United States Supreme Court ("Supreme Court"),[1] and the Dizol factors outlined by the Ninth Circuit Court of Appeals ("Ninth Circuit").[2]

First, removal is inappropriate in this case because there are no federal claims present on the face of Plaintiffs' well-pleaded Complaint. Defendants' sole basis for removal stems from its assertion that this Court has federal question jurisdiction over this matter. Plaintiffs' Complaint, however, only alleges state claims. Moreover, Defendants' basis for asserting federal question jurisdiction lies in their argument that the Ordinance is preempted by federal law. Federal preemption, however, is merely an affirmative defense, and a defense of federal preemption alone does not provide a basis for federal question jurisdiction. See Caterpillar, Inc. v. Williams, 482 U.S. 386, 392-93 (1987).

Even more, the "complete preemption" doctrine, which is an exception to the well-pleaded complaint rule, is inapplicable and does not create federal question jurisdiction in this case. The Supreme Court has articulated only

[1] Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491, 494 (1942).
[2] Gov't Emples. Ins. Co. v. Dizol, 133 F.3d 1220, 1225 (9th Cir. 1998).

three discrete circumstances in which "complete preemption" applies. The claims raised in Plaintiffs' Complaint do not fall under any of these three categories. Moreover, Congress has not expressed an intent to convert any of the state law claims in this case to federal question claims. Monsanto Defendants take the inconsistent position that state law also preempts the Ordinance. Thus, based on the well-pleaded complaint rule and the "complete preemption" exception to the rule, this Court lacks jurisdiction to proceed with this action.

Despite the foregoing arguments, should this Court determine that it has federal question jurisdiction over this matter, such jurisdiction is purely discretionary, and the Court should exercise its discretion to remand the case based upon the Brillhart and Dizol factors. There are substantial and compelling interests in having these issues resolved in State Court under comity and abstention principles. A State Court is in the best position to determine the validity of the Ordinance based on the Hawaii Constitution and Hawaii state law. Accordingly, the Court should grant Plaintiffs' Motion to Remand and allow these issues to be decided in State Court, the original forum where these issues were properly raised.

II. BACKGROUND

Pursuant to Article 11 of the Charter of the County of Maui, the five individually named Plaintiffs exercised the voter initiative power by coordinating the necessary signatures to place the Ordinance on the November 4, 2014 ballot.

Declaration of Barbara E. Savitt ("Savitt Dec."), ¶ 4. Plaintiffs actively sought to educate the Maui community on the importance of the Ordinance. Id. at ¶ 5. Notwithstanding aggressive campaigning against the Ordinance, Maui voters passed the Ordinance into law on November 4, 2014. Id. at ¶ 6.

On November 12, 2014, Plaintiffs 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 Hawaii (the "State Court action") against the County, Monsanto Company, and Dow Agrosciences LLC. See Exhibit "B." Plaintiffs initiated the State Court action to assure that the Ordinance would be properly and timely implemented, that Plaintiffs would be permitted to have a role in the process given their unique relationship to the Ordinance, and that the Ordinance would be declared valid and legal and not otherwise preempted by state law.

One day later, Monsanto Defendants commenced a lawsuit in the United States District Court for the District of Hawaii in Civil No. 14-00511 SOM-BMK (the "Federal Court action"). See Civ. 14-00511, CM/ECF No. 1. The Federal Court action seeks to invalidate the Ordinance, notwithstanding that this issue is already pending in the State Court action. See id. Four days after the Federal Court action was filed, Monsanto Defendants and the County entered into a stipulation, agreeing to enjoin the certification and enactment of the Ordinance until March 31, 2015. Id. at CM/ECF No. 26. The County entered into this

agreement without the Court hearing any evidence of harm to Monsanto Defendants. As a result, the Ordinance has not been certified, and the necessary protections to Maui's environment, public health, and natural resources have been compromised.

On December 10, 2014, Plaintiffs filed their First Amended Complaint for Declaratory and Injunctive Relief in the State Court action, naming Monsanto Defendants as additional parties. See Exhibit "C." The Complaint contains, in relevant part, the following causes of action: (1) declaratory relief to establish the enforceability of the Ordinance; (2) declaratory relief regarding the proper implementation of the Ordinance; and (3) injunctive relief regarding certification of election results and implementation of the Ordinance. See id.

On December 10, 2014, Plaintiffs filed a Motion for Preliminary Injunction in the State Court action, requesting that the Court compel the County to certify the election results and to implement the Ordinance. See Carroll Dec., ¶ 5. The Court set an evidentiary hearing on the Motion for Preliminary Injunction for January 12, 2015. See id. at ¶ 6.

On November 21, 2014, Plaintiffs filed a Motion to Intervene as defendants in the Federal Court action; on December 15, 2014, the Court granted Plaintiffs' intervention, finding that Plaintiffs had significantly protectable interests

that would be impaired should the Ordinance be invalidated. Civ. 14-00511, CM/ECF No. 63.

Despite the impending evidentiary hearing in the State Court action, Defendants filed a Notice of Removal on December 30, 2014. CM/ECF No. 1. Defendants argue that this Court has federal question jurisdiction because Monsanto Defendants have initiated the Federal Court action which seeks "to establish the invalidity of the Ordinance under federal law." Id. at ¶ 18. The Federal Court action, however, is a "reactive declaratory judgment action," which occurs when a party sues in federal court when there is a pending state court case presenting identical issues.[3] This type of "reactive declaratory judgment action" is strongly discouraged by the Ninth Circuit.[4] In actuality, Defendants' claim of federal preemption is merely an affirmative defense to Plaintiffs' State Court claims. Tellingly, Defendants assert federal preemption as a defense in their Answer. CM/ECF No. 9.

III. LEGAL STANDARD

A motion to remand may be brought to challenge the removal of an action from state to federal court. 28 U.S.C. § 1447(c). Removal of a civil action from state court to the appropriate federal district court is permissible only if the federal district court has original jurisdiction over the action. 28 U.S.C. § 1441.

[3] Gemini Ins. Co. v. Clever Constr., Inc., 2009 U.S. Dist. LEXIS 97768, 22 (D. Haw. Oct. 21, 2009).
[4] Gov't Emples. Ins. Co. v. Dizol, 133 F.3d 1220, 1225 (9th Cir. 1998); see also Catholic Foreign Mission Soc'y of Am., Inc. v. Arrowood Indem. Co., 2014 U.S. Dist. LEXIS 178307, *28 (D. Haw. Dec. 29, 2014).

Federal district courts have original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

There is a "strong presumption" against removal in the Ninth Circuit. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (internal citations omitted). This strict construction "against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." Id. If there is any doubt as to the right of removal, federal jurisdiction must be rejected, because it is well established that the plaintiff is "master of his complaint" and can avoid federal jurisdiction by solely pleading state law claims. Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075 (9th Cir. 2005).

IV. THE COURT DOES NOT HAVE FEDERAL QUESTION JURISDICTION

"The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Balcorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102, 1106 (9th Cir. 2000) (citing Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987)). Federal jurisdiction cannot be based upon actual or anticipated defenses or counterclaims. K2 Am. Corp. v. Roland Oil & Gas, 653 F.3d 1024, 1029 (9th Cir. 2011) (citing Vaden v. Discover Bank, 556 U.S. 49, 60 (2009)). As the Supreme Court has recognized, "it is now settled law that a case may not be

removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." Caterpillar, 482 U.S. at 393. "Because federal preemption is an affirmative defense, it does not provide a basis for removal jurisdiction unless there is what is deemed 'complete preemption.'" Coyle v. O'Rourke, 2015 U.S. Dist. LEXIS 585, *13 (C.D. Cal. Jan. 5, 2015).

The "complete preemption" doctrine, an exception to the well-pleaded complaint rule, exists only where federal law is so dominant in a specific field that it transforms ordinary state law claims into federal claims for purposes of removal jurisdiction. See Caterpillar, 482 U.S. at 393. "Complete preemption" only arises in "extraordinary" situations. Wayne v. DHL Worldwide Express, 294 F.3d 1179, 1183-84 (9th Cir. 2002) (citations omitted). "The test is whether Congress clearly manifested an intent to convert state law claims into federal-question claims." Id. at 1184. The Supreme Court has only identified three federal statutes to support a finding of "complete preemption": (1) Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (concerning collective bargaining agreements); (2) Section 502(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a) (concerning violations of ERISA); and (3) Sections 85 and 86 of the National Bank Act, 12 U.S.C. §§ 85-86 (concerning usury laws against

national banks). See Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6-11 (2003). In each one of these exceptions, Congress expressly created federal jurisdiction for the claims and the remedies. Id. See 29 U.S.C. § 185(a) (suits for violation of contracts between an employer and a labor organization may be brought in any U.S. District Court without respect to amount in controversy or citizenship of the parties); 29 U.S.C. § 1132(a) and (f) (suits under ERISA may be brought in any U.S. District Court without respect to amount in controversy or citizenship of the parties); 12 U.S.C. §§ 85 and 86 (creating an exclusive cause of action for usury against a national bank). If the claims asserted in a plaintiff's well-pleaded complaint are not deemed to be completely preempted and do not otherwise support removal under 28 U.S.C. § 1441, there is no basis for federal jurisdiction.

In this case, pursuant to the well-pleaded complaint rule, there are no federal questions present on the face of Plaintiffs' Complaint. Plaintiffs' Complaint asserts only state law causes of action regarding the implementation of a county law. Defendants' federal preemption defense appears in its Answer and is the basis for Defendants' assertion that the Court has federal question jurisdiction. CM/ECF No. 9. Because federal preemption is an affirmative defense, it does not provide a proper basis for removal jurisdiction unless there is "complete preemption." See Marin Gen. Hosp. v. Modesto & Empire Traction Co., 581 F.3d 941, 945 (9th Cir. 2009).

The mere possibility that federal law may defensively preempt Plaintiffs' state law claims is insufficient to warrant federal jurisdiction. Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d 938, 947 (9th Cir. 2014). Thus, this Court is obligated to decline jurisdiction over Plaintiffs' Complaint and remand to State Court. Id. After remand, Defendants are free to assert their defense of federal preemption in the State Court action. Id. The State Court's interpretation of federal law and judgment on Defendants' federal preemption defense would be reviewable by the Hawaii appellate courts. Id. Therefore, because Plaintiffs' Complaint does not allege any federal claims on its face, and because the purported "federal question" is merely a part of Defendants' defense, this case was improperly removed.

Moreover, the "complete preemption" doctrine is inapplicable and does not create federal question jurisdiction in this case. Aside from the three distinct federal statutes explicitly outlined by the Supreme Court, no other areas—including the claims raised in Plaintiffs' Complaint—fall within this extraordinarily narrow exception to the well-pleaded complaint rule. Monsanto Defendants take the position that the Ordinance is additionally preempted by state law. This position negates any potential "complete preemption" argument, as it acknowledges Monsanto's position on the entanglement of state law issues in resolving this matter. In fact, Monsanto Defendants' first and principal argument

in their Motion for Partial Summary Judgment in the Federal Court action is that the Ordinance is preempted by state law, not federal law. See Civ. 14-00511, CM/ECF No. 70. This Court has already held that the "Federal Coordinated Framework" did not expressly or implicitly preempt the Kauai Ordinance's GMO notification provisions, thereby defeating any argument that "complete preemption" would apply. See Syngenta Seeds, Inc. v. County of Kauai, 2014 U.S. Dist. LEXIS 117820, *36-*41. Because the defense of federal preemption does not create federal question jurisdiction unless there is "complete preemption," and because no other jurisdictional basis was asserted supporting removal, federal jurisdiction is improper in this matter, and the case should be remanded.

V. EVEN ASSUMING THE COURT HAS JURISDICTION, THE COURT'S EXERCISE OF JURISDICTION IS PURELY DISCRETIONARY

Even if this Court determines that it has federal question jurisdiction, the Court's exercise of jurisdiction over the matter is discretionary. Gov't Emples, Ins. Co. v. Dizol, 133 F.3d 1220, 1222-23 (9th Cir. 1998). The case law cited by Defendants in their Notice of Removal does not stand for the proposition of removal jurisdiction, but rather applies to cases in which a plaintiff has initiated a declaratory judgment action in federal court pursuant to the Federal Declaratory Judgment Act, and there has been a challenge to the federal court's subject matter jurisdiction, either by the court itself or by the defendant(s). See Public Service Com. v. Wycoff Co., 344 U.S. 237, 248 (1952); see also Mobil Oil Corp. v. City of

Long Beach, 772 F.2d 534, 539 (9th Cir. 1985); Janakes v. United States Postal Serv., 768 F.2d 1091 (9th Cir. 1985).

The procedural posture and issues in this case are vastly different from those outlined in the cases cited by Defendants. Plaintiffs filed state law claims in the State Court action, and Defendants removed those claims to Federal Court based on Defendants' federal preemption defense. Plaintiffs now challenge Defendants' improper removal of this case. Moreover, Defendants failed to cite any Ninth Circuit precedent demonstrating that the "reversal" of roles applies to actions for declaratory relief originating in State Court. Thus, Defendants' reliance on these cases is misleading, improper, and inapplicable. For the reasons set forth below, the Court should instead apply the Brillhart and Dizol factors, which weigh in favor of remanding this action to State Court.

If the Court finds that it has subject matter jurisdiction, the Court would need to exercise its jurisdiction pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(a) (the "Act").[5] Under the Act, federal courts "may declare the rights and other legal relations of any interested party seeking such declaration[.]" Id. First, the lawsuit must fulfill constitutional and statutory jurisdictional prerequisites. Dizol, 133 F.3d at 1222-23; see also Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 672 (1950). Even if the lawsuit passes

[5] The Act does not create jurisdiction in federal courts, but rather creates the only cause of action for a declaratory judgment action where federal question jurisdiction is available.

constitutional and statutory muster, the federal courts still have the discretion to refuse to exercise jurisdiction over a request for declaratory relief. Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995); see also Dizol, 133 F.3d at 1222-23.

A federal district court has "unique and substantial discretion in deciding whether to declare the rights of litigants[,]" Wilton, 515 U.S. at 286, but is "under no compulsion to exercise that jurisdiction." Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491, 494 (1942); see also Dizol, 133 F.3d at 1223. When determining actions for declaratory judgment, "the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." Snodgrass v. Provident Life and Acc. Ins. Co., 147 F.3d 1163, 1166 (9th Cir. 1998) (citations and footnote omitted).

As previously analyzed in Section IV of this Motion, the Court does not have statutory jurisdiction over this lawsuit, as there is no federal question jurisdiction based on the well-pleaded complaint rule and the applicable "complete preemption" doctrine. Even if the Court were to find that federal jurisdiction exists, however, the Court's discretion to exercise jurisdiction based on the Brillhart and Dizol factors favor remand to State Court.

A. The *Brillhart* Factors Favor Remand

In considering whether to exercise jurisdiction over a declaratory judgment action, the Ninth Circuit has adopted the factors set forth in Brillhart v.

Excess Ins. Co. of America., 316 U.S. 491, 494 (1942). See Dizol, 133 F.3d at 1220; see also Catholic Foreign Mission Soc'y of Am., Inc. v. Arrowood Indem. Co., 2014 U.S. Dist. LEXIS 178307, *3-*4 (D. Haw. Dec. 30, 2014) ("[T]he Ninth Circuit Court of Appeals held that the Brillhart factors outlined by the Supreme Court 'remain the philosophic touchstone' in analyzing whether to entertain a declaratory action[.]"). In Brillhart, the Supreme Court articulated the following factors that a district court should consider in deciding whether to decline jurisdiction over a declaratory judgment action: (1) avoiding needless determination of state law issues; (2) discouraging litigants from filing declaratory judgment actions as a means of forum shopping; and (3) avoiding duplicative litigation. Dizol, 133 F.3d at 1225.

Consideration of these factors serves a number of important policies, such as "avoiding rendering opinions based on purely hypothetical factual scenarios, discouraging forum shopping, encouraging parties to pursue the most appropriate remedy for their grievance, preserving precious judicial resources, and promoting comity." Am. Nat'l Fire Ins. Co. v. Hungerford, 53 F.3d 1012, 1019 (9th Cir. 1995) (overruled in part on other grounds). In light of these policies, the Court must proceed cautiously, balancing "concerns of judicial administration, comity, and fairness to the litigants." Chamberlain v. AllState Ins. Co., 931 F.2d 1361, 1367 (9th Cir. 1991) (overruled in part on other grounds).

1. Needless Determination of State Law Issues

The first consideration under Brillhart is whether remand will avoid needless determination of state law issues. In this case, all of Plaintiffs' claims in the Complaint are based on state law: (1) the County's duty to certify the election results as mandated in Hawaii Revised Statutes ("HRS") §§ 11-155, 11-156, and 11-174.5 and the Charter of the County of Maui; (2) the County's duty to protect the public interest and the rights of Plaintiffs in implementing the Ordinance pursuant to the Hawaii Constitution; and (3) the legality and validity of a county law which was placed on the ballot through a voter initiative process provided for in the County Charter, and passed into law by Maui voters.

Furthermore, there are important state issues that directly impact the County's ability to protect the natural environment and avoid irreparable harm to Public Trust resources. These issues should first be resolved on the state level under comity and abstention principles. Not only are there no federal questions asserted in Plaintiffs' Complaint, but there are significant state law issues, and as such, the Court should remand this case to State Court to avoid a needless determination of state and local laws.

2. Discouraging Forum Shopping

The second consideration is determining whether declining to exercise jurisdiction will discourage litigants from attempting to forum shop. This factor

disfavors the "filing of a federal court declaratory action by a defendant to see if it might fare better in federal court" when there is already a state court action pending. Burlington Ins. Co. v. Panacorp, Inc., 758 F. Supp. 2d 1121, 1143 (D. Haw. 2010) (citing American Cas. Co. v. Krieger, 181 F.3d 1113, 1119 (9th Cir. 1999). A "reactive declaratory judgment action" occurs when one party sues in federal court to determine liability after a state court action has already been initiated. Burlington, 758 F. Supp. 2d at 1143 (citing Dizol, 133 F.3d at 1225).

One day after Plaintiffs filed the State Court action regarding the enforceability of the Ordinance, Defendants filed the Federal Court action in reaction to Plaintiffs' filing of the State Court action. Now, Defendants attempt to remove this case to Federal Court as well. The facts indicate that the Federal Court action is the type of reactive declaratory judgment action strongly discouraged by the Ninth Circuit. Burlington, 758 F. Supp. 2d at 1143-44. Defendants' removal of this action, despite (1) the declaratory nature of the remedy sought; (2) the claims presenting solely issues of state law that the State Court has a compelling interest in adjudicating; and (3) the availability of declaratory relief in State Court, indicates that Defendants are forum shopping. Thus, this factor weighs in favor of this Court's declining to exercise jurisdiction.

3. Avoiding Duplicative Litigation

The third consideration under Brillhart is determining whether declining to exercise jurisdiction will avoid duplicative litigation. "[W]here all of the issues presented by the declaratory judgment action could be resolved by the state court, the district court should not waste judicial resources by permitting the federal action to go forward." Great-West Life Assurance Co. v. Lunardi, 1992 U.S. Dist. LEXIS 6225, *6-*7 (N.D. Cal. Apr. 29, 1992).

Plaintiffs originally filed the State Court action, seeking declaratory and injunctive relief regarding the certification and implementation of the Ordinance. Because declaratory relief can be granted by the State Court pursuant to HRS Chapter 632, and because the State Court is capable of interpreting federal law should Defendants choose to pursue their federal preemption defense, this factor also weighs in favor of declining to exercise jurisdiction.

B. Additional *Dizol* Factors Favor Remand

The Ninth Circuit recognized that the Brillhart factors are not exhaustive and suggested that district courts also consider the following factors:

> [W]hether the declaratory action will settle all aspects of the controversy; whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue; whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage; or whether the use of a declaratory action will result in entanglement between the federal and state court systems. In addition, the district court might also consider the convenience of the parties, and the availability and relative convenience of other remedies.

Dizol, 133 F.3d at 1225 n.5 (internal citations omitted). The additional factors identified by the Dizol Court also favor remand.

In this case, if this Court were to retain jurisdiction, it would not "settle all aspects of the controversy." The underlying State Court action not only seeks to have the legality and validity of the Ordinance declared, but it also seeks injunctive relief that the County certify the election results and properly implement the Ordinance. Plaintiffs' Complaint also specifically invokes the Constitutional protections that recognize the fundamental rights of Hawaii citizens to a "clean and healthful environment,"[6] gives standing to citizens to pursue direct Constitutional claims for harming Hawaii's natural environment,[7] and delegates the responsibility and duty to the counties to protect the natural environment and Public Trust resources.[8] The County's failure to certify the election results and its decision to agree with the Monsanto Defendants to a voluntary injunction directly infringes on Plaintiffs' Constitutional rights, for which remedies are being pursued in the State

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[6] Haw. Const. art. XI, § 9 provides:

> Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

[7] Id.

[8] Haw. Const. art. XI, § 1 provides:

> 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 and 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.

Court Action. See Exhibit "C" ¶¶ 36, 37, 59, 62, and 91. These are affirmative claims, and without allowing this litigation to proceed forward in State Court, Plaintiffs' rights to pursue these remedies will be infringed.

Moreover, although a declaratory action will serve the useful purpose of clarifying the legal issues at hand, the declaratory judgment action need not be maintained in this Court. As discussed above, the State Court is in a better position to resolve the issues raised in Plaintiffs' declaratory judgment action.

The consideration of whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a "res judicata" advantage also weighs in favor of declining to exercise jurisdiction. There is no reason why Defendants had to file the Federal Court action when they just as easily could have brought the same preemption arguments in the State Court action. It appears that Defendants filed the Federal Court action and the expedited briefing schedule in an attempt to forum shop and have the Federal Court reach legal or factual determinations before the State Court could do so.

The final two considerations—the convenience of the parties and the availability and relative convenience of other remedies—also weigh in favor of remand. The circumstances giving rise to the State Court action arose in Maui County. Plaintiffs all reside in Maui County. Defendants all admittedly reside or operate businesses in Maui County. Furthermore, a convenient remedy for the

Court's decision to decline to exercise jurisdiction is readily available in the form of remand to State Court.

In summary, the additional factors identified by the Dizol Court as well as the Brillhart factors, weigh in favor of the Court's declining to exercise jurisdiction. Because this declaratory judgment action was properly filed in State Court, and because the Complaint involves issues of Hawaii law and presents no federal claims, the Court should exercise its discretion under the Declaratory Judgment Act and decline jurisdiction over this matter.

VI. THIS COURT SHOULD ABSTAIN AND ALLOW THE ISSUES TO BE LITIGATED IN THE STATE COURT ACTION

On November 21, 2014, Plaintiffs filed a Motion to Dismiss or for Judgment on the Pleadings, or in the Alternative, to Stay Proceeding ("Motion to Dismiss") in the Federal Court action. Plaintiffs have concurrently filed with this Motion to Remand: (1) an *ex parte* motion to consolidate hearings on the Motion to Dismiss and this Motion to Remand, and (2) an *ex parte* motion to shorten time to hear this Motion to Remand. This request is in the interest of judicial economy, as both Motions are set before the same judge and involve overlapping issues of abstention. As such, in addition to the arguments set forth herein, Plaintiffs hereby incorporate by reference the grounds under which the Court should abstain based on the general principle of comity, Pullman Abstention, Colorado River

Abstention, and the Court's inherent authority to efficiently manage its cases, as set forth in Plaintiffs' previously-filed Motion to Dismiss.

VII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion to Remand. The Court should likewise abstain from hearing this case on these grounds and remand the matter to State Court.

DATED: Honolulu, Hawaii, January 15, 2015.

/s/ Michael C. Carroll
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