

**Electronically Filed
Intermediate Court of Appeals
CAAP-18-0000738
27-SEP-2018
11:03 AM**

NO. CAAP-18-_____

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI‘I

CITY AND COUNTY OF HONOLULU,
COUNTY OF HAWAI‘I, COUNTY OF
MAUI, COUNTY OF KAUA‘I,

Plaintiffs-Appellants,

vs.

DAVID Y. IGE, GOVERNOR, STATE OF
HAWAI‘I, in his official capacity; DOUGLAS
S. CHIN, LIEUTENANT GOVERNOR,
STATE OF HAWAI‘I, in his official capacity;
F.M. SCOTTY ANDERSON,
CHAIRPERSON, ELECTIONS
COMMISSION, in his official capacity;
SCOTT T. NAGO, CHIEF ELECTION
OFFICER, in his official capacity,

Defendants-Appellees.

CIVIL NO. 18-1-1326-08 (JPC)
(Declaratory Judgment; Injunctive Relief)

APPEAL FROM THE:
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER DENYING PLAINTIFF
COUNTIES’ MOTION FOR PRELIMINARY
INJUNCTION, FILED ON AUGUST 31, 2018

FIRST CIRCUIT COURT

HONORABLE JEFFREY P. CRABTREE
Judge

PLAINTIFFS-APPELLANTS COUNTIES’ NOTICE OF APPEAL

EXHIBIT “1” & “2”

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COUNTY OF KAUA'I

PLAINTIFFS-APPELLANTS COUNTIES' NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT Plaintiffs-Appellants City and County of Honolulu, County of Hawai'i, County of Kaua'i, and County of Maui (collectively "Counties"), pursuant to H.R.S. § 602-57, 641-1(b), and Rules 3 and 4 of the Hawai'i Rules of Appellate Procedure, hereby appeal to the Intermediate Court of Appeals of the State of Hawai'i from the Circuit Court of the First Circuit's Findings of Fact, Conclusions of Law and Order Denying Plaintiff Counties' Motion for Preliminary Injunction, filed on September 20, 2018, a certified copy of which is attached as **Exhibit 1**. Also, the Circuit Court's Order (1) Certifying Findings of Fact, Conclusions of Law (motion filed 8/31/18), and Order Denying Plaintiff Counties' Motion for Preliminary Injunction for Interlocutory Appeal and (2) Staying Proceedings Pending Appeal, filed on September 21, 2018, is attached as **Exhibit 2** (certified copy).

DATED: Honolulu, Hawai'i, September 27, 2018.

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Corporation Counsel

By /s/ Robert M. Kohn

ROBERT M. KOHN
NICOLETTE WINTER
Deputies Corporation Counsel

Attorneys for Plaintiff-Appellant
CITY AND COUNTY OF HONOLULU

DATED: Hilo, Hawai'i, September 27, 2018.

JOSEPH K. KAMELAMELA
Corporation Counsel

By /s/ Lauren L. Martin

LAUREEN L. MARTIN
Deputies Corporation Counsel

Attorneys for Plaintiff-Appellant
COUNTY OF HAWAI'I

DATED: Wailuku, Hawai'i, September 27, 2018.

PATRICK WONG
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By /s/ Brian A. Bilberry
BRIAN A. BILBERRY
Deputy Corporation Counsel

Attorneys for Plaintiff-Appellant
COUNTY OF MAUI

DATED: Lihue, Hawai'i, September 27, 2018.

MAUNA KEA TRASK
County Attorney

By /s/ Matthew M. Bracken
MATTHEW M. BRACKEN
First Deputy County Attorney

Attorneys for Plaintiff-Appellant
COUNTY OF KAUA'I

Original

PKM

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

9-20-18
4:00 o'clock pm
JCh
Clerk, Sixth Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU,
COUNTY OF HAWAII, COUNTY OF MAUI,
COUNTY OF KAUA'I,

Plaintiffs,

vs.

DAVID Y. IGE, GOVERNOR, STATE OF
HAWAII, in his official capacity; DOUGLAS
S. CHIN, LIEUTENANT GOVERNOR, STATE
OF HAWAII, in his official capacity;
F.M. SCOTTY ANDERSON, CHAIRPERSON,
ELECTIONS COMMISSION, in his official
capacity; and SCOTT T. NAGO, CHIEF
ELECTION OFFICER, in his official capacity,

Defendants,

and

TAX FOUNDATION OF HAWAII,

Amicus Curiae.

CIVIL NO. 18-1-1326-08 JPC
(Declaratory Judgment; Injunctive Relief)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER DENYING PLAINTIFF
COUNTIES' MOTION FOR
PRELIMINARY INJUNCTION,
FILED ON AUGUST 31, 2018**

Hearing:

Date: September 7, 2018

Time: 1:30 p.m.

Judge: Honorable Jeffrey P. Crabtree

No trial date set

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER DENYING PLAINTIFF COUNTIES' MOTION
FOR PRELIMINARY INJUNCTION, FILED ON AUGUST 31, 2018**

I hereby certify that this is a full, true and
correct copy of the original in file in this office.

EXHIBIT "1"

JCh
Clerk, Circuit Court, First Circuit

Plaintiffs CITY AND COUNTY OF HONOLULU ("City"), COUNTY OF HAWAI'I, COUNTY OF MAUI, COUNTY OF KAUA'I's (collectively "Counties") Motion for Preliminary Injunction, Filed on August 31, 2018 (the "Motion") was heard by the Honorable Jeffrey P. Crabtree, Judge, Circuit Court of the First Circuit, State of Hawai'i on September 7, 2018 at 1:30 p.m., with Corporation Counsel Donna Y.L. Leong, Deputies Corporation Counsel Robert M. Kohn and Nicolette Winter appearing on behalf of Plaintiff CITY AND COUNTY OF HONOLULU, Deputy Corporation Counsel John Mukai appearing on behalf of Plaintiff COUNTY OF HAWAI'I, Corporation Counsel Patrick K. Wong and Deputy Corporation Counsel Brian A. Bilberry appearing on behalf of Plaintiff COUNTY OF MAUI, First Deputy County Attorney Matthew M. Bracken appearing on behalf of Plaintiff COUNTY OF KAUA'I (by phone), and Attorney General Russell A. Suzuki and Deputy Attorney General Valri Lei Kunimoto appearing on behalf of Defendants DAVID Y. IGE, DOUGLAS S. CHIN, F.M. SCOTTY ANDERSON, and SCOTT T. NAGO (collectively "State Defendants"). The Court having reviewed the Motion and memoranda, declarations and exhibits attached thereto, the entire record of this proceeding, and having heard the arguments of counsel presented at the hearing on the Motion, being duly apprised of all the premises there, the Court enters the following findings of fact and conclusions of law and order.

FINDINGS OF FACT

Procedural Background

1. On August 22, 2018, the Complaint was filed, seeking declaratory and injunctive relief to prevent an alleged misleading ballot heading (title) for a proposed constitutional amendment from being placed on the general election ballot.

2. On August 29, 2018, a first Amended Complaint was filed, to prevent an alleged improper ballot question from being placed on the general election ballot and indicating that the remaining counties would join the City in its Second Amended Complaint to be filed. First Amended Complaint for Declaratory and Injunctive Relief, ¶1. The City sought to obtain a court ruling prior to Friday, September 7, 2018, the date it believed the proposed ballot would be sent to the publisher for printing. Id. The City contended that the ballot measure was improper because (a) the ballot title is misleading and deceptive; (b) the ballot question is misleading and deceptive; (c) "investment real property" is not defined and the provision is therefore vague and overbroad; (d) the legislative procedure for adopting SB 2922 was flawed, was not transparent and was improper; and (e) SB 2922 interferes with the "home rule" of the Counties. Id., ¶8. The Counties (sic) sought a declaration that SB 2922 is invalid, the proposed ballot title and ballot question are invalid, and enjoining the Defendants from placing the proposed amendment on the ballot. Id., p. 8, ¶1.

3. Also on August 29, 2018, the Counties filed a Second Amended Complaint for Declaratory and Injunctive Relief.

4. On August 31, 2018, the Counties filed a Motion for Preliminary Injunction.

The Motion for Preliminary Injunction

5. At issue is the Legislature's ballot question for the proposed constitutional amendment, "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?"

6. The proposed constitutional amendments are as follows¹:

Section 2. Article VIII, section 3, of the Constitution of the State of Hawaii is amended to read as follows:

¹ New material is underscored.

"TAXATION AND FINANCE

Section 3. The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao[-]; provided that the legislature may establish, as provided by law, a surcharge on investment real property. The legislature shall have the power to apportion state revenues among the several political subdivisions."

SECTION 3. Article X, section 1, of the Constitution of the State of Hawaii is amended to read as follows:

"PUBLIC EDUCATION

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or nonsectarian private educational institution, except that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist:

1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public; and
2. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities.

Funding of public education shall be determined by the legislature; provided that revenues derived from a surcharge on investment real property pursuant to section 3 of article VIII shall be used to support public education."

7. The Legislature specified the exact constitutional ratification question to be printed on the general election ballot, and pursuant to Hawai'i Revised Statutes ("HRS") § 11-118.5, phrased the question in a manner to enable voters to express their choice on the constitutional amendment with a "yes" or "no" response.
8. The general election is scheduled for November 6, 2018.

9. Plaintiff counties initially challenged the ballot header (title) for the proposed constitutional amendments. Nago Dec. ¶10. The Chief Election Officer removed the header for the ballot question altogether because he could not accept the City's proposed title and did not want to jeopardize the general election because of a dispute over a header. Id., ¶¶16, 18. Headers are not legally required and thus, there is no header or title for the proposed constitutional amendments on the ballot. Id., ¶18.

10. Given the strict deadlines to prepare, print, and distribute the ballots for the forthcoming general election, the State argued that any delay to modify the ballots or delete the question from the ballot may jeopardize the general election. Id., ¶¶23, 25. The State further argued there are 240 ballot types which need to be changed, proofed, printed and coordinated with the counting system, Id., ¶28, and that requiring any modification of the general election ballot at this time might increase the possibility of mistakes being made and cause irreparable harm to the Chief Election Officer as well as to the County Clerks who are responsible for sending the absentee ballots out to the voters. Id., ¶¶25-60. The court notes and finds that these particular issues did not impact the court's decision.

11. Perhaps based on the logistical issues described above in ¶ 10, Plaintiff Counties revised their request to physically remove the question from the ballot, and instead asked this court to issue an order: (1) declaring the proposed ballot question void; and (2) ordering the Chief Election Officer to issue a public proclamation stating that the question regarding the constitutional amendment should not have appeared on the ballot and should be considered stricken from the ballot and any votes for or against the measure will not be counted and have no impact. (*See*, Counties' Reply Re Motion for Preliminary Injunction, filed 9/6/18, p. 3.)

CONCLUSIONS OF LAW

1. Any conclusion of law that is erroneously designated as a Finding of Fact is deemed to be a Conclusion of Law; any finding of fact that is erroneously designated as a Conclusion of Law is deemed to be a Finding of Fact.
2. HRS § 603-21.5 extends jurisdiction to the circuit courts to consider Plaintiffs' request for declaratory judgment and related injunctive relief regarding proposed constitutional amendments. State ex rel. Bronster v. Yoshina, 84 Haw. 179, 932 P.2d 316 (1997).
3. This motion is limited to a request for injunctive relief under Rule 65 of the Hawai'i Rules of Civil Procedure. The Court is limited to deciding: (1) which side is likely to win, i.e., whether or not the proposed amendment is too vague or is deceptive and therefore cannot go on the ballot; (2) will irreparable injury result if the vote goes forward; and (3) is a public interest involved, and, if so, does it support granting the injunction. Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. 272, 276, 630 P.2d 646, 649-50 (1981) (*citing* Life of the Land v. Ariyoshi, 59 Haw. 156, 158, 577 P.2d 1116, 1118 (1978)).
4. HRS § 11-118.5 requires the Legislature to propose the exact ratification question for constitutional amendments as follows:

[§11-118.5] Constitutional amendments, proposed. Any constitutional amendment proposed by the legislature shall include in final form the exact constitutional ratification question to be printed on a ballot. The constitutional ratification question shall be phrased in a manner to enable voters to express their choice on the constitutional amendment by providing a "yes" or "no" response. The language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive.

(Emphasis added.)

5. The Counties argue that the terms "surcharge," "as provided by law," and "investment real property" used in the ballot question are misleading and deceptive or vague and overbroad.

6. State Defendants argue: (1) the Legislature's use of "surcharge," is used in other legislation and refers to "an additional amount" and refers to an Art. VII surcharge calculated on the investment real property tax; (2) Courts have interpreted the provision, "as provided by law," to mean the constitutional provision is not self-implementing and that it requires further clarification and enactment by the Legislature by subsequent legislation, Board of Education v. Waihee, 70 Haw. 253, 269, fn. 4, 768 P.2d 1279, 1289 (1989); and (3) "investment real property" can be defined in future implementing legislation.

7. The Court does not find the proposed language for the constitutional amendments to be deceptive. HRS § 11-118.5 does not require that the proposed constitutional amendment contain a detailed description of all of the issues and possible effects connected with the proposed amendment. The reality is that many of our most important constitutional rights approved by the voters, such as those approved by the voters following the 1978 Constitutional Convention, are somewhat general or vague. They are often clarified by subsequent legislation or court decision. Here, while the proposed language is not as clear as it could be, the court finds the language is clear enough to satisfy HRS § 11-118.5.

8. The Hawai'i State Constitution reserves the taxing power to the State but allows the Legislature to delegate the State's taxing powers to the counties and to amend such delegation. Art. VIII, Sec. 3, Hawai'i State Constitution, provides as follows:

Section 3. The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised

exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions.

(Emphasis added.)

9. The Counties argue that the constitutional amendments should be proposed by a Constitutional Convention, but this is not supported by Art. XVII, Sec. 3, Hawai'i State Constitution, which grants authority to the Legislature to propose amendments to the Constitution.

10. The Counties contend that the Legislature's procedures, in its committee assignments or making amendments were "irregular" or "improper". The court is not persuaded by this argument. Art. III, Sec. 12, Hawai'i State Constitution, provides in part, "[i]n any event, each house shall ... determine the rules of its proceedings." If the procedures used are alleged to be in violation of the legislature's rules, the Supreme Court has stated, "We will not interfere with the conduct of legislative affairs in absence of a constitutional mandate to do so, or unless the procedure or result constitutes a deprivation of constitutionally guaranteed rights." Schwab v. Ariyoshi, 58 Haw. 25, 36, 564 P.2d 135, 143 (1977). The court is not aware and does not find that any of the allegedly irregular procedures resulted in a constitutional violation.

11. Turning to the three key questions this court must answer:

A. Are Plaintiffs likely to win on the merits? The court answers "No." The court's reason is because as stated above, the court does not find the measure deceptive, and does not find the measure otherwise violates HRS § 11-118.5. It is not impossible that the counties could prevail, but the court finds it unlikely.

B. Is there irreparable harm? The court answers "No." This is the most important factor in the court's decision. Even if this court was convinced that the ballot language

was somewhat deceptive or misleading (and again, the court does not make this finding), a high hurdle remains on the irreparable injury issue. The court concludes an irreparable injury would not result if the vote goes forward as currently scheduled. This is not a situation where by letting the vote go forward, damage results which cannot be undone. In fact, most challenges to constitutional amendments occur after the vote, not before.

C. Does the public interest weigh in favor of an injunction? The court answers: "No." There is definitely a public interest in not having a deficient measure on the ballot, and there is definitely a public interest in allowing voters to vote on measures adopted by the State Legislature unless they are clearly deceptive or misleading. This court finds that under the circumstances of this case, the public interest on each side of the question balances evenly, or at least certainly not enough to tip the scale in favor of issuing the injunction.

**ORDER DENYING PLAINTIFF COUNTIES' MOTION FOR
PRELIMINARY INJUNCTION FILED HEREIN ON AUGUST 31, 2018**

FOR THE ABOVE REASONS, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Counties' Motion for Preliminary Injunction filed herein on August 31, 2018 is hereby DENIED.

DATED: Honolulu, Hawai'i, 9-20-18



JUDGE OF THE ABOVE-ENTITLED COURT

City and County of Honolulu, County of Hawai'i, County of Maui, County of Kaua'i vs. David Y. Ige, Governor, State of Hawai'i, et al.; Civil No. 18-1-1326-08 JPC; In the Circuit Court of the First Circuit, Findings of Fact, Conclusions of Law and Order Denying Plaintiff Counties' Motion for Preliminary Injunction, Filed on August 31, 2018

NOTICE OF ENTRY

The above **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF COUNTIES' MOTION FOR PRELIMINARY INJUNCTION, FILED ON AUGUST 31, 2018** has been entered and copies served on the above-identified parties by:

1. NA United States mail;
2. X Delivery to the court jackets of attorneys;

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Nicolette Winter

Donna Leong

Paul Aoki

Attorney(s) for Plaintiff

Russel Suzuki

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Valri.I.Kunimoto

Attorney(s) For Defendant

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 9-20-18
Clerk, 6th Division

City and County of Honolulu, County of Hawai'i, County of Maui, County of Kaua'i vs. David Y. Ige, Governor, State of Hawai'i, et al.; Civil No. 18-1-1326-08 JPC; In the Circuit Court of the First Circuit, Findings of Fact, Conclusions of Law and Order Denying Plaintiff Counties' Motion for Preliminary Injunction, Filed on August 31, 2018

Original

PKM

FIRST CIRCUIT COURT
STATE OF HAWAII

FILED

9-21-18

3:58 o'clock pm

9
Clerk, South Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU,
COUNTY OF HAWAII, COUNTY OF
MAUI, COUNTY OF KAUA'I,

Plaintiffs,

vs.

DAVID Y. IGE, GOVERNOR, STATE OF
HAWAII, in his official capacity; DOUGLAS
S. CHIN, LIEUTENANT GOVERNOR,
STATE OF HAWAII, in his official capacity;
F.M. SCOTTY ANDERSON,
CHAIRPERSON, ELECTIONS
COMMISSION, in his official capacity;
SCOTT NAGO, CHIEF ELECTION
OFFICER, in his official capacity,

Defendants.

CIVIL NO. 18-1-1326-08 JPC
(Declaratory Judgment; Injunctive
Relief)

ORDER (1) CERTIFYING FOR
INTERLOCUTORY APPEAL THE
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER DENYING
PLAINTIFF COUNTIES' MOTION
FOR PRELIMINARY INJUNCTION
(motion filed 8/31/18), AND (2)
STAYING PROCEEDINGS
PENDING APPEAL

Judge: Honorable Jeffrey P. Crabtree

ORDER (1) CERTIFYING FOR INTERLOCUTORY APPEAL THE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF COUNTIES' MOTION
FOR PRELIMINARY INJUNCTION (motion filed 8/31/18), AND
(2) STAYING PROCEEDINGS PENDING APPEAL

Plaintiffs City and County of Honolulu, County of Hawai'i, County of Kaua'i, and
County of Maui (collectively "Counties") challenge a proposed constitutional amendment
question on the ballot for the general election on November 6, 2018 ("General Election").
The challenge is in the form of a Motion for Preliminary Injunction, where Counties seek
an order directing the Chief Elections Officer to issue a public proclamation to voters
before the General Election. Counties request the proclamation state that the proposed

do hereby certify that this is a full, true and
correct copy of the original in file in this office.

EXHIBIT "2"

Clerk, Circuit Court, First Circuit

constitutional amendment should not have appeared on the ballot and should be considered stricken, and that any votes for or against the measure will not be counted and have no impact.

A hearing on the Motion for Preliminary Injunction was held on September 7, 2018. On September 19, 2018, the Court entered an initial written interlocutory order denying the Motion ("PI Order"). After concluding that Findings of Fact and Conclusions of Law were required, on September 20, 2018, this court entered Findings of Fact, Conclusions of Law and Order Denying Plaintiff Counties' Motion For Preliminary Injunction ("FOFCOL"). The FOFCOL order entered on September 20, 2018 supersedes the PI Order entered September 19, 2018. (The parties submitted differing versions for the proposed FOFCOL. The court directed Division staff to file each proposed version so the record is clear as to which side proposed what language, and which language the court adopted from a party versus which language the court wrote.)

Since the Counties seek relief before the General Election, and since there is no Judgment or HRCP Rule 54(b) certification for this matter, the parties and the court met at a status conference and discussed a certification for appeal pursuant to HRS 641-1(b). On September 14, 2018, the court received a hand-delivered copy of the Counties' proposed Order (1) Certifying Order Denying Plaintiff Counties' Motion for Preliminary Injunction for Interlocutory Appeal and (2) Staying Proceedings Pending Appeal. On September 14, 2018, the court also received Counties' proposed Stipulated Order (1) Certifying Order Denying Plaintiff Counties' Motion for Preliminary Injunction for Interlocutory Appeal and (2) Staying Proceedings Pending Appeal. While the names of the two proposed orders are slightly different, the text of the Counties' September 14th proposed order included extra language which was not part of the proposed Stipulated

Order, as follows: "A ruling by an appellate court on whether the language printed on the ballot is clear and neither misleading nor deceptive will resolve the underlying challenge to invalidate the ballot measure prior to the General Election."

This court hereby certifies for appeal its Findings of Fact, Conclusions of Law and Order Denying Plaintiff Counties' Motion For Preliminary Injunction. The court's certification is pursuant to HRS § 641-1(b), which provides:

Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it. The refusal of the circuit court to allow an appeal from an interlocutory judgment, order, or decree shall not be reviewable by any other court.

This court expressly finds that an immediate appeal of the Findings of Fact, Conclusions of Law and Order Denying Plaintiff Counties' Motion For Preliminary Injunction would be advisable for the speedy termination of the litigation before it. The court's reasons are:

1. If the Counties obtain the relief they are seeking prior to the election, the ballot question will be invalidated and the votes will not be counted, resulting in the termination of the litigation. (This language was proposed by the Counties, and the court agrees with it and hereby adopts it.)

2. Based on its reading of the Complaint, the Court finds that the sufficiency of the constitutional amendment ballot question is the gravamen of this litigation and the interlocutory appeal of the Court's denial of the Counties' motion for preliminary injunction may put an end to the action. The Court therefore expressly concludes that an immediate appeal of the Findings of Fact, Conclusions of Law and Order Denying Plaintiff Counties' Motion for Preliminary Injunction is advisable for the speedy termination of

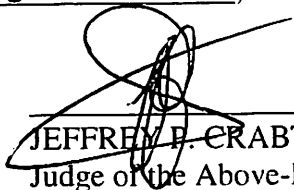
the litigation before it. (This language was proposed by the State, and the Counties informed the court they have no objection to this language.)

3. If the Counties do not obtain their requested pre-election relief from the denial of the preliminary injunction, it is *possible* the underlying constitutional claims could still be prosecuted, and therefore this case may *possibly* not be terminated in its entirety; however, the court finds this is more a theoretical concern. Therefore, this court still finds the appeal is advisable for the speedy termination of a substantial, important, and time-sensitive issue in the litigation before it, all of which affects the public interest.

4. The court hereby stays all proceedings before it pending resolution of the certified appeal, unless otherwise ordered.

5. Regarding the parties' proposed language for this order as described above, the court has directed Division staff to file the parties' and the court's e-mails with the suggested language and positions, so a record is made as to which side proposed what language, and which language the court adopted from a party versus which language was written by the court.

Dated: Honolulu, Hawai'i, 9-21-18, 2018.



JEFFREY F. CRABTREE
Judge of the Above-Entitled Court

City and County of Honolulu, et al. v. Ige, et al., Civil No. 18-1-1326-08 (JPC);
ORDER (1) CERTIFYING FOR INTERLOCUTORY APPEAL THE FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF
COUNTIES' MOTION FOR PRELIMINARY INJUNCTION (Motion Filed
8/31/18), AND (2) STAYING PROCEEDINGS PENDING APPEAL

NOTICE OF ENTRY

The above ORDER (1) CERTIFYING FOR INTERLOCUTORY APPEAL THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF COUNTIES' MOTION FOR PRELIMINARY INJUNCTION (motion filed 8/31/18), AND (2) STAYING PROCEEDINGS PENDING APPEAL has been entered and copies served on the above-identified parties by:

1. NA United States mail;
2. X Delivery to the court jackets of attorneys;

Robert M. Kohn

Nicolette Winter

Donna Leong

Paul Aoki

Attorney(s) for Plaintiff

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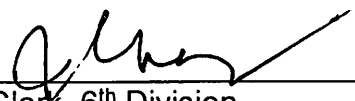
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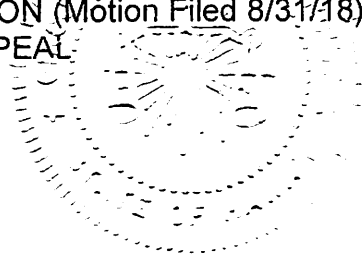
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Clerk, 6th Division

City and County of Honolulu, et al. v. Ige, et al., Civil No. 18-1-1326-08 (JPC); ORDER (1) CERTIFYING FOR INTERLOCUTORY APPEAL THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFF COUNTIES' MOTION FOR PRELIMINARY INJUNCTION (Motion Filed 8/31/18), AND (2) STAYING PROCEEDINGS PENDING APPEAL.



No. CAAP _____

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU,
COUNTY OF HAWAI'I, COUNTY OF
MAUI, COUNTY OF KAUA'I,

Plaintiffs-Appellants,

vs.

DAVID Y. IGE, GOVERNOR, STATE OF
HAWAI'I, in his official capacity; DOUGLAS
S. CHIN, LIEUTENANT GOVERNOR,
STATE OF HAWAI'I, in his official capacity;
F.M. SCOTTY ANDERSON,
CHAIRPERSON, ELECTIONS
COMMISSION, in his official capacity;
SCOTT T. NAGO, CHIEF ELECTION
OFFICER, in his official capacity,

Defendants-Appellees.

CIVIL NO. 18-1-1326-08 (JPC)
(Declaratory Judgment; Injunctive Relief)

APPEAL FROM THE:
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER DENYING PLAINTIFF
COUNTIES' MOTION FOR
PRELIMINARY INJUNCTION, FILED ON
AUGUST 31, 2018

FIRST CIRCUIT COURT

HONORABLE JEFFREY P. CRABTREE
Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date noted below, a true and correct copy of the
foregoing was duly served upon the following at their last known address via Judiciary

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