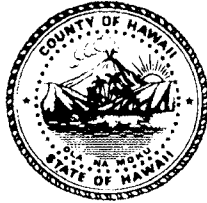


William P. Kenoi
Mayor



Molly A. Stebbins
Corporation Counsel

Laureen L. Martin
Assistant Corporation
Counsel

COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

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January 28, 2015

Honorable Dru Kanuha, Chairman
Members of the Hawai'i County Council
25 Aupuni Street
Hilo, Hawai'i 96720

2015 JAN 29 AM 9:59
CORPORATION COUNSEL

Dear Chairman Kanuha and Council Members:

RE: Special Counsel Request for Appeal of Hawai'i Floriculture and Nursery Association, et al. v. County of Hawai'i, Civil No. 14-00267 BMK (Federal District Court of the District of Hawai'i) to the United States Court of Appeals for the Ninth Circuit, Case No. 14-17538

Enclosed for your information and review is a letter dated January 27, 2015, from Paul Achitoff, Esq., and George A. Kimbrell, Esq. This relates to the executive session on the February 4, 2015 agenda.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

LAUREEN L. MARTIN
Assistant Corporation Counsel

LLM:emc

Comm. No. 9.3
Ref. To: PT Council
Ref. Date: FEB 04 2015



January 27, 2015

Molly Stebbins, Esq.
Office of Corporation Counsel
101 Aupani Street, Suite 325
Hilo, HI 96720

Re: *Hawai'i Floriculture and Nursery Association et al. vs. County of Hawaii*, Civil No. 14-1-00267 BMK

Dear Ms. Stebbins:

We received a copy of Margery Bronster's January 22, 2015 letter to the County Council urging them not to retain Earthjustice to handle the County's appeal from Judge Kurren's decision in the above case. It's obvious that, considering that Ms. Bronster's clients want nothing more than to see the County lose its appeal, she is the last person to be offering legal advice to the County. In fact, it would be unethical for Ms. Bronster to assist the County, since it would directly conflict with her duty to her own clients. Her own conflict of interest aside, and while Ms. Bronster's fear of Earthjustice is apparent, her analysis is simply wrong; the circumstances she describes in no way create a conflict of interest preventing Earthjustice from representing the County. Ms. Bronster is merely trying to muddy the waters and create confusion.

Ms. Bronster tries to suggest that a conflict exists between the interests of the County in this case and those of Center for Food Safety (CFS), which Earthjustice has represented, and worked with as co-counsel, on many occasions. Ms. Bronster notes that when Earthjustice (and CFS, as co-counsel) sought on behalf of their clients to intervene in the case before Judge Kurren to defend Bill 113, Earthjustice and CFS argued that the County could not represent all of the interests of the clients they were representing--small farmers on the Big Island and CFS. Ms. Bronster is merely trying to confuse the issues by falsely suggesting that *different interests* for purposes of intervention equals a *conflict of interest*. They don't.

As Ms. Bronster herself argued to Judge Kurren, the ultimate goal of Earthjustice's and CFS's former clients and that of the County are *exactly the same*: defending the ordinance; she argued that any distinction between those interests was "a

distinction without a difference.” In her letter, Ms. Bronster failed to point out that Judge Kurren agreed with Ms. Bronster, and did not permit Earthjustice’s and CFS’s clients to intervene because he concluded that those clients and the County all wanted the same thing—to defend Bill 113—and the County *would* adequately represent all of those interests. Earthjustice’s and CFS’s former clients fully support the County’s efforts to win its appeal, because their goal—retaining Bill 113—is exactly the same as the County’s. Those clients will be testifying in favor of the County retaining Earthjustice and CFS.

Additionally, Ms. Bronster is misinformed regarding the facts. Based on a partial list of Earthjustice’s many clients, she claims that Earthjustice has not represented counties or municipalities, and suggests this is because they are “wary of allowing Earthjustice to highjack litigation by representing them in court.” This is false. For example, Earthjustice recently represented the town of Dryden, NY in a landmark case successfully defeating an effort by the oil and gas industry to do exactly what Ms. Bronster’s clients are seeking to do in this case: eliminate a local ordinance (in that case, banning fracking) by arguing state preemption. *Wallach v. Town of Dryden*, 16 N.E.3d 1188 (N.Y. 2014). Dryden Deputy Supervisor Jason Leifer commented:

Today the Court stood with the people of Dryden and the people of New York to protect their right to self determination. It is clear that people, not corporations, have the right to decide how their community develops. This would not have been possible without the hard work of many of my friends and neighbors and our lawyers Deborah Goldberg of Earthjustice and Mahlon Perkins. Today’s ruling shows all of America that a committed group of citizens and public officials can stand together against fearful odds and successfully defend their homes, their way of life, and the environment against those who would harm them all in the name of profit.

Clearly, the Town of Dryden would take issue with Ms. Bronster’s attempt to smear Earthjustice.

Finally, Ms. Bronster argues that Earthjustice could disclose confidential information to CFS. We have no idea why Ms. Bronster imagines that, if Earthjustice alone were representing the County, it could or would share client confidences with another organization, including a former client; this would be unethical and strictly

Molly Stebbins
Office of Corporation Counsel
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prohibited. But Ms. Bronster apparently is unaware that CFS and Earthjustice are jointly seeking to represent the County in the appeal as co-counsel. Earthjustice and CFS have co-counseled numerous cases over the past dozen years, and each brings its own expertise to the team. Earthjustice obviously would have no need to “disclose” the County’s confidences to CFS, since the latter would also be the County’s attorney. Ms. Bronster’s argument makes no sense.

In short, Ms. Bronster’s letter is legally and factually without any basis whatsoever, and is nothing more than a desperate effort to avoid having to litigate against us.

Respectfully,



Paul Achitoff
EARTHJUSTICE



George A. Kimbrell
CENTER FOR FOOD SAFETY

cc: Kathy Garson, Esq.
Laureen Martin, Esq.