

Electronically Filed
Intermediate Court of Appeals
CAAP-22-0000506
20-SEP-2024
03:52 PM
Dkt. 61 MEO

NO. CAAP-22-0000506

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

STATE OF HAWAII

HAWAII GOVERNMENT EMPLOYEES)	CIVIL NO. 1CCV-21-0001304
ASSOCIATION, AFSCME, LOCAL 152,)	(DECLARATORY JUDGMENT)
AFL-CIO; and, UNITED PUBLIC)	
WORKERS, AFSCME, LOCAL 646,)	APPEAL FROM:
AFL-CIO,)	(1) ORDER GRANTING
Plaintiffs-Appellants,)	DEFENDANT DEPARTMENT OF
vs.)	PUBLIC SAFETY, STATE OF HAWAII'S
)	AMENDED MOTION TO DISMISS,
)	FILED ON NOVEMBER 29, 2021
)	[Dkt. 17], FILED ON MARCH 31, 2022
DEPARTMENT OF PUBLIC SAFETY,)	[Dkt. 37]; and (2) FINAL JUDGMENT
STATE OF HAWAII; JOHN DOES 1-10;)	FILED ON AUGUST 2, 2022 [Dkt. 48]
JANE DOES 1-10; DOE PARTNERSHIPS)	
1-10; DOE CORPORATIONS 1-10; DOE)	
GOVERNMENTAL AGENCIES AND)	
DOE ENTITIES 1-10;)	
Defendant-Appellee.)	
)	
)	JUDGE: HON. LISA W. CATALDO
)	
)	
)	

**PLAINTIFFS-APPELLANTS' MEMORANDUM IN OPPOSITION TO
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
FILED ON SEPTEMBER 19, 2024 [Dkt. 58]**

and

DECLARATION OF TED H. S. HONG

and

EXHIBIT “1.”

and

CERTIFICATE OF SERVICE

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
Facsimile No. 808.935.8281
ted@tedhonglaw.com

Attorney for Plaintiffs-Appellants
HAWAII GOVERNMENT EMPLOYEES ASSOCIATION,
AFSCME, LOCAL 152, AFL-CIO; and, UNITED PUBLIC
WORKERS, AFSCME, LOCAL 646, AFL-CIO

**PLAINTIFFS-APPELLANTS' MEMORANDUM IN OPPOSITION TO
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
FILED ON SEPTEMBER 19, 2024 [Dkt. 58]**

Comes now Plaintiffs-Appellants, HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO; and, UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO (“Appellants”), by and through their undersigned counsel and hereby submits their Memorandum in Opposition to the Motion for Leave to File *Amicus Curiae* Brief Filed on September 19, 2024 [Dkt. 58], by the Public First Law Center as follows:

I. SUMMARY

The Movant’s proposed brief identifies new issues that the Plaintiffs-Appellants do not have adequate time to respond to. *Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai’i 376, 363 P.3d 224 (2015). Appellant’s counsel cannot rebut the substantive arguments raised by Movant’s counsel within the period of five (5) days, pursuant to Rule 27(a), Hawaii Rules of Appellate Procedure. “Due Process” dictates that Appellants be given the opportunity to adequately respond. See, Declaration of Ted H. S. Hong, attached hereto (unavailability until October 21, 2024). If the Court is inclined to review and consider the Movant’s *amicus* brief, then it should consider resetting the briefing schedule for all parties.

II. ARGUMENT

1. Timeliness.

The Motion for Leave to File *Amicus Curiae* Brief is untimely. The last brief filed was Plaintiffs-Appellants’ Reply Brief, filed on April 24, 2023 [Dkt. 54]. The Intermediate Court of Appeals filed its Notice of Intermediate Court of Appeals Merit Panel Members on June 26 2023 [Dkt. 56]. The request is nearly a year and three months after the issues have been identified and briefed.

2. Misrepresentation of Interest.

On June 12, 2014, the Movant, The Civil Beat Law Center for the Public Interest, filed its Amended and Restated Articles of Incorporation. See, Exhibit “1,” attached hereto. The purpose of the Public First Law Center was clearly stated:

This corporation is organized exclusively for charitable and/or educational purposes, including for each such purpose, the making of distributions to organizations that qualify as tax exempt organizations under section 501(c)(4) or 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

* * *

The mission of the corporation shall be to operate a law center advancing the constitutional and statutory rights of the people of Hawai’i **by investigating government activity that appears to be misaligned with constitutional intent, illegal, ineffective and/or inefficient**; advocating for the implementation of corrective measures in and out of the courts; and enforcing such corrective measures and rights. (Emphasis added)

Exhibit “1,” attached hereto.

In its Motion for Leave to File *Amicus Curiae* Brief, Filed on September 19, 2024 [Dkt. 58], counsel for Movant stated its interest are:

Movant is a Hawai’i non-profit focused on solutions that promote transparency and responsiveness in government. Public First regularly represents member of the public in litigation concerning the Uniform Information Practices Act (Modified), Hawai’i Revised Statutes (HRS) chapter 92F (UIPA).

Movant has a compelling interest in how this Court interprets UIPA. As framed by the parties, this case concerns UIPA. **But this is not a UIPA case at its core**, and to **interpret the privacy issues here based on UIPA would do substantial injustice to the rights of the public to obtain information about their government operations.** (Emphases added)

Motion for Leave to File *Amicus Curiae* Brief, Filed on September 19, 2024 [Dkt. 58], at 1.

The justification by Movant’s counsel as the basis for its intervention or statement of

interest violates its Amended and Restated Articles of Incorporation.

3. Issue in the present case.

Movant’s counsel avoids any recognition that on August 5, 2021, the Governor of the State of Hawaii, issued an Emergency Proclamation which ordered:

. . . All State and county departments, offices, and agencies shall ensure, consistent with law, that any documentation related to vaccination status or test results obtained for purposes of this section are not disclosed to individuals other than as necessary to ensure compliance with this Proclamation or as required by law or court order. (Emphases added)

See, Emergency Proclamation Related to the COVID-19 Response, August 5, 2021, Dkt. 20, in 1CCV-21-0001304, at pdf Page#7; see also, Complaint Filed on October 25, 2021, at ¶45, Dkt. 1 in 1CCV-21-0001304, at pdf Page#10.

Appellants contend that the Circuit Court erred, as a matter of law, because it allowed a former employee of the former Department of Public Safety, to violate the Governor’s Emergency Proclamation concerning COVID-19 vaccination status and government employees’ privacy rights under Chapter 92F, HRS. The other important question for the appellate court is whether the Circuit Court committed grave error by using Chapter 92F, HRS to immunize the State from negligence based claims.

Representing a media outlet, Movant seeks to actively participate in the discussion in this case based on “happenstance.” As welcome as a media outlet’s statement may be, despite the lack of declaration or other trustworthiness assurance, including it’s legal analysis, Appellant should be given the opportunity to adequately respond. Accordingly, Appellants respectfully request the right to respond in a timely manner. Unfortunately, Appellants’ counsel will leave the country on September 27, 2024 and return to his office on October 21, 2024. See Declaration of Ted H. S. Hong, attached hereto. Additionally, Appellants’ counsel, solo practitioner, has two

(2) appellate briefs due on September 27, 2024 and a supplemental brief due in the Third Circuit Court. Appellants' counsel seeks time to adequately respond to the new legal arguments which negatively impacts Appellants' position in the present case.

III. CONCLUSION

Based on the foregoing points of authority and law, Appellants' counsel respectfully requests that the Court deny Movant's Motion for Leave to File *Amicus Curiae* Brief Filed on September 19, 2024 [Dkt. 58], or in the alternative set a supplemental briefing schedule to allow Appellants' counsel the opportunity to respond to Movant's *Amicus Curiae* Brief filed on September 19, 2024, allowing for Appellants' counsel adequate time to respond.

DATED: Hilo, Hawaii, September 20, 2024.

Respectfully submitted,

/s/ Ted H. S. Hong
Attorney for Plaintiffs-Appellants
HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO; and, UNITED PUBLIC
WORKERS, AFSCME, LOCAL 646, AFL-
CIO

NO. CAAP-22-0000506

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

STATE OF HAWAII

HAWAII GOVERNMENT EMPLOYEES)
ASSOCIATION, AFSCME, LOCAL 152,)
AFL-CIO; and, UNITED PUBLIC)
WORKERS, AFSCME, LOCAL 646,)
AFL-CIO,)

Plaintiffs-Appellants,)

vs.)

DEPARTMENT OF PUBLIC SAFETY,)
STATE OF HAWAII; JOHN DOES 1-10;)
JANE DOES 1-10; DOE PARTNERSHIPS)
1-10; DOE CORPORATIONS 1-10; DOE)
GOVERNMENTAL AGENCIES AND)
DOE ENTITIES 1-10;)

Defendant-Appellee.)

CIVIL NO. 1CCV-21-0001304
(DECLARATORY JUDGMENT)

APPEAL FROM:
(1) ORDER GRANTING
DEFENDANT DEPARTMENT OF
PUBLIC SAFETY, STATE OF HAWAII'S
AMENDED MOTION TO DISMISS,
FILED ON NOVEMBER 29, 2021
[Dkt. 17], FILED ON MARCH 31, 2022
[Dkt. 37]; and (2) FINAL JUDGMENT
FILED ON AUGUST 2, 2022 [Dkt. 48]

JUDGE: HON. LISA W. CATALDO

DECLARATION OF TED H. S. HONG

STATE OF HAWAII)
)
COUNTY OF HAWAII)

SS.

I, TED H. S. HONG, declare that:

1. I make this Declaration based on my personal knowledge and am competent to testify

about the matters contained in this Declaration.

2. I am the legal counsel for Plaintiffs-Appellants, HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO; and, UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, in the present case.

3. Exhibit “1,” attached hereto is a true and accurate copy of the Amended and Restated Articles of Incorporation for The Civil Beat Law Center for the Public Interest, filed with the Department of Commerce and Consumer Affairs, State of Hawaii on June 12, 2014, and downloaded by me from the Business Registration Division on September 19, 2024.

4. On September 27, 2024, I leave the country and will not return to Hilo until October 21, 2024.

5. During that period of time, there will be several days where I will not have access to the Internet or my mobile phone due to lack of coverage.

6. I am a solo practitioner and have no one else to write any supplemental brief in the present case, until I return.

7. From September 19, 2024 until September 27, 2024, I have two (2) appellate court briefs due and a supplemental memorandum due in the Third Circuit Court, State of Hawaii.

8. If the Court could set the supplemental briefing until after October 28, 2024, Appellants’ counsel welcomes the opportunity to submit briefing in opposition to the Movant’s *Amicus Curiae* filed on September 19, 2024 [Dkt. 58].

9. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Hilo, Hawai'i, on September 20, 2024.

/s/ Ted H. S. Hong
TED H. S. HONG

EXHIBIT “1”

FILED 06/12/2014 11:22 AM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii

FORM DNP-5
7/2008

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
335 Merchant Street
Mailing Address: P.O. Box 40, Honolulu, Hawaii 96810
Phone No. (808) 586-2727



06/13/201420078

AMENDED AND RESTATED ARTICLES OF INCORPORATION

(Section 414D-164, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, duly authorized officers of the corporation submitting these Amended and Restated Articles of Incorporation, certify as follows:

1. The name of the corporation is:
The Civil Beat Law Center for the Public Interest

2. The Amended and Restated Articles of Incorporation adopted is attached.

3. The Amended and Restated Articles of Incorporation was adopted on: April 1, 2014
(Month Day Year)

(Check one)

at a meeting of the *members*:

Designation (class) Of membership	Total Number of Memberships (votes) outstanding	Total Number of Votes Entitled to be Cast By each Class	Number of Votes Cast by each class For Amendment	Number of Votes Cast by each class Against Amendment

OR

by written consent of the *members* holding at least eighty per cent of the voting power.

OR

by a sufficient vote of the *Board of Directors or incorporators* because member approval was not required.

4. Check one:

The written approval of a specified person or persons named in the articles of incorporation was obtained.

The written approval of a specified person or persons is not required.

5. The attached Amended and Restated Articles of Incorporation supersedes the original Articles of Incorporation and all amendments thereto.

The undersigned certifies under the penalties of Section 414D-12, Hawaii Revised Statutes, that the undersigned has read the above statements, I/we are authorized to make this change, and that the statements are true and correct.

Signed this 5th day of June, 2014

Paul Alston, Secretary

(Signature of Officer)

(Type/Print Name & Title)

(Signature of Officer)

SEE INSTRUCTIONS ON REVERSE SIDE. The articles must be signed by at least one officer of the corporation.

EXHIBIT "1"

STATE OF HAWAI'I
Department of Commerce and Consumer Affairs
Business Registration Division

In the matter of the Incorporation)
)
 Of)
)
 THE CIVIL BEAT LAW CENTER FOR THE)
 PUBLIC INTEREST)
 _____)

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
THE CIVIL BEAT LAW CENTER FOR THE PUBLIC INTEREST

ALSTON HUNT FLOYD & ING
Attorneys at Law
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
THE CIVIL BEAT LAW CENTER FOR THE PUBLIC INTEREST**

**Article I
NAME**

The name of the Corporation shall be: The Civil Beat Law Center for the Public Interest.

**Article II
ADDRESS**

The mailing address of the corporation's initial principal office is: 3465 Waialae Avenue, Suite 200, Honolulu, Hawaii 96816.

**Article III
REGISTERED AGENT AND OFFICE**

The name of the Corporation's registered agent in the State of Hawaii is: Paul Alston.

The street address of the place of business of the person in the State of Hawaii to which service of process and other notice and documents being served on or sent to the entity represented by it may be delivered to is: 1001 Bishop Street, Suite 1800, Honolulu, Hawaii 96813.

**Article IV
INCORPORATOR**

The name and address of the incorporator is:

<u>Name</u>	<u>Address</u>
Michael G. Mohr	3465 Waialae Avenue, Suite 200 Honolulu, Hawaii 96816

Article V
MEMBERS

The Corporation shall have no members.

Article VI
PURPOSE OF CORPORATION

This Corporation shall be a nonprofit corporation within the meaning of Chapter 414D of the Hawaii Revised Statutes.

This corporation is organized exclusively for charitable and/or educational purposes, including for each such purpose, the making of distributions to organizations that qualify as tax exempt organizations under section 501(c)(4) or 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code. The primary purpose of the Corporation shall not be to (1) carry on propaganda, or otherwise attempt to influence legislation, nor (2) participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

The corporation is nonprofit in nature and shall not authorize or issue shares of stock. No part of the Corporation's assets, income or earnings shall inure to the benefit of, or be distributed to, any member, director, officer, employee, trustee or any private individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation effecting one or more of its objects and purposes, for reimbursement of expenses incurred in behalf of the Corporation and to make payments and distributions in furtherance of the purposes set forth in these Articles. No director, officer or employee of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the Corporation's assets on dissolution of the Corporation.

The mission of the corporation shall be to operate a law center advancing the constitutional and statutory rights of the people of Hawai'i by investigating government activity that appears to be misaligned with constitutional intent, illegal, ineffective and/or inefficient; advocating for the implementation of corrective measures in and out of the courts; and enforcing such corrective measures and rights.

Article VII
INITIAL DIRECTORS

Management of the business and affairs of the Corporation is vested in a Board of Directors. The number of Directors and the method of their appointment shall be determined

by the Bylaws of the Corporation, and shall be subject to change from time to time by amendment of the Bylaws; provided, however that the number of Directors shall never be less than three (3).

The following persons shall act as the initial Directors of the Corporation until their successors are duly elected or appointed as provided for in the Bylaws. The name and address of each initial Director is:

<u>Name</u>	<u>Address</u>
Pierre M. Omidyar	3465 Waialae Avenue, Suite 200 Honolulu, Hawaii 96816
Patti Epler	3465 Waialae Avenue, Suite 200 Honolulu, Hawaii 96816
Paul Alston	1001 Bishop Street, Suite 1800 Honolulu, Hawaii 96813

Article VIII
ADOPTION OF BYLAWS

The initial Bylaws of the Corporation shall be adopted by the Board of Directors, and the power to alter, amend or repeal the Bylaws or adopt new Bylaws shall be vested in the Board of Directors.

Article IX
DISSOLUTION

Upon the dissolution or winding up of the Corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of the Corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable and/or educational purposes and which has established its tax-exempt status under Section 501(c)(4) or 501(c)(3) of the Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

The undersigned certifies under the penalties of Section 414D-12, Hawaii Revised Statutes, that she has read the above statements and that the same are true and correct.

Effective as of the 20th day of August, 2013.



MICHAEL G. MOHR

Incorporator

06/13/201420078

NO. CAAP-22-0000506

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

STATE OF HAWAII

HAWAII GOVERNMENT EMPLOYEES)	CIVIL NO. 1CCV-21-0001304
ASSOCIATION, AFSCME, LOCAL 152,)	(DECLARATORY JUDGMENT)
AFL-CIO; and, UNITED PUBLIC)	
WORKERS, AFSCME, LOCAL 646,)	APPEAL FROM:
AFL-CIO,)	(1) ORDER GRANTING
)	DEFENDANT DEPARTMENT OF
Plaintiffs-Appellants,)	PUBLIC SAFETY, STATE OF HAWAII'S
)	AMENDED MOTION TO DISMISS,
vs.)	FILED ON NOVEMBER 29, 2021
)	[Dkt. 17], FILED ON MARCH 31, 2022
DEPARTMENT OF PUBLIC SAFETY,)	[Dkt. 37]; and (2) FINAL JUDGMENT
STATE OF HAWAII; JOHN DOES 1-10;)	FILED ON AUGUST 2, 2022 [Dkt. 48]
JANE DOES 1-10; DOE PARTNERSHIPS)	
1-10; DOE CORPORATIONS 1-10; DOE)	
GOVERNMENTAL AGENCIES AND)	
DOE ENTITIES 1-10;)	
)	
Defendant-Appellee.)	
)	
)	JUDGE: HON. LISA W. CATALDO
)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on this date, written below, a true and correct copy of Plaintiffs-Appellants Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO; and, United Public Workers, AFSCME, Local 646, AFL-CIO's Memorandum in Opposition to the Motion for Leave to File *Amicus Curiae* Brief Filed on September 19, 2024 [Dkt. 58],

was duly served upon the party listed below by electronic means through the Judiciary Electronic

Filing and Service System:

AMANDA FURMAN, ESQ. Email: *amanda.furman@hawaii.gov*
ROBERT RAWSON, ESQ. Email: *robert.rawson@hawaii.gov*
JAMES E. HALVORSON, ESQ. Email: *james.halvorson@hawaii.gov*
Deputy Attorneys General
Department of the Attorney General,
State of Hawaii
235 South Beretania Street, 15th Floor
Honolulu, Hawaii 96813

Attorneys for Defendant-Appellee
DEPARTMENT OF PUBLIC SAFETY
STATE OF HAWAII

ROBERT BRIAN BLACK, ESQ. Email: *brian@publicfirstlaw.org*
BENJAMIN M. CREPS, ESQ.
700 Bishop Street, Suite 1701
Honolulu, Hawaii 96813

Attorneys for Movant
PUBLIC FIRST LAW CENTER

DATED: Hilo, Hawaii, September 20, 2024.

/s/ Ted H. S. Hong
TED H. S. HONG
Attorney at Law

Attorney for Plaintiffs-Appellants
HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO; and, UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO