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**FIRST CIRCUIT**  
**1CSP-21-0000278**  
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Attorneys for Respondent  
INVESTIGATIVE COMMITTEE, HOUSE OF REPRESENTATIVES,  
STATE OF HAWAI'I, THE THIRTY-FIRST LEGISLATURE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LESLIE H. KONDO, in his official capacity  
as AUDITOR; OFFICE OF THE  
AUDITOR, STATE OF HAWAI'I,

Petitioners,

vs.

INVESTIGATIVE COMMITTEE, HOUSE  
OF REPRESENTATIVES, STATE OF  
HAWAI'I, THE THIRTY-FIRST  
LEGISLATURE; JOHN DOE  
DEFENDANTS 1 TO 10, JANE DOE  
DEFENDANTS 1-10; DOE  
GOVERNMENTAL ENTITIES 1-10,

Respondents.

CIVIL NO. 1CSP-21-0000278

RESPONDENT INVESTIGATIVE  
COMMITTEE, HOUSE OF  
REPRESENTATIVES, STATE OF HAWAII,  
THE THIRTY-FIRST LEGISLATURE'S  
MEMORANDUM IN OPPOSITION TO  
TAX FOUNDATION OF HAWAI'I'S  
MOTION FOR LEAVE TO FILE *AMICUS*  
*CURIAE* MEMORANDUM IN SUPPORT  
OF PETITIONERS FILED ON  
OCTOBER 26, 2021; CERTIFICATE OF  
SERVICE

NON-HEARING MOTION

JUDGE: Honorable Lisa W. Cataldo  
TRIAL DATE: No trial date set

RESPONDENT INVESTIGATIVE COMMITTEE,  
HOUSE OF REPRESENTATIVES, STATE OF HAWAII,  
THE THIRTY-FIRST LEGISLATURE'S MEMORANDUM IN OPPOSITION  
TO TAX FOUNDATION OF HAWAI'I'S MOTION FOR LEAVE TO FILE *AMICUS*  
*CURIAE* MEMORANDUM IN SUPPORT OF PETITIONERS FILED ON OCTOBER 26, 2021

Approximately seven hours *after* the House Investigative Committee filed its opposition  
to Petitioners' Motion for Enlargement of Time to Respond to and/or to Quash or for Protective

Order (“Motion to Quash”), the Tax Foundation of Hawaii (“TFH”) filed the instant motion seeking leave to file an *amicus curiae* memorandum in support of Petitioner’s Motion to Quash (“Motion”). TFH seeks leave in order to echo one of the arguments raised in the Auditor’s Motion to Quash. TFH’s Motion should be summarily denied.

There is no rule which expressly permits an *amicus curiae* brief to be filed in the Circuit Court. *Cf.* Hawaii Rules of Appellate Procedure Rule 28(g) (“An *amicus curiae* brief may be filed only by leave of the appellate court.”). To the extent it is not prohibited, the Court has broad discretion to deny leave to file an amicus brief:

The term ‘amicus curiae’ means friend of the court, not friend of a party. . . . An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. Otherwise, leave to file an amicus curiae brief should be denied.

*Ryan v. Commodity Futures Trading Commission*, 125F.3d 1062, 1063 (7th Cir. 1997) (citations omitted); *see also Community Association for Restoration of Environment v. DeRuyter Brothers Dairy*, 54 F.Supp.2d 974 (E.D. Wash. 1999) (“The privilege of being heard amicus rests in the discretion of the court which may grant or refuse leave according as it deems the proffered information timely, useful, or otherwise.”).

TFH does not satisfy the requirements for being granted leave to file an amicus brief. First, the Auditor has competent counsel. As reflected by the Motion to Quash and Reply Memorandum, the Auditor’s General Counsel, Megan Y. S. Johnson,<sup>1</sup> already strenuously advocated for the same privilege TFH encourages the Court to adopt, but in much more detail than what TFH proposes to do.

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<sup>1</sup> Shortly before the filing of this opposition, the Richard Naiwicha Wurdeman was substituted in as counsel for the Auditor.

Second, TFH has not shown that it has an interest in some other case that may be affected by a decision here nor has it shown that it has unique information or perspective that can assist the Court beyond what current counsel has been able to provide. Even assuming TFH has unique information or perspective on the handling of tax return information, it is undisputed that “tax returns are not at issue” in this case. *See* Exhibit A to Motion, p. 4.

Third, TFH’s Motion is untimely and if granted, would disadvantage the House Investigative Committee. It appears that TFH’s counsel, Thomas Yamachika, as a Hawaii Judiciary Information Management System user, added himself as an attorney to the case on October 19, 2021. *See* Dkt. 19. This permitted Mr. Yamachika to access the documents filed in the case, including the October 14, 2021 Motion to Quash and the amended notice of hearing confirming that the Motion to Quash was set for a November 3, 2021 hearing. *See* Dkts. 1, 16. Despite having ample notice and opportunity, TFH waited until after the House Investigative Committee filed its opposition on October 26, 2021 to seek leave to file an amicus in support of the Motion to Quash. TFH’s counsel was undoubtedly aware that the House Investigative Committee had already filed its opposition and given the rapidly-approaching November 3, 2021 hearing date, likely would not have a chance to substantively address TFH’s amicus brief should it be granted leave. The Court should therefore deny TFH’s Motion.

DATED: Honolulu, Hawai‘i, November 2, 2021.

/s/ Lori N. Tanigawa  
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Deputy Attorneys General  
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INVESTIGATIVE COMMITTEE,  
HOUSE OF REPRESENTATIVES,  
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LEGISLATURE

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GOVERNMENTAL ENTITIES 1-10,

Respondents.

CIVIL NO. 1CSP-21-0000278

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was duly served upon the parties identified below via JEFS and electronic mail, on the date set forth below:

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Movant  
TAX FOUNDATION OF HAWAI'I

DATED: Honolulu, Hawai'i, November 2, 2021.

/s/ Lori N. Tanigawa  
PATRICIA OHARA  
LORI N. TANIGAWA  
Deputy Attorneys General  
Attorneys for Respondent  
  
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HOUSE OF REPRESENTATIVES,  
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