

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 KAUAI,

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 Hawaii, County of Kauai, 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

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

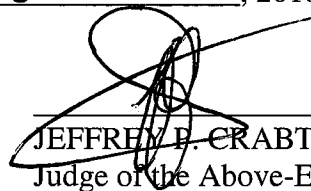
the litigation before it. (This language was proposed by the State, and the Counties informed the court they have no objection to this language.)

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 P. 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;

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Paul Aoki

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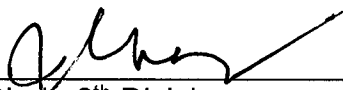
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Clerk, 6th Division

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