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SCAP-16-0000462

IN THE SUPREME COURT OF THE STATE OF HAWAII

TAX FOUNDATION OF HAWAII, a
Hawai'i non-profit corporation, on behalf of
itself and those similarly situated,

Plaintiff/Appellant,

vs.

STATE OF HAWAII,

Defendant/Appellee.

CIVIL NO. 15-1-2020-10

APPEAL FROM THE:

**(1) FINAL JUDGMENT FILED JUNE 1,
2016 AND (2) ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS
COMPLAINT FILED ON OCTOBER 21,
2015 (FILED ON NOVEMBER 10, 2016),
FILED MAY 16, 2016**

**FIRST CIRCUIT COURT, STATE OF
HAWAII**

The Honorable Edwin C. Nacino, Judge

**PLAINTIFF/APPELLANT TAX FOUNDATION OF HAWAII'S
OPPOSITION TO DEFENDANT-APPELLEE STATE OF HAWAII'S
MOTION TO STRIKE PLAINTIFF-APPELLANT TAX FOUNDATION'S
HRAP RULE 28(j) RESPONSE [DKT #19]**

CERTIFICATE OF SERVICE

Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys at Law
A Law Corporation

PAUL ALSTON 1126
LORI KING STIBB 9670
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
E-mail: palston@ahfi.com
lstibb@ahfi.com

Attorneys for Plaintiff-Appellant
TAX FOUNDATION OF HAWAII

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OF THE STATE OF HAWAII

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HRAP RULE 28(j) RESPONSE [DKT #19]**

Plaintiff/Appellant Tax Foundation of Hawai'i (the "Foundation") by and through its counsel, Alston Hunt Floyd & Ing, hereby files its opposition to Defendant/Appellee State of Hawai'i's (the "State") motion to strike [Dkt #19] ("Motion") the Foundation's Rule 28(j) letter dated September 13, 2017 (the "Foundation's Letter").

The Foundation's Letter was appropriate given the argument presented in the State's HRAP Rule 28(j) letter filed on September 7, 2017 (the "State's Letter"), specifically "whether the matter at issue in this case properly belongs in the Legislature or in the courts." Ex. A to the Motion. While the State's Letter is shorter than the Foundation's Letter, the length of a letter does not constitute argument, but rather the content does.

Here, the State misleadingly referred to part of the Act to support its argument that the matter at issue in this case should properly be before the Legislature. *See* Page 30 of the

Answering Brief ("This matter belongs in the Legislature and not in the courts.") Under HRAP 28(j), the Foundation is surely entitled to respond in kind.

The Foundation appropriately cited to the portions of the Act that the State (perhaps purposefully) failed to cite as being pertinent to the appeal and responded to the pages that the State referenced in their Answering Brief. Moreover, the Foundation cited to the pages of its Opening Brief to which the Act was pertinent.

Finally, to the extent the Court is inclined to grant the State's Motion, the Foundation respectfully requests that this Court allow supplemental briefing on the limited issues raised in both the Foundation's Letter and the State's Letter as to allow the Court to render a fully-informed decision on the merits.

DATED: Honolulu, Hawai'i, September 18, 2017 .

/s/ PAUL ALSTON
PAUL ALSTON
LORI KING STIBB

Attorneys for Plaintiff-Appellant
TAX FOUNDATION OF HAWAII

No. CAAP-16-0000462

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document will
be served on counsel of record indicated below through JEFS upon the filing hereof:

DOUGLAS CHIN, ESQ.

Douglas.S.Chin@hawaii.gov

HUGH R. JONES, ESQ.

Hugh.R.Jones@hawaii.gov

NATHAN S. C. CHEE, ESQ.

Nathan.S.Chee@hawaii.gov

MICHAEL A. LILLY, ESQ.

michael@nljlaw.com

DATED: Honolulu, Hawai'i, September 18, 2017.

/s/ PAUL ALSTON
PAUL ALSTON
LORI KING STIBB

Attorneys for Plaintiff-Appellant
TAX FOUNDATION OF HAWAII