

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.	)	
_____	)	

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

In a historic election on November 4, 2014, Maui voters enacted into law a County Ordinance requiring GMO businesses to demonstrate that the testing and development of genetically modified organisms are not harmful to the Maui community and its ecosystem. The Ordinance requires that the GMO industry fund a study that is independently administered by the County to show that the operations are not harmful. Maui is ground zero for large agricultural companies' testing facilities that develop genetically engineered crops. Notwithstanding, there are no regulations on the Federal or State level that control these undisclosed and unmonitored facilities. These facilities use high quantities and combinations of pesticides and combine DNA from various plants and animals to create new strains of vegetation.

Before the agricultural companies filed this lawsuit, the original proponents and drafters of the Ordinance, Intervenor, filed a lawsuit in State Court seeking a declaratory ruling that the Ordinance is not preempted by State law, and that the County should proceed forward with steps necessary to implement the law. The agricultural companies initiated this lawsuit the following day in response to the prior State Court action in an attempt to forum shop and bring the case to Federal Court.

This Court should abstain from resolving the important State issues that directly impact the County's ability to protect its natural environment and avoid irreparable harm to Public Trust resources. These issues should first be resolved on the State level under comity and abstention principals. Notably, Maui County has already been prohibiting the testing, cultivation, and growing of genetically engineered kalo (taro) since 2009 in the Maui County Code. See Maui County Code §§ 20-38-010-060.

Maui County has a substantial and compelling interest in having these issues decided in State Court. A Maui State Court is best positioned to determine the validity of this Ordinance based on the Public Trust Doctrine made a part of the Hawai'i Constitution that recognizes the duty of the County to protect Hawaii's delicate environment. For the reasons set forth herein, Intervenor respectfully request that the Court grant this Motion, and dismiss, enter judgment on the pleadings, or stay this proceeding, to allow the issues to be decided in State Court, the original forum where these issues were first raised.

II. FACTUAL BACKGROUND

A. Maui's Attractiveness For GMO Testing Based On Lack Of Regulation And Unique Ecosystem

Hawai'i is the most isolated island chain in the world. As a result of its unique ecosystem, populations of plants and animals are smaller, less stable, and more susceptible to disruption, damage, or complete loss by human

intervention. Palila v. Hawaii Dep't of Land & Natural Resources, 649 F. Supp. 1070, 1081 n.42 (D. Haw. 1986) (citing Juvik & Juvik, *Mauna Kea and the Myth of Multiple Use: Endangered Species and Mountain Management in Hawaii*, 4 Mountain Research and Development 191 (August 1984)). There are more endangered and extinct species in Hawai'i than anywhere in North America. Id.

By Plaintiffs' own admission, Hawai'i is a magnet for the experimental testing of genetically modified organisms, as it offers "more growing cycles per year" than any other location in the United States. See Complaint ¶ 18, attached hereto as Exhibit A. Moreover, despite its delicate ecosystem, Hawai'i is one State where there are no State laws that have been adopted to control or even monitor the experimental testing or use of GMOs.¹ By contrast, for example, counties throughout California have adopted prohibitions on the growing, cultivation, and raising of GMOs. Id.

With the exception of Maui County's prohibition on regulating genetically engineered kalo, there are no laws in place regulating the genetic testing and development of GMOs and related operations affecting Maui County. The fact that Hawai'i is seen by the industry as the ideal location for genetic testing, coupled with the fact that Hawai'i does not have any general laws on

¹ See http://www.organicconsumers.org/articles/article_27247.cfm (last visited Nov. 21, 2014) (listing local regulations from states and counties concerning GMOs).

GMOs, agricultural companies have chosen Hawai‘i, and Maui County in particular, as their forum of choice for genetic testing.

B. The Hawai‘i State Constitution Recognizes The State’s Unique And Vital Environmental Resources And Mandates Considerations Which Are Distinct From Federal Law

Ingrained throughout the Hawai‘i Constitution are vital environmental considerations that recognize the importance of preserving Hawaii’s delicate natural environment. These provisions are unique given Hawaii’s delicate ecosystem, history, and cultural heritage. Under the Hawai‘i Constitution, the State is expressly obligated to provide for the “protection and promotion of the public health”, Haw. Const. art. IX, § 1; and has the express power to “promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State’s resources.” Id. art. IX, § 8.

Moreover, the Hawai‘i Constitution further recognizes that

[e]ach 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 regulations provided by law.

Id. art. XI, § 9.

In accord with the Hawai‘i Constitution, Congress has recognized Hawaii’s unique historical and cultural significance. 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).

C. Hawaii’s Public Trust Doctrine Obligates The County To Conserve And Protect Hawaii’s Natural Resources

To protect Hawaii’s natural resources, the Hawai‘i Constitution expressly includes the Public Trust Doctrine as a “fundamental principal” of constitutional law. Kauai Springs, Inc. v. Planning Comm’n of Kaua‘i, 133 Hawai‘i 141, 171, 324 P.3d 951, 981 (2014) (citation omitted). Under the Public Trust Doctrine, the state *and* each 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 [the counties] 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 (emphasis added).

The Hawai‘i Constitution further provides that the legislature shall create counties, and that each county shall have and exercise such powers as shall be conferred under “general laws.” Haw. Const. art. VIII, § 1. In accord with the Public Trust Doctrine and the authority to confer powers to the counties, the State Legislature expressly delegated certain powers to each county “subject to general law[.]” HRS § 46-1.5. Such powers include: (1) “the power to enact ordinances deemed necessary to protect health, life, and property . . . of the county and its inhabitants”; (2) “enact and enforce ordinances necessary to prevent or summarily remove public nuisances”; and (3) matters of sanitation. HRS § 46-1.5(12)-(14). The County is further authorized to fix a penalty for the violation of any ordinance, which may be a misdemeanor, petty misdemeanor, or violation as defined by general law. Id.

D. Maui County Has Adopted A Comprehensive Regulatory Scheme Addressing Environmental Protection, Which Includes Issues Associated With GMOs

As a result of the authority vested to the counties, Maui County has adopted a comprehensive regulatory scheme incorporated in the Maui County Code concerning environmental protection. Notably, the Maui County Code already includes regulations concerning the prohibition on genetically engineered

kalo (taro). Maui County Code regulates the following environmental issues, among others:

- Maui County Code §§ 20.38.010-060 – making it unlawful for any person to test, propagate, cultivate, raise, plant, grow, introduce, transport, or release genetically engineered kalo. The ordinance is predicated on findings that: (1) kalo has cultural significance to the indigenous people of Hawai‘i; (2) adequate safeguards do not exist to prevent contamination of non-genetically engineered kalo with genetically engineered organisms; (3) there is no legal recourse for kalo farmers who cultivate non-genetically engineered kalo if their kalo is contaminated by genetically engineered organisms; and (4) there is no requirement to label genetically engineered kalo.
- Maui County Code §§ 20.04.020 – declaring it a public nuisance and unlawful for any person to cause, permit, or allow to escape into the open air, smoke, soot, poisonous gases, dirt, dust or debris of any kind from any smokestack, chimney, flue, or incinerator, or any opening of any building.
- Maui County Code §§ 20.08.010-400 – regulating soil erosion and sedimentation control to “safeguard life and limb, protect property, and promote public welfare, and to preserve and enhance the natural environment, including but not limited to water quality,” by regulating and controlling grubbing and grading operations within the County.

In addition to the Maui County Code’s ordinances addressing environmental protection, in 2010, the County adopted the Countywide Policy Plan by Ordinance No. 3732. See Exhibit B. This plan is part of the Maui General Plan, which all agencies are required to comply with. See Maui County Code § 2.80B.030. Under the Countywide Policy Plan (“Plan”), Maui will “be an innovative model of sustainable island living” and “will be a leader in the creation of responsible, self-sufficient communities and environmentally sound economic

development and land stewardship.” Exhibit B at 5. One of the Plan’s objectives is to diversify and expand sustainable forms of agriculture and aquaculture. The policies in support of this objective include: (1) “[e]nhanc[ing] County efforts to monitor and regulate important agricultural issues”; (2) “[m]aintain[ing] the genetic integrity of existing food crops”; and (3) “[e]ncourag[ing] methods of monitoring and controlling genetically modified crops to prevent adverse effects.” Id. at 61.

E. Maui Voters Adopt The GMO Ordinance To “Conserve” And “Protect” Maui’s “Natural Resources” Pursuant To The Public Trust Doctrine And Powers Vested To The County

Consistent with the Public Trust Doctrine, Maui voters enacted into law “A Bill Placing a Moratorium on the Cultivation of Genetically Engineered Organisms” (the “Ordinance”). See Exhibit C. In brief, the Ordinance places a temporary moratorium on future GMO testing and cultivation until it is demonstrated that GMO operations and practices are not harmful through the completion of an Environmental and Public Health Impacts Study (EPHIS). Id. The study is funded by the GMO industry and independently administered by the County. Id. Intervenor Alike Atay, Lorrin Pang, Mark Sheehan, Bonnie Marsh, Lei’ohu Ryder, and SHAKA Movement (“Intervenor”) were the original drafters of the Ordinance, coordinated the necessary signatures to place the bill on the ballot, and actively educated the community on the details of the bill through the

election process. See generally Declaration of Beth Savitt attached to Intervenor's Motion to Intervene.

The Ordinance included detailed findings as to the reason why Maui voters adopted the law. In particular, the Ordinance recognizes that the unregulated and rapid growth in the testing, cultivation, and development of GMOs in Maui County threatens the stability of Maui County's public health, environment, and agricultural economy. Ordinance § 2. The Ordinance identified multiple risks associated with continued unregulated GMO testing and operations:

- GE Organisms are not part of the natural environment of Maui County and instead are a possible invasive species potentially causing damage and/or potential irreversible alteration of the environment and cultural heritage.
- GE Organisms often causes unintended consequences as a result of combining different genetic materials from plants and animals causing adverse health or environmental consequences.
- GE Operations and Practices can have serious effects on the environment as a result of indiscriminate herbicide use to treat GE herbicide-resistant crops and the proliferation of previous unknown herbicide-tolerant superweeds.
- The rabid evolution of pests known as superbugs that are resistant to organic pesticides to the detriment of conventional and organic farmers.
- Transgenic contamination can and does occur as a result of cross-pollination, co-mingling of conventional and GE seeds, accidental transfer by animals and weather, and other mechanisms.
- The risk of significant harm to soil, water and air resources as a result of aggressive and repeated pesticide use.

The Ordinance expressly states that Maui County residents have a right to decide if the risks associated with genetically engineered operations are unacceptable, and to take action to suspend such operations and practices. Id. § 2.

F. Intervenors File The State Court Action To Declare The Ordinance Valid And To Ensure Its Proper Implementation

On November 12, 2014, Intervenors 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 named Defendants in the State Court action are the County of Maui, Monsanto Company, and Dow Agrosiences, LLC. See Exhibit D (“State Court Complaint”). Intervenors initiated the State Court action to ensure that the Ordinance would be properly administered, that Intervenors be permitted to 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.

The Complaint sought a declaratory judgment pursuant to Hawai‘i Law (HRS § 632-1) that (1) the GMO Ordinance is valid and enforceable, and not preempted by any State law; (2) the County is obligated to proceed forward to properly and timely implement the law; and (3) Intervenors should be allowed to participate or comment on the process.

III. PROCEDURAL BACKGROUND

On November 13, 2014, Plaintiffs commenced this lawsuit in federal court after Intervenor 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 Company, is also a Defendant in the State Court action. See id. The County is a Defendant in both actions. See id. The Complaint in this case seeks to invalidate the law in federal court, notwithstanding that these issues are already pending in State Court. See id.

On 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. On 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. The relief requested in Plaintiffs’ Complaint as well as the terms of the Stipulation are directly in conflict with the relief that Intervenor is currently seeking in the State Court action.

IV. THE FEDERAL COURT SHOULD ABSTAIN AND ALLOW THESE ISSUES TO BE LITIGATED IN THE STATE COURT PROCEEDING

The doctrine of comity is well engrained in our judicial system. The fundamental rule is that where there is concurrent jurisdiction, the first court to obtain jurisdiction has “exclusive jurisdiction” to resolve the controversy. See Rath Packing Co. v. Becker, 530 F.2d 1295, 1306 (9th Cir. 1975).

The chief rule which preserves our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose.

Id. (quoting Ponzi v. Fessenden, 258 U.S. 254, 259-60 (1921)). The Ninth Circuit has defined the rule of comity as “merely recognizing exclusive jurisdiction in the court first acquiring jurisdiction of any action.” Id. (citation and internal quotation marks omitted).

As set forth below, this Court should dismiss this Complaint, or stay this proceeding based on general principle of comity, *Pullman* Abstention, *Colorado River* Abstention, and the Federal Court’s inherent authority to efficiently manage its cases.

A. *Pullman* Abstention

A federal court may abstain under the *Pullman* doctrine if the following three factors are present: “(1) the case touches on a sensitive area of

social policy upon which the federal courts ought not enter unless no alternative to its adjudication is open, (2) constitutional adjudication plainly can be avoided if a definite ruling on the state issue would terminate the controversy, and (3) [the proper resolution of] the possible determinative issue of state law is uncertain.”

Porter v. Jones, 319 F.3d 483, 492 (9th Cir. 2003) (citations and internal quotation marks omitted) (brackets in original). *Pullman* Abstention states that the federal court should stay the federal constitutional question “until the matter has been sent to state court for a determination of the uncertain state law issue.” Fireman’s Fund Ins. Co. v. City of Lodi, 302 F.3d 928, 940 (9th Cir. 2002) (citations and internal quotation marks omitted). In Bridge Aina Le’a, LLC v. Hawaii Land Use Comm’n, this district court held that the *Pullman* Abstention factors were met with respect to a pending State administrative appeal involving the Land Use Commission’s decision to redesignate certain property from the urban district to the agricultural district. 2012 U.S. Dist. LEXIS 45284, at *20 (D. Haw. Mar. 30, 2012).

1. The GMO Ordinance Involves Sensitive Areas Of Social Policy

In this case, Intervenors have met the requirements for *Pullman* Abstention. First, the protection of the health and safety of a state’s citizens is a sensitive area of social policy that favors preemption. U.S. Ecology, Inc. v. Nevada, Dep’t of Human Resources, 557 F. Supp. 464, 467 (D. Nev. 1983)

(recognizing that “the protection of the health and safety of Nevadans from the hazards of radioactivity is clearly a sensitive area of social policy”). Protecting the health and safety of a State’s citizens through environmental safeguards is so significant that it is incorporated as a fundamental component to the Hawai‘i Constitution through the Public Trust Doctrine. Kauai Springs, 133 Hawai‘i at 171, 324 P.3d at 981.

Moreover, Maui County has already adopted policies in its general plan recognizing the potential hazards associated with GMO operations and practices and encouraging methods of monitoring and controlling these activities to prevent adverse effects. The Ordinance seeks to avoid irreparable harm to Public Trust resources by requiring the GMO industry to show that their unregulated and undisclosed activities that are being conducted on Maui are not harmful. The protection of the health and safety of Hawai‘i, avoiding irreparable harm to the Public Trust resources, and addressing the potential dangers associated with GMOs, are all sensitive areas of social policy involving State law in which preemption is warranted.

Moreover, also at stake in this case is the historical and cultural relationship between native Hawaiians and Hawaii’s natural resources, as well as the relationship between the State and County and native Hawaiians. In particular, Congress recognized in the Apology Resolution the significance of the overthrow

of the Hawaiian Kingdom in 1873, pledging reconciliation between the United States and the Native Hawaiian People. Public Law No. 103-150, 107 Stat. 1510 (1993). Congress expressly recognized that “the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land.” Id. State law is in accord adopting laws to recognize the State’s special relationship with Native Hawaiians. See Haw. Const. art. XII, §§4-6 (creating the Office of Hawaiian Affairs to manage ceded lands to benefit Native Hawaiians); Hawaiian Homes Commission Act, 1920, adopted as part of the Hawai‘i Constitution by Art. XII, § 1 (transferring ceded lands to the State of Hawai‘i to be held for the benefit of Native Hawaiians). A local ordinance adopted under the State’s Constitution in recognition of the Native Hawaiian interest is a sensitive area of social policy that requires abstention.

2. A Definite Ruling on the State Issues Could Terminate the Controversy

The second factor is also met as the constitutionality and federal preemption issues can be decided independently of state law preemption. Moore v. County of Suffolk, 851 F. Supp. 2d 447, 457 (E.D.N.Y. 2012) (holding that the second prong of the test was met where the constitutionality of a county law may be determined independently of the issue of whether it is preempted by state law). In this case, the State Court can decide the State preemption issue separately.

3. Resolution On State Law Issue Is Uncertain

Finally, the resolution of whether the Ordinance is preempted by state law is uncertain. Accordingly, all three elements to establish *Pullman* Abstention have been met.

B. Colorado River Abstention

Colorado River Abstention applies “in situations involving the contemporaneous exercise of concurrent jurisdictions” of State and Federal courts. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976). The Supreme Court recognized that there may be circumstances where traditional abstention principals do not apply. See id. However, the Federal Court case should be dismissed to allow the State Court proceeding to go forward in consideration of “wise judicial administration” and conservation of judicial resources. Smith v. Central Ariz. Water Conservation Dist., 418 F.3d 1028, 1033 (9th Cir. 2005) (citing Colorado River, 424 U.S. at 817).

The Ninth Circuit has adopted several factors that the Court is to consider on whether exceptional circumstances apply to warrant a stay or dismissal under Colorado River. See R.R. St. & Co. Inc. v. Trans. Ins. Co., 656 F.3d 966, 978 (9th Cir. 2011) (quoting Colorado River, 424 U.S. at 818). These factors are: “(1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or

state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court.” Id. at 978-79 (citation omitted).

In this case, the factors the Court considers to warrant Colorado River Abstention weigh greatly in favor of abstention. First, the State Court was the first to assume jurisdiction as the Complaint in State Court was filed first.

Second, the Federal District Court on Oahu is a less convenient forum as this case arises in the Second Circuit for the State of Hawai‘i, on the Island of Maui, the venue for the State Court Action.

Third, piecemeal litigation can be avoided by having the case decided in State Court, as all issues can be resolved in State Court.

Fourth, State Court obtained jurisdiction first, as Intervenor’s Complaint was filed in State Court first.

Fifth, State law primarily provides the rule of decision on the merits as this case necessarily requires the Court to evaluate a County ordinance and whether it is valid under Hawai‘i law. Notably, Syngenta Seeds, Inc. v. County of Kauai, 2014 U.S. Dist. LEXIS 117820, 2014 WL 4216022 (D. Haw. Aug 25, 2014) (“Syngenta Seeds”), the case relied on by Plaintiffs in bringing this Complaint, was decided solely on State law.

Sixth, the State Court proceedings can adequately protect the rights of the federal litigants. Plaintiffs can raise all arguments concerning the legality of the Ordinance and its enforceability in State Court.

Seventh, Plaintiffs' decision to bring this lawsuit in Federal Court was motivated by forum shopping. Plaintiffs filed this action one day after Intervenor's filed their Complaint in State Court. Plaintiffs admittedly brought this Complaint in Federal Court based on this Court's decision in Syngenta Seeds (Complaint ¶ 3). Plaintiffs' motivation in filing this Complaint was to avoid the initial State Court action in hopes of obtaining a more favorable ruling in Federal Court.

Finally, the State Court can resolve all State and Federal Claims. If any issues remain unresolved on the federal level after the resolution of State law claims, Plaintiffs have the right to obtain certiorari review to the U.S. Supreme Court pursuant to 28 U.S.C. § 1257. In contrast, a Federal Court is not in the best position to decide whether the Ordinance is preempted by State law. There is no state law precedent directly on point. The issues concerning whether the Ordinance is preempted by state law necessarily requires a court to evaluate the significant State constitutional issues involving the Public Trust Doctrine, and the potential irreparable harm to Public Trust resources. A State Court is best equipped to decide this issue. The resolution in Federal Court may require

certification of the question to the Hawai‘i Supreme Court thereby bifurcating this proceeding.²

C. The Court’s Inherent Authority To Stay Cases Based On The “Sensible Management” Of The Case

A federal court can stay a federal case in the “interest of sensible management.” Bridge, 2012 U.S. Dist. LEXIS 45284, at *25-26. In Bridge, this Court ruled that it has “discretion to manage” the case in an “orderly and efficient manner.” This included staying the federal lawsuit to avoid needless inefficiency and avoid splitting the case into two overlapping lawsuits in two forums resulting in increased costs and burdens on the parties. Id. Accordingly, this Court held in Bridge that a stay was appropriate in the interest of sensible case management in addition to *Pullman* Abstention. Id.

In this case, a dismissal or stay of this proceeding would avoid the needless inefficiency and avoid splitting the case into two overlapping lawsuits. First, the Ordinance has not yet been certified or enacted into law. Plaintiffs’ claims in this case are entirely speculative as the County has yet to take any action to implement the law. Proceeding forward with this case to decide a purely speculative injury would be the needless exercise of judicial resources. Moreover, this Court does not have the ability to enjoin the State Court action.

² Intervenors expressly reserve the right to seek certification of the State law issues.

If this case is not stayed or dismissed, the State Court has jurisdiction to proceed forward to decide the issue on whether the Ordinance is valid under State law and the County's duty to implement the law. This could result in overlapping proceedings, inconsistent results, and unnecessary costs and expenses notwithstanding the speculative nature of this case. Accordingly, under the Court's inherent authority, the Court should stay or dismiss this case and allow the State Court action to proceed.

V. CONCLUSION

Based on the foregoing, Intervenor respectfully request that this Court recognize the well established principals of comity, abstention, and the Court's inherent authority and dismiss or stay this case to allow the State Court action to proceed forward.

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

/s/ Michael C. Carroll

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