



PLAINTIFF WEST HAWAII TODAY'S MOTION  
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

COMES NOW Plaintiff WEST HAWAII TODAY, a Hawaii daily newspaper ("Plaintiff"), by and through its attorney, Robert D. S. Kim, a Hawaii law corporation, and and moves this Honorable Court for a order allowing Plaintiffs to amend the First Amended Complaint filed in this action, by obtaining leave of this Honorable Court to file and serve the proposed Second Amended Complaint, attached hereto as Exhibit B. Exhibit A, contains a computer generated comparison of the Second Amended Complaint and the Third Amended Complaint.

In addition, because of the abbreviated preliminary hearing schedule, Plaintiff is submitting with the motion to amend an application for oral hearing and a ex parte motion to shorten time for hearing.

This motion is made pursuant to Rule 15(a), Hawaii Rules of Civil Procedure, the memorandum in support of the Motion, the Declaration of Robert D. S. Kim attached hereto, and the files and records herein.

DATED: Kealakekua, Hawaii, 9.1.09.



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ROBERT D. S. KIM  
DONNA V. PAYESKO

Attorney for Plaintiff  
WEST HAWAII TODAY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WEST HAWAII TODAY, ) Civil No. 09-1-279K  
 ) (Declaratory Judgment and  
 Plaintiff, ) Injunction) (Kona)  
 )  
 vs. ) MEMORANDUM IN SUPPORT OF MOTION  
 )  
 COUNTY COUNCIL OF THE COUNTY )  
 OF HAWAII, J STANLEY )  
 YOSHIMOTO, DONALD IKEDA, GUY )  
 ENRIQUES, DENNIS "FRESH" )  
 ONISHI, EMILY I. NAEOLE, )  
 DOMINIC YAGONG, BRENDA FORD, )  
 KELLY GREENWELL, PETE HOFFMAN, )  
 in their official capacities )  
 as members of the Hawaii )  
 County Council of the County )  
 of Hawaii, JOHN DOES 1-10, )  
 JANE DOES 1-10, DOE )  
 CORPORATIONS, PARTNERSHIPS, )  
 GOVERNMENTAL UNITS or OTHER )  
 ENTITIES 1-20, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

MEMORANDUM IN SUPPORT OF MOTION

I. STATEMENT OF FACTS

Plaintiff has uncovered other instances of alleged affirmative acts which indicate a conscious circumventing and violation of the Hawaii Sunshine Law. These allegations are set forth in the Second Amended Complaint. Good cause exists to allow these amendments.

II. ARGUMENT

A. THIS HONORABLE COURT IS AUTHORIZED TO GRANT LEAVE TO AMEND THE COMPLAINT IN THIS ACTION

Plaintiffs seek leave from this Honorable Court to amend the First Amended Complaint by filing the proposed Second Amended Complaint that is attached hereto as Exhibit A, and is

incorporated by reference. On the issue of amendments of pleadings. Rule 15(a), Hawaii Rules of Civil Procedure is the governing authority. This Rule states:

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

In this case, the proposed amendments enlarge the factual basis to include other instances of violation of Hawaii Sunshine Law, as well as request a declaration that the repeated actions by certain councilpersons constituted a willful violation of the statute. This case proceeded with limited discovery and on an expedited basis and this new information was revealed through investigation.

In Hawaii, "[t]he Rule requires leave of court or consent by the adverse party in order to amend, and further states that 'leave shall be freely given when justice so requires'". Hirasa v. Burtner, 68 Haw. 22, 25-26, 702 P.2d 772 (Haw. 1985); See Keawe v. Hawaiian Electric Co., Inc., 65 Haw. 232, 238-239 (1982) citing Bishop Trust Co. v. Kamokila Development Corporation, 57 Haw. 330, 555 P.2d 1193 (Haw. 1976).

The Hawaii Supreme Court has recognized that a Motion to Amend "... is governed by Rule 15(a), HRCPP, that is identical to Rule 15(a) of the Federal Rules of Civil Procedure. Hirasa v. Burtner, 68 Haw. 22, 25 702 P.2d 772 (Haw. 1985); See Bishop Trust Company v. Kamokila Development Corp., 57 Haw. 330, 337 (1976). The Hawaii Supreme Court in reviewing the sufficiency of a motion to amend has followed the Federal Courts in applying

Rule 15(a), and has recognized:

In the absence of any apparent or declared reason... such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, utility of amendment, etc. ... the leave should, as the Rules require, be "freely given".

Hirasa v. Burtner, 68 Haw. 22, 26 702 P.2d 772 (Haw. 1985) citing Bishop Trust Co. v. Kamokila Development Corp., 57 Haw. 330, 337, 555 P.2d 1193, 1198 (1976), quoting Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed. 2d 222, 226 (1962).

Furthermore, the Hawaii Supreme Court has recognized decisions of the Fifth Circuit Court of Appeals, citing Dussouv v. Golf Coast Investment Corp., 660 F.2d 594 (5th Cir. 1981), that held that, "... a motion to amend should be granted unless there are substantial reasons to deny the motion." Hirasa v. Burtner, Adv. Sh. 68 Haw. 22, 26 (1985).

Legal authorities have long recognized, under the Federal Rules of Civil Procedure, that the disposition of litigation should be on the merits. These commentators have recognized that the purpose of Rule 15 is such that:

Rule 15 is one of the most important rules that deal with pleadings. It re-emphasizes and assists in attaining the objectives of the rules on pleadings: that pleadings are not an end in themselves, but are only a means of proper presentation of a case; that at all times they are to assist, not deter, the disposition of the litigation on the merits.

3 J. W. Moore, Moore's Federal Practice, 2d Ed. §15.02[1] (1987).

This policy objective, that litigation be decided on the merits, has been echoed by other legal scholars who recognize that:

Rule 15 reflects two of the most important policies of the federal rules. First, the rule's purpose is to provide maximum opportunity to be decided on the

merits rather than on procedural technicalities... Second, Rule 15 reflects the fact that the federal rules assign the pleadings the limited role of providing the parties with limited notice of the nature of the pleader's claim or defense and the transaction, event, or occurrence that has been called into question; they no longer carry the burden of fact revelation and issue formulation, which is now discharged by the discovery process, or control the trial phase of the action.

6 C.A. Wright and A.R. Miller, Federal Practice and Procedure, §1471, pp. 357-360 (1971 with supplement).

In fact, the circumstances of amending a complaint based upon newly discovered information has been recognized by courts in other jurisdictions. In such instances, courts have found ample justification to allow such an amendment. In the case of Standard Ins. Co. of N.Y. v. Pittsburgh Elec. Insulation, 29 F.R.D. 185 (1961), the United States District Court for the Western District of Pennsylvania was faced with a situation whereby the plaintiff seeking the amendment "suspected" excessive payments at the time they filed the complaint, but asserted they had no documentary proof, and that they needed the process of the courts and its "discovery procedures to ferret out such evidence". Id. at 187. Faced with that factual setting the court determined that:

We think that plaintiff should not be required to make allegations on suspicion alone; in fact, the law frowns upon such frivolous and unsubstantial claims. It was time enough to file the claim when it had gained some substantial evidence of the excessive payment.

Id. at 187. See also American Electric Power Co. v. Westinghouse Electric Corp., 418 F.Supp. 435, 443 (1976) (where the court granted leave to amend a complaint as to add an alternative theory for recovery based on information uncovered during discovery).

Furthermore, the Court, upon review of the defendants' argument that the amendment should be denied as it would delay the proceedings, found such argument to be without

merit. The court held that, "[m]ere delay is not reason enough to bar amendment, [citing] Bowles v. American Brewery, Inc., 8 F.R. Serv. 15a.21, Case 13 (D.Md. 1945); Moore's Federal Practice, 2d 3d., Vol. 3, §15.08, p. 835, and in our opinion the defendants will not be prejudiced by its allowance." Id. at 187. In addition, the court recognized that weight of authority supports the granting of an amendment that sets forth a new claim for relief. The U.S. District Court cited and quoted the case of Hirshhorn v. Mine Safety Appliances Co., that held that:

Even if the proposed amendment ... should be construed as stating a new claim for relief, the result would be the same. The right to plead new claims by amendment is inferentially recognized by subdivision (c) of Rule 15 and confirmed by the Supreme Court of the United States in Freeman v. Bee Machine Co., Inc., 1943, 319 U.S. 448, 63 S.Ct. 1146, 87 L.Ed. 1509.

Id. at 553-554.

In this case, a preliminary hearing has been set for September 18, 2009, as of the filing of this motion.

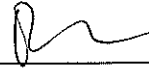
### III. CONCLUSION

Therefore, based on the preceding, Plaintiff respectfully requests this Honorable Court issue an Order granting Plaintiffs' Motion for Leave to File Second Amended Complaint.

The proposed Second Amended Complaint is attached hereto as Exhibit B. Exhibit A is a computer generated comparison version. In Exhibit A, deleted materials from the First Amended Complaint are stricken, and new amended language is presented following the stricken out portion. Exhibit B is a clean copy of the proposed Second Amended Complaint for the

Court's convenience.

DATED: Kealakekua, Hawaii, 9.1.09.



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ROBERT D. S. KIM  
DONNA V. PAYESKO

Attorney for Plaintiff  
WEST HAWAII TODAY



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WEST HAWAII TODAY, ) Civil No. 09-1-279K  
 ) (Declaratory Judgment and  
Plaintiff, ) Injunction) (Kona)  
 )  
vs. ) DECLARATION OF ROBERT D. S.  
 ) KIM AND EXHIBITS "A" AND "B"  
COUNTY COUNCIL OF THE COUNTY )  
OF HAWAII, J STANLEY )  
YOSHIMOTO, DONALD IKEDA, GUY )  
ENRIQUES, DENNIS "FRESH" )  
ONISHI, EMILY I. NAEOLE, )  
DOMINIC YAGONG, BRENDA FORD, )  
KELLY GREENWELL, PETE )  
HOFFMAN, in their official )  
capacities as members of the )  
Hawaii County Council of the )  
County of Hawaii, JOHN DOES )  
1-10, JANE DOES 1-10, DOE )  
CORPORATIONS, PARTNERSHIPS, )  
GOVERNMENTAL UNITS or OTHER )  
ENTITIES 1-20, )  
 )  
 )  
Defendants. )  
\_\_\_\_\_ )

DECLARATION OF ROBERT D. S. KIM

1. Declarant is an attorney licensed to practice before the state and federal courts, State of Hawaii, is the counsel for Plaintiff in this case, and makes this Declaration upon personal knowledge, unless otherwise stated.

2. A true and correct copy of a red line copy of the First Amended Complaint setting forth the amended language (in bold) and deleted portions (in brackets) of the new Second Amended Complaint is attached hereto as Exhibit "A" and is incorporated by reference herein.

3. A true and correct copy of the proposed Second Amended Complaint is attached hereto as Exhibit "B" and is incorporated by reference herein.

I declare that the foregoing is true and correct to  
the best of my knowledge under penalty of perjury.

DATED: Kealahou, Hawaii, 9.1.09.



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ROBERT D.S. KIM

ROBERT D.S. KIM  
A Law Corporation  
Attorney At Law

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Attorney for Plaintiff  
WEST HAWAII TODAY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WEST HAWAII TODAY,	)	Civil No. 09-1-279K
	)	(Declaratory Judgment and
Plaintiff,	)	Injunction) (Kona)
	)	
vs.	)	[FIRST] <b>SECOND</b> AMENDED
	)	COMPLAINT FOR DECLARATORY
COUNTY COUNCIL OF THE COUNTY	)	JUDGMENT AND OTHER RELIEF;
OF HAWAII, J STANLEY	)	EXHIBITS "A" <b>AND</b> "B"; SUMMONS
YOSHIMOTO, DONALD IKEDA, GUY	)	
ENRIQUES, DENNIS "FRESH"	)	
ONISHI, EMILY I. NAEOLE,	)	
DOMINIC YAGONG, BRENDA FORD,	)	
KELLY GREENWELL, PETE HOFFMAN,	)	
in their official capacities	)	
as members of the Hawaii	)	
County Council of the County	)	
of Hawaii, JOHN DOES 1-10,	)	
JANE DOES 1-10, DOE	)	
CORPORATIONS, PARTNERSHIPS,	)	
GOVERNMENTAL UNITS or OTHER	)	
ENTITIES 1-20,	)	
	)	
Defendants.	)	
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EXHIBIT "A"

**SECOND AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT AND OTHER RELIEF**

COMES NOW Plaintiff WEST HAWAII TODAY, a Hawaii daily newspaper ("Plaintiff"), by and through its attorney, Robert D. S. Kim, a Hawaii law corporation, and for a **second amended** complaint against the Defendants ("Defendants") above captioned, alleges and avers as follows:

A. THE PARTIES

1. Plaintiff WEST HAWAII TODAY is a Hawaii daily newspaper with its principal place of publication being 75-5580 Kuakini Hwy., Kailua-Kona, Hawaii 96740, County, Island and State of Hawaii.
2. Defendant COUNTY COUNCIL OF THE COUNTY OF HAWAII is an elected legislative body for the municipal corporation and/or governmental entity duly organized and existing under the Constitution and laws of the State of Hawaii and the ordinances of the COUNTY OF HAWAII, located in the County, Island and State of Hawaii.
3. Defendant J STANLEY YOSHIMOTO, is, and was at all times relevant hereto the Chairperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.
4. Defendant DONALD IKEDA, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.
5. Defendant GUY ENRIQUES, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.
6. Defendant DENNIS "FRESH" ONISHI, is, and was at all times relevant hereto a councilperson of the County Council

of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.

7. Defendant EMILY I. NAEOLE, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.

8. Defendant DOMINIC YAGONG, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in her official capacity only as an elected County Council Member for the County of Hawaii.

9. Defendant BRENDA FORD, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in her official capacity only as an elected County Council Member for the County of Hawaii.

10. Defendant KELLY GREENWELL, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.

11. Defendant PETE HOFFMAN, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.

12. Additional Defendants John Does 1-10, Jane Does 1-10, and Doe Partnerships, Corporations, Governmental Units or Other Entities 1-20 ("Doe Defendants") are persons or entities who may be liable to Plaintiff or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiff. **These Doe Defendants may be current defendants in this litigation who acted in contravention to their official powers and/or duties who may have personal individual liability for violations and/or criminal acts.** Plaintiff has reviewed records, state statutes, and other

documents, but is unable to ascertain whether or not all parties liable to Plaintiff are named therein. Plaintiff will identify such Doe Defendants when their names and capacities are ascertained. Plaintiff is informed and believes and thereon alleges that some of these Doe Defendants are, and at all times relevant herein, were, in some manner presently unknown to Plaintiffs engaged in and/or responsible for the intentional and/or negligent acts, breaches and/or omissions alleged herein, and/or were in some manner responsible for violating state law, as alleged herein. Written notice of the filing of this Complaint is being forwarded to the Office of Information Practices, State of Hawaii at the time of the filing of said Complaint pursuant to Haw. Rev. Stat. Chapter 92, as amended,

B. PRELIMINARY ALLEGATIONS

13. On or about June 16, 2009, the Hawaii County Council held a formal meeting in Kailua-Kona, Hawaii.

14. Council members began discussing Resolutions Nos. 200-09, 201-09 and 202-09. The issue before the council was the reorganization of the council.

15. During the discussions, several council members referred to a meeting between Council Chair Defendant J Yoshimoto, County Clerk Kenneth Goodenow and Defendant Pete Hoffmann, in which Defendant Yoshimoto apparently told Hoffmann he "had five votes to make the measures pass" even without Hoffmann's support.

16. Defendant Hoffmann provided an account of this conversation. That conversation took place on or about Wednesday, June 10, 2009.

17. During the discussion, Defendants Hoffmann and Brenda Ford (as well as at least a dozen members of the public) kept asking questions about the appearance of a violation of Hawaii's Sunshine Law.

18. Defendant Yoshimoto instructed Mr. Goodenow to provide his opinion about the Sunshine Law and the relevant sections.

19. Mr. Goodenow said the Sunshine Law permits council members (any number between two and less than a quorum, in this case four) to discuss matters "without limitation" pertaining to the election of board officers.

20. Mr. Goodenow conceded that "it could be argued" that discussion of Resolution 202-09 might push the limits of that law, because 202-09 included changing council rules in order to consolidate some committees and change committee chairmanships. After the discussion, Council Resolution No. 202-09 was defeated, however, Resolution 201-09, passed, changing committee chairmanships.

21. Defendant Yoshimoto then asked council members to disclose with whom they spoke. Defendant Yoshimoto spoke with Defendants Onishi, Enriques and Hoffmann.

22. Defendant Enriques spoke with Defendants Onishi and Yoshimoto. Defendant Onishi spoke with Defendants Enriques, Yoshimoto and Kelly Greenwell.

23. Thereafter, Hawaii County Corporation Counsel Lincoln Ashida advised the council that by divulging the apparent violations in an open meeting that such action "cured" the violation. A true and correct copy of an article in the West Hawaii Today, dated June 18, 2009, is attached hereto as Exhibit "A" and is incorporated by reference herein.

24. Based on the foregoing factual history (which is memorialized via videotape) the Hawaii County Council has violated the letter and spirit of Haw. Rev. Stat. § 92-1 et seq.

25. The vote on the reorganization of the council, and any subsequent acts involving the resolutions above referenced, that are premised on the illegal acts of this body based on the

violation of the state sunshine law are null and *void ab initio*.

26. In addition to acts stated above, on or about April of 2009, at least five (5) council persons, being Defendants Ikeda, Onishi, Greenwell, Yoshimoto and Enriques, along with the County Clerk Kenneth Goodenow attended meetings with State legislators from the Island of Hawaii at the Hawaii State Capitol.

27. During the time frame stated above, at least Defendants Ikeda, Onishi, Greenwell, Yoshimoto and Enriques had sought the support for H.B. 345, "Relating to Campaign Spending" from Big Island legislators.

28. During a meeting that was held on or about April 2, 2009, at least Defendants Ikeda, Onishi, Greenwell, Yoshimoto and Enriques had verbally decided among themselves that they intended to quickly pass a new Hawaii County Council resolution showing their desire to have the Clean Election Law amended, suspended or removed from the statute.

29. This discussion and commitment to pass a resolution was a violation of the letter and spirit of Haw. Rev. Stat. § 92-1 et seq.

30. On or about April 13, 2009, the Hawaii County Council met and passed Resolution No. 98-09, a true and correct copy of which is attached hereto as Exhibit "B" and is incorporated by reference herein.

31. The roll call vote in the passage of Resolution No. 98-09 reflects that Defendants Ikeda, Onishi, Greenwell, Yoshimoto and Enriques voted in favor of said legislation.

32. Based on the foregoing course of conduct, constitutes a violation and/or willful violation of Haw. Rev. Stat. § 92-1 et seq.



COUNT I

[26] 33. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained in paragraphs 1 through [25] 32, as though fully set forth herein.

[27] 34. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties in that Plaintiff contends that under state law, that the **Defendants': (1) discussion and commitment/agreement on how to vote on or about April 2, 2009; and, (2) the use of a series of private, one-on-one communications to reach a consensus among a majority of Council members regarding reorganization and other matters of the Council's standing committees or any other matter over which the Council has supervision, control, jurisdiction, or advisory power is a violation and/or willful violation of Haw. Rev. Stat. § 92-1, et seq.** as amended.

[28] 35. Plaintiff is requesting a judicial determination by way of a declaratory judgment that actions of the Defendants, in having the serial conversations were in violation of the Hawaii State Sunshine Law, Haw. Rev. Stat. § 92-1, et seq. as amended, and thus voidable. Such declaration is necessary and appropriate at this time in order that Plaintiff may ascertain its rights and pursuant judicial enforcement of said rights as an aggrieved person who has been aggrieved by these illegal actions by the government.

COUNT II

[29] 36. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained in paragraphs 1 through [28] 35, as though fully set forth herein.

[30] 37. Plaintiff is entitled to reasonable attorney's fees and costs for enforcing compliance with or preventing the violation of the Hawaii State Sunshine Law, Haw.

Rev. Stat. § 92-1, et seq. as amended, pursuant to Haw. Rev. Stat. § 92-12, and under the "private attorney general doctrine".

COUNT III

[31] 38. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained in paragraphs 1 through [30] 37, as though fully set forth herein.

[32] 39. Plaintiff has no plain, adequate, speedy remedy at law to prevent Defendants from taking further official acts that are premised on, or made in furtherance of, the illegal acts of county council based on the violation of the state sunshine law that are null and void *ab initio* and/or voidable that will cause irreparable harm to the Plaintiff and the public.

[33] 40. Under the circumstances, damages at law would represent an inadequate remedy, and the issuances of a temporary and permanent injunction is necessary to prevent irreparable injury to the Plaintiff and the public.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For a declaration that the Defendants' use of a series of private, one-on-one communications to reach a consensus among a majority of Council members regarding reorganization and other matters of the Council's standing committees or any other matter over which the Council has supervision, control, jurisdiction, or advisory power is a violation of Haw. Rev. Stat. § 92-1, et seq. as amended, as prayed for; and,

2. For a declaratory judgment that actions of the Defendants, in having the serial conversations were in violation of the Hawaii State Sunshine Law, Haw. Rev. Stat. § 92-1, et seq. as amended, and thus voidable.

3. For a declaratory judgment that Defendants' discussions and commitment/agreements on how to vote on or about April 2, 2009 and the subsequent enactment of Resolution No. 98-09 in concert with the other alleged acts cited herein involving

an intentional pattern of conduct by elected officials as to constitute a willful violation of Haw. Rev. Stat. § 92-1, and mandate referral of the matter to the Attorney General of the State of Hawaii and/or the Prosecuting Attorney for the County of Hawaii.

[3]4. For reimbursement of Plaintiff's reasonable attorney's fees and cost of suit to Haw. Rev. Stat. § 92-12, and under the "private attorney general" doctrine.

[4]5. Plaintiff be granted a temporary and permanent injunction as against Defendants as prayed for.

[5]6. For such other and further relief to Plaintiff and for the protection of the public that this Honorable Court deems proper and just.

DATED: Kealakekua, Hawaii, \_\_\_\_\_.

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ROBERT D. S. KIM

Attorney for Plaintiff  
WEST HAWAII TODAY

# West Hawaii Today

THURSDAY, JUNE 18, 2009

WESTHAWAII TODAY.COM

## SUNSHINE LAW VIOLATION BY COUNCIL MAY HAVE REPERCUSSIONS

BY NANCY COOK LAUER  
WEST HAWAII TODAY

HIFO — The council's violation of the Sunshine Law may have repercussions on the council members' employment if a presiding officer finds that the council violated the Sunshine Law.

The Hawaii County Council's use of e-mail communications before meeting formally Tuesday a resolution reorganizing the council as an advisory commission, a move taken by the Honolulu City Council.

The case, where a majority of council members signed onto a resolution reorganizing

SEE SUNSHINE LAW PAGE 2A

### Hawaii County Council



## SUNSHINE LAW: Resident says he filed complaint with state

COMPILED FROM HAWAIIAN

... committees went to the court of appeals. The court ruled they council was in violation and a civil penalty could be assessed for the violation. The council members could face fines of up to \$5000 for each violation.

The Hawaii County Council will be going to the state supreme court to challenge the court's ruling. The council is arguing that the court's ruling is unconstitutional. The council is also arguing that the court's ruling is a violation of the state constitution.

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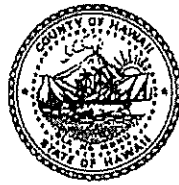
The council is also arguing that the court's ruling is a violation of the state constitution. The council is also arguing that the court's ruling is a violation of the state constitution. The council is also arguing that the court's ruling is a violation of the state constitution.

That had nothing to do with nothing... I don't see who was planning whatever.

Councilman Donald Heega... People had said before the meeting that she knew nothing about the measure until she saw her agenda Friday morning. She told West Hawaii Today on Wednesday that her meeting later that Friday will likely be at Kona. Heega was called to testify about the council's actions. Heega said she did not understand what all this was about. She said she had nothing to do with anything. She said she didn't see who was planning whatever.

EXHIBIT "A"

COUNTY OF HAWAI'I



STATE OF HAWAI'I

RESOLUTION NO. 98 09

**A RESOLUTION SUPPORTING THE PASSAGE OF HOUSE BILL NO. 345,  
RELATING TO THE POSTPONEMENT OF A COMPREHENSIVE PUBLIC  
FUNDING PROGRAM FOR THE COUNTY OF HAWAI'I COUNCIL ELECTIONS.**

WHEREAS, House Bill No. 345 (hereinafter HB 345) postpones the comprehensive public funding program for the County of Hawai'i Council elections created by Act 244, 2008 Session Laws of Hawai'i, until the 2014 elections, rather than commencing for the 2010 elections; and

WHEREAS, Act 244 provides that any candidate for a Hawai'i County Council office can apply for comprehensive public funding, providing that person accrues 200 signatures and a nominal \$5 contribution from each signer, up until a total of \$300,000 has been expended from the Hawai'i Election Campaign Fund; and

WHEREAS, if the pilot project had been in effect for the 2006 election cycle in Hawai'i County, a minimum of \$373,276 would have been spent, assuming just one publicly-funded candidate from each of the major political parties ran in each district; and

WHEREAS, twenty-three candidates ran for Council offices during the 2006 election cycle; and

WHEREAS, should each incumbent apply for the 2010 cycle, the allotted \$300,000 would likely allow for only one challenger per district race, or certain districts could receive zero funds due to absorption by the other district races; and

WHEREAS, there are no provisions in Act 244 to equitably and fairly determine who receives the limited funds, including equal funding per council district, which may create a frenzy of potential candidates applying for the funds and potential legal challenges relating to who should receive the limited funds; and

WHEREAS, the concept of "equalization funds" has been challenged in several courts, including in Arizona, where U.S. District Judge Roslyn Silver recently ruled that a key provision of Arizona's public campaign-financing system violates constitutional free speech rights; and

WHEREAS, the United States Supreme Court in *Davis v. Fed. Election Commission* (2008) found that provisions of the Bipartisan Campaign Reform Act of 2002 violated the First Amendment to the United States Constitution, concluding that the right to use personal funds to finance a campaign should not produce fundraising advantages for opponents in the competitive context of electoral politics; and

EXHIBIT "B"

WHEREAS, no funds were provided to the County of Hawai'i to implement the provisions of Act 244, which require that for every candidate seeking to participate in the program the county clerk must verify that at least 200 signatures and qualifying contributions were received from registered voters in the district for which each candidate seeks office; and

WHEREAS, additional funding has not been provided to the Hawai'i Campaign Spending Commission which has identified additional duties and responsibilities resulting from the comprehensive public funding program that will most likely result in the hiring of new staff, the development of manuals, forms and procedures; modifying the electronic candidate filing system; and potential educating candidates; and

WHEREAS, several instances of fraud and abuse have been reported in other states providing comprehensive publicly-funded elections, including in Seattle, where Emilie Boyles was accused of improperly using public funds to pay her then 16-year-old daughter \$12,500 and to reimburse herself for calls made from her home telephone; and

WHEREAS, a *Seattle Weekly* article dated April 8, 2008, states that Boyles has paid back about \$69,000, according to the city auditor's office, but still owes \$112,919 including interest and penalties; and

WHEREAS, in Arizona, Yuri Downing, Paul DeDonati, and Trevor Clevenger collaborated to receive approximately \$100,000 in public funds to run for the Arizona Legislature, but used the money to throw lavish parties and pay bills at high-end restaurants and clubs; and

WHEREAS, a *Tucson Weekly* article dated December 30, 2004, states that Downing pled guilty and agreed to repay just over \$41,000 to the Clean Elections Program, while DeDonati and Clevenger were each assessed \$15,000 fines by the Clean Elections Commission; and

WHEREAS, Act 244 states that the comprehensive public funding program is a pilot program, but contains no provisions to determine objectively and empirically if the program has been successful and should therefore be expanded to other counties, other political offices than county council elections, or state elections; and

WHEREAS, if this "pilot program" is determined to be a successful model, there is no plan in place to expand the program to other Counties and elected offices, and furthermore, if such expansion occurs, sufficient funds are not in place, nor likely to be in place to cover a genuine expansion of the program to a statewide level; and

WHEREAS, when considering the potential for statewide implementation, the Hawai'i State Campaign Commission reported that Massachusetts and Kentucky have terminated their full funding program due to costs and Connecticut reports increases from \$15 million in fiscal year 2006 to a projected cost of \$45 million for fiscal year 2008; and

WHEREAS, the Hawai'i State Campaign Commission stated that the Hawai'i fund would be bankrupt within the first year of a statewide program, and the additional check-off would not generate anywhere near the required funds to maintain a viable program, which would then require an appropriation from the state legislature out of the general fund; and

WHEREAS, Hawai'i County expending such a large portion of the Hawai'i Election Campaign Fund, which is contributed to by the entire State, is not fair to those seeking partial public funding for other races on other Islands in addition to the multitude of other needs placed on the fund; now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI'I** that it supports HB 345 and asks the State Legislature to postpone the implementation of comprehensive public funding for County Council elections until 2014.

**BE IT FURTHER RESOLVED** that the council finds that state regulation of elections should confer powers, duties, and responsibilities on the counties by way of general laws.

**BE IT FURTHER RESOLVED** by the council that a true pilot program will encompass all counties, not just Hawai'i County, to determine if such a program could be feasible on a statewide basis and urges the Legislature to further amend Act 244 to include all county elections, notwithstanding elections for mayor and prosecutor.

**BE IT FURTHER RESOLVED** that the council believes the provisions of Act 244 must be refined prior to being implemented to ensure that the comprehensive public funding program is a genuine pilot program with empirical objectives to determine its rate of success and potential for expansion.

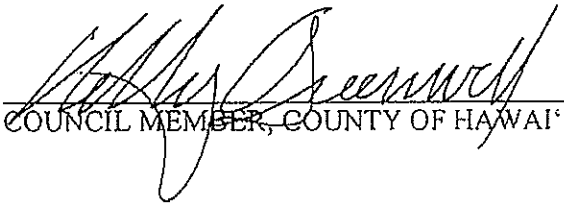
**BE IT FURTHER RESOLVED** that the council is concerned that, with no objective means to empirically measure the success of such a "pilot program," that a statewide program could be the result, which is completely economically unfeasible in the foreseeable future and could have disastrous effects on the State's general fund and operating budget.

**BE IT FURTHER RESOLVED** that the council beleieves that unless adequate funding can be provided to ensure a fair and equitable distribution of funds for all candidates who wish to participate, the implementation of public funding for County Council elections should be delayed.

**BE IT FINALLY RESOLVED** that the County Clerk shall forward a copy of this resolution to the Honorable Senator Brain T. Taniguchi, Chair, Committee on Judiciary and Government Operations; the Honorable Senator Donna Mercado Kim, Chair, Committee on Ways and Means; the Honorable Senator Colleen Hanabusa, President of the Senate; the Honorable Representative Calvin K. Y. Say, Speaker of the House; the Honorable Representative Jon Riki Karamatsu, chair, Committee on Judiciary; the Honorable Representative Marcus R. Oshiro, chair, Committee on Finance; and the Honorable Governor Linda Lingle.

Dated at Hilo, Hawai'i, this 13th day of April, 2009.

INTRODUCED BY:

  
 \_\_\_\_\_  
 COUNCIL MEMBER, COUNTY OF HAWAII'I

COUNTY COUNCIL  
 County of Hawai'i  
 Hilo, Hawai'i

ROLL CALL VOTE

	AYES	NOES	ABS	EX
ENRIQUES	X			
FORD		X		
GREENWELL	X			
HOFFMANN		X		
IKEDA	X			
NAEOLE	X			
ONISHI	X			
YAGONG		X		
YOSHIMOTO	X			
	6	3	0	0

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on April 13, 2009.

ATTEST:

   
 COUNTY CLERK      CHAIRPERSON & PRESIDING OFFICER

Reference: C-248/Waived FC  
 RESOLUTION NO. 98 09



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WEST HAWAII TODAY,	)	Civil No. 09-1-279K
	)	(Declaratory Judgment) (Kona)
Plaintiff,	)	
	)	<b>SECOND AMENDED SUMMONS</b>
vs.	)	
	)	
COUNTY COUNCIL OF THE COUNTY	)	
OF HAWAII, J STANLEY	)	
YOSHIMOTO, DONALD IKEDA, GUY	)	
ENRIQUES, DENNIS "FRESH"	)	
ONISHI, EMILY I. NAEOLE,	)	
DOMINIC YAGONG, BRENDA FORD,	)	
KELLY GREENWELL, PETE HOFFMAN,	)	
in their official capacities	)	
as members of the Hawaii	)	
County Council of the County	)	
of Hawaii, JOHN DOES 1-10,	)	
JANE DOES 1-10, DOE	)	
CORPORATIONS, PARTNERSHIPS,	)	
GOVERNMENTAL UNITS or OTHER	)	
ENTITIES 1-20,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

SECOND AMENDED SUMMONS

THE STATE OF HAWAII:  
To the above-named Defendants:

YOU ARE HEREBY SUMMONED and required to serve upon Robert D. S. Kim, a Hawaii Law Corporation, Plaintiffs' attorney, whose address is P.O. Box 188, Kealahou, Hawaii 96750, an answer to the Second Amended Complaint which is attached. This action must be taken within [twenty (20)] **ten (10)** days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the [twenty (20)] **ten (10)** day time limit, judgment by default will be taken

against you for the relief demanded in the Complaint.

There shall be no personal delivery of this Complaint between 10:00 p. m. and 6:00 a. m. on premises not open to the public, unless a Judge of the Circuit Court permits, in writing on this Summons, personal delivery during these hours.

DATED: Kealahou, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
CLERK OF THE ABOVE-ENTITLED COURT

ROBERT D.S. KIM  
A Law Corporation  
Attorney At Law

ROBERT D.S. KIM 4255-0  
DONNA V. PAYESKO 9077  
P.O. Box 188  
Kealahou, Hawaii 96750  
Telephone (808) 329-6611

Attorney for Plaintiff  
WEST HAWAII TODAY

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WEST HAWAII TODAY,	)	Civil No. 09-1-279K
	)	(Declaratory Judgment and
Plaintiff,	)	Injunction) (Kona)
	)	
vs.	)	SECOND AMENDED COMPLAINT FOR
	)	DECLARATORY JUDGMENT AND OTHER
COUNTY COUNCIL OF THE COUNTY	)	RELIEF; EXHIBITS "A" AND "B";
OF HAWAII, J STANLEY	)	SUMMONS
YOSHIMOTO, DONALD IKEDA, GUY	)	
ENRIQUES, DENNIS "FRESH"	)	
ONISHI, EMILY I. NAEOLE,	)	
DOMINIC YAGONG, BRENDA FORD,	)	
KELLY GREENWELL, PETE HOFFMAN,	)	
in their official capacities	)	
as members of the Hawaii	)	
County Council of the County	)	
of Hawaii, JOHN DOES 1-10,	)	
JANE DOES 1-10, DOE	)	
CORPORATIONS, PARTNERSHIPS,	)	
GOVERNMENTAL UNITS or OTHER	)	
ENTITIES 1-20,	)	
	)	
Defendants.	)	
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**EXHIBIT "B"**

SECOND AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT AND OTHER RELIEF

COMES NOW Plaintiff WEST HAWAII TODAY, a Hawaii daily newspaper ("Plaintiff"), by and through its attorney, Robert D. S. Kim, a Hawaii law corporation, and for a second amended complaint against the Defendants ("Defendants") above captioned, alleges and avers as follows:

A. THE PARTIES

1. Plaintiff WEST HAWAII TODAY is a Hawaii daily newspaper with its principal place of publication being 75-5580 Kuakini Hwy., Kailua-Kona, Hawaii 96740, County, Island and State of Hawaii.
2. Defendant COUNTY COUNCIL OF THE COUNTY OF HAWAII is an elected legislative body for the municipal corporation and/or governmental entity duly organized and existing under the Constitution and laws of the State of Hawaii and the ordinances of the COUNTY OF HAWAII, located in the County, Island and State of Hawaii.
3. Defendant J STANLEY YOSHIMOTO, is, and was at all times relevant hereto the Chairperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.
4. Defendant DONALD IKEDA, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.
5. Defendant GUY ENRIQUES, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.
6. Defendant DENNIS "FRESH" ONISHI, is, and was at all times relevant hereto a councilperson of the County Council

of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.

7. Defendant EMILY I. NAEOLE, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.

8. Defendant DOMINIC YAGONG, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in her official capacity only as an elected County Council Member for the County of Hawaii.

9. Defendant BRENDA FORD, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in her official capacity only as an elected County Council Member for the County of Hawaii.

10. Defendant KELLY GREENWELL, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.

11. Defendant PETE HOFFMAN, is, and was at all times relevant hereto a councilperson of the County Council of the County of Hawaii, acting in his official capacity only as an elected County Council Member for the County of Hawaii.

12. Additional Defendants John Does 1-10, Jane Does 1-10, and Doe Partnerships, Corporations, Governmental Units or Other Entities 1-20 ("Doe Defendants") are persons or entities who may be liable to Plaintiff or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiff. These Doe Defendants may be current defendants in this litigation who acted in contravention to their official powers and/or duties who may have personal individual liability for violations and/or criminal acts. Plaintiff has reviewed records, state statutes, and other

documents, but is unable to ascertain whether or not all parties liable to Plaintiff are named therein. Plaintiff will identify such Doe Defendants when their names and capacities are ascertained. Plaintiff is informed and believes and thereon alleges that some of these Doe Defendants are, and at all times relevant herein, were, in some manner presently unknown to Plaintiffs engaged in and/or responsible for the intentional and/or negligent acts, breaches and/or omissions alleged herein, and/or were in some manner responsible for violating state law, as alleged herein. Written notice of the filing of this Complaint is being forwarded to the Office of Information Practices, State of Hawaii at the time of the filing of said Complaint pursuant to Haw. Rev. Stat. Chapter 92, as amended,

B. PRELIMINARY ALLEGATIONS

13. On or about June 16, 2009, the Hawaii County Council held a formal meeting in Kailua-Kona, Hawaii.

14. Council members began discussing Resolutions Nos. 200-09, 201-09 and 202-09. The issue before the council was the reorganization of the council.

15. During the discussions, several council members referred to a meeting between Council Chair Defendant J Yoshimoto, County Clerk Kenneth Goodenow and Defendant Pete Hoffmann, in which Defendant Yoshimoto apparently told Hoffmann he "had five votes to make the measures pass" even without Hoffmann's support.

16. Defendant Hoffmann provided an account of this conversation. That conversation took place on or about Wednesday, June 10, 2009.

17. During the discussion, Defendants Hoffmann and Brenda Ford (as well as at least a dozen members of the public) kept asking questions about the appearance of a violation of Hawaii's Sunshine Law.

18. Defendant Yoshimoto instructed Mr. Goodenow to provide his opinion about the Sunshine Law and the relevant sections.

19. Mr. Goodenow said the Sunshine Law permits council members (any number between two and less than a quorum, in this case four) to discuss matters "without limitation" pertaining to the election of board officers.

20. Mr. Goodenow conceded that "it could be argued" that discussion of Resolution 202-09 might push the limits of that law, because 202-09 included changing council rules in order to consolidate some committees and change committee chairmanships. After the discussion, Council Resolution No. 202-09 was defeated, however, Resolution 201-09, passed, changing committee chairmanships.

21. Defendant Yoshimoto then asked council members to disclose with whom they spoke. Defendant Yoshimoto spoke with Defendants Onishi, Enriques and Hoffmann.

22. Defendant Enriques spoke with Defendants Onishi and Yoshimoto. Defendant Onishi spoke with Defendants Enriques, Yoshimoto and Kelly Greenwell.

23. Thereafter, Hawaii County Corporation Counsel Lincoln Ashida advised the council that by divulging the apparent violations in an open meeting that such action "cured" the violation. A true and correct copy of an article in the West Hawaii Today, dated June 18, 2009, is attached hereto as Exhibit "A" and is incorporated by reference herein.

24. Based on the foregoing factual history (which is memorialized via videotape) the Hawaii County Council has violated the letter and spirit of Haw. Rev. Stat. § 92-1 *et seq.*

25. The vote on the reorganization of the council, and any subsequent acts involving the resolutions above referenced, that are premised on the illegal acts of this body based on the

violation of the state sunshine law are null and *void ab initio*.

26. In addition to acts stated above, on or about April of 2009, at least five (5) council persons, being Defendants Ikeda, Onishi, Greenwell, Yoshimoto and Enriques, along with the County Clerk Kenneth Goodenow attended meetings with State legislators from the Island of Hawaii at the Hawaii State Capitol.

27. During the time frame stated above, at least Defendants Ikeda, Onishi, Greenwell, Yoshimoto and Enriques had sought the support for H.B. 345, "Relating to Campaign Spending" from Big Island legislators.

28. During a meeting that was held on or about April 2, 2009, at least Defendants Ikeda, Onishi, Greenwell, Yoshimoto and Enriques had verbally decided among themselves that they intended to quickly pass a new Hawaii County Council resolution showing their desire to have the Clean Election Law amended, suspended or removed from the statute.

29. This discussion and commitment to pass a resolution was a violation of the letter and spirit of Haw. Rev. Stat. § 92-1 et seq.

30. On or about April 13, 2009, the Hawaii County Council met and passed Resolution No. 98-09, a true and correct copy of which is attached hereto as Exhibit "B" and is incorporated by reference herein.

31. The roll call vote in the passage of Resolution No. 98-09 reflects that Defendants Ikeda, Onishi, Greenwell, Yoshimoto and Enriques voted in favor of said legislation.

32. Based on the foregoing course of conduct, constitutes a violation and/or willful violation of Haw. Rev. Stat. § 92-1 et seq.

#### COUNT I

33. Plaintiff repeats, realleges and incorporates by



reference each and every allegation contained in paragraphs 1 through 32, as though fully set forth herein.

34. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties in that Plaintiff contends that under state law, that the Defendants': (1) discussion and commitment/agreement on how to vote on or about April 2, 2009; and, (2) the use of a series of private, one-on-one communications to reach a consensus among a majority of Council members regarding reorganization and other matters of the Council's standing committees or any other matter over which the Council has supervision, control, jurisdiction, or advisory power is a violation and/or willful violation of Haw. Rev. Stat. § 92-1, *et seq.* as amended.

35. Plaintiff is requesting a judicial determination by way of a declaratory judgment that actions of the Defendants, in having the serial conversations were in violation of the Hawaii State Sunshine Law, Haw. Rev. Stat. § 92-1, *et seq.* as amended, and thus voidable. Such declaration is necessary and appropriate at this time in order that Plaintiff may ascertain its rights and pursuant judicial enforcement of said rights as an aggrieved person who has been aggrieved by these illegal actions by the government.

#### COUNT II

36. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 35, as though fully set forth herein.

37. Plaintiff is entitled to reasonable attorney's fees and costs for enforcing compliance with or preventing the violation of the Hawaii State Sunshine Law, Haw. Rev. Stat. § 92-1, *et seq.* as amended, pursuant to Haw. Rev. Stat. § 92-12, and under the "private attorney general doctrine".

COUNT III

38. Plaintiff repeats, realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 37, as though fully set forth herein.

39. Plaintiff has no plain, adequate, speedy remedy at law to prevent Defendants from taking further official acts that are premised on, or made in furtherance of, the illegal acts of county council based on the violation of the state sunshine law that are null and void *ab initio* and/or voidable that will cause irreparable harm to the Plaintiff and the public.

40. Under the circumstances, damages at law would represent an inadequate remedy, and the issuances of a temporary and permanent injunction is necessary to prevent irreparable injury to the Plaintiff and the public.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For a declaration that the Defendants' use of a series of private, one-on-one communications to reach a consensus among a majority of Council members regarding reorganization and other matters of the Council's standing committees or any other matter over which the Council has supervision, control, jurisdiction, or advisory power is a violation of Haw. Rev. Stat. § 92-1, *et seq.* as amended, as prayed for; and,

2. For a declaratory judgment that actions of the Defendants, in having the serial conversations were in violation of the Hawaii State Sunshine Law, Haw. Rev. Stat. § 92-1, *et seq.* as amended, and thus voidable.

3. For a declaratory judgment that Defendants' discussions and commitment/agreements on how to vote on or about April 2, 2009 and the subsequent enactment of Resolution No. 98-09 in concert with the other alleged acts cited herein involving an intentional pattern of conduct by elected officials as to constitute a willful violation of Haw. Rev. Stat. § 92-1, and

mandate referral of the matter to the Attorney General of the State of Hawaii and/or the Prosecuting Attorney for the County of Hawaii.

4. For reimbursement of Plaintiff's reasonable attorney's fees and cost of suit to Haw. Rev. Stat. § 92-12, and under the "private attorney general" doctrine.

5. Plaintiff be granted a temporary and permanent injunction as against Defendants as prayed for.

6. For such other and further relief to Plaintiff and for the protection of the public that this Honorable Court deems proper and just.

DATED: Kealakekua, Hawaii, \_\_\_\_\_.

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ROBERT D. S. KIM

Attorney for Plaintiff  
WEST HAWAII TODAY

# West Hawaii Today

THURSDAY, JUNE 18, 2009

WESTHAWAII.TODAY.COM

## SUNSHINE LAW VIOLATION BY COUNCIL MAY HAVE REPERCUSSIONS

BY HANCOY COON LAUER  
WESTHAWAII.TODAY.COM

H.H.O. — The council's failure to disclose the names of the members of the planning party, pastime, and other county council members employed by a business during a meeting, it violates state Sunshine Law.

The Hawaii County Council's use of rental accommodations before meeting formally to discuss resolutions regarding the council's administration, including the council's administration, is a violation of the state's Sunshine Law, according to a report from Honolulu City Council.

That was where a majority of council members agreed to a resolution regarding the council's administration.

SEE SUNSHINE LAW PAGE 5A

### Hawaii County Council



J Yoshimoto  
Chairman/Hilo



Emily Hasebe  
Vice Chair/Puna



Paul Hoffmann  
Hilo



Dennis Onishi  
Hilo



Kelly Greenwell  
Hilo



Donald Reed  
Hilo



Dennis Ford  
Sikekua



Guy Enriquez  
Kau



Dominic Yegons  
Honolulu

## SUNSHINE LAW: Resident says he filed complaint with state

CONTINUED FROM PAGE 1A

committee, sent all the way to the Intermediate Court of Appeals. The court ruled the council violated the law and awarded a media company \$100,000 in damages, including the \$100,000 in attorney's fees and costs.

In the Hawaii County Council case, submitted to the court, the council members were ordered to disclose the names of the members of the planning party, pastime, and other county council members employed by a business during a meeting, it violates state Sunshine Law.

The Hawaii County Council's use of rental accommodations before meeting formally to discuss resolutions regarding the council's administration, including the council's administration, is a violation of the state's Sunshine Law, according to a report from Honolulu City Council.

The secretary, receptive when I spoke with them, said Puna resident James Ayea therefore said to former Councilman Bob Jacobson, "It really shames me."

Members of the public can file complaints with the OIP or they can file a civil complaint in the circuit court. Where the violation occurred, the complaint can have three goals: requiring compliance with or preventing a violation; or to determine the applicability to the decisions or decisions of the public body.

Council members (that is) council members (that is) have been previously advised by the OIP that divulging information in an open meeting would be a violation. He advised the council to put on the record what happened before a violation, the resolutions.

Any violation of the law is a crime according to the OIP. He said you could have a civil complaint, but the records are collected. He said you could have a civil complaint, but the records are collected. He said you could have a civil complaint, but the records are collected.

Penalties for Sunshine Law violations include criminal penalties, including removal from office and fines. Disclosing a potential violation, and then speaking in a public meeting, will public notice is a crime for some violations, but it does not necessarily constitute a crime.

That had nothing to do with nothing.... I don't see who was planning whatever.

Vice Chairwoman  
Emily Hasebe/Puna

Councilman Donald Reed didn't report with whom they spoke.

People tend to be before the meeting that she knew nothing about the meetings until she saw her agenda Friday morning. She said West Hawaii Today on Wednesday that her meeting later that week was held at K's Diner in Hilo. She was called to discuss the Puna Steep View, an item on the Tuesday agenda.

Naples didn't understand what all this was about. That had nothing to do with nothing, she said. "I don't see who was planning whatever."

PHOTO CENTER BY HAWAII TODAY

EXHIBIT "A"

COUNTY OF HAWAI'I



STATE OF HAWAI'I

RESOLUTION NO. 98 09

**A RESOLUTION SUPPORTING THE PASSAGE OF HOUSE BILL NO. 345,  
RELATING TO THE POSTPONEMENT OF A COMPREHENSIVE PUBLIC  
FUNDING PROGRAM FOR THE COUNTY OF HAWAI'I COUNCIL ELECTIONS.**

WHEREAS, House Bill No. 345 (hereinafter HB 345) postpones the comprehensive public funding program for the County of Hawai'i Council elections created by Act 244, 2008 Session Laws of Hawai'i, until the 2014 elections, rather than commencing for the 2010 elections; and

WHEREAS, Act 244 provides that any candidate for a Hawai'i County Council office can apply for comprehensive public funding, providing that person accrues 200 signatures and a nominal \$5 contribution from each signer, up until a total of \$300,000 has been expended from the Hawai'i Election Campaign Fund; and

WHEREAS, if the pilot project had been in effect for the 2006 election cycle in Hawai'i County, a minimum of \$373,276 would have been spent, assuming just one publicly-funded candidate from each of the major political parties ran in each district; and

WHEREAS, twenty-three candidates ran for Council offices during the 2006 election cycle; and

WHEREAS, should each incumbent apply for the 2010 cycle, the allotted \$300,000 would likely allow for only one challenger per district race, or certain districts could receive zero funds due to absorption by the other district races; and

WHEREAS, there are no provisions in Act 244 to equitably and fairly determine who receives the limited funds, including equal funding per council district, which may create a frenzy of potential candidates applying for the funds and potential legal challenges relating to who should receive the limited funds; and

WHEREAS, the concept of "equalization funds" has been challenged in several courts, including in Arizona, where U.S. District Judge Roslyn Silver recently ruled that a key provision of Arizona's public campaign-financing system violates constitutional free speech rights; and

WHEREAS, the United States Supreme Court in *Davis v. Fed. Election Commission* (2008) found that provisions of the Bipartisan Campaign Reform Act of 2002 violated the First Amendment to the United States Constitution, concluding that the right to use personal funds to finance a campaign should not produce fundraising advantages for opponents in the competitive context of electoral politics; and

EXHIBIT "B"

WHEREAS, no funds were provided to the County of Hawai'i to implement the provisions of Act 244, which require that for every candidate seeking to participate in the program the county clerk must verify that at least 200 signatures and qualifying contributions were received from registered voters in the district for which each candidate seeks office; and

WHEREAS, additional funding has not been provided to the Hawai'i Campaign Spending Commission which has identified additional duties and responsibilities resulting from the comprehensive public funding program that will most likely result in the hiring of new staff, the development of manuals, forms and procedures; modifying the electronic candidate filing system; and potential educating candidates; and

WHEREAS, several instances of fraud and abuse have been reported in other states providing comprehensive publicly-funded elections, including in Seattle, where Emilie Boyles was accused of improperly using public funds to pay her then 16-year-old daughter \$12,500 and to reimburse herself for calls made from her home telephone; and

WHEREAS, a *Seattle Weekly* article dated April 8, 2008, states that Boyles has paid back about \$69,000, according to the city auditor's office, but still owes \$112,919 including interest and penalties; and

WHEREAS, in Arizona, Yuri Downing, Paul DeDonati, and Trevor Clevenger collaborated to receive approximately \$100,000 in public funds to run for the Arizona Legislature, but used the money to throw lavish parties and pay bills at high-end restaurants and clubs; and

WHEREAS, a *Tucson Weekly* article dated December 30, 2004, states that Downing pled guilty and agreed to repay just over \$41,000 to the Clean Elections Program, while DeDonati and Clevenger were each assessed \$15,000 fines by the Clean Elections Commission; and

WHEREAS, Act 244 states that the comprehensive public funding program is a pilot program, but contains no provisions to determine objectively and empirically if the program has been successful and should therefore be expanded to other counties, other political offices than county council elections, or state elections; and

WHEREAS, if this "pilot program" is determined to be a successful model, there is no plan in place to expand the program to other Counties and elected offices, and furthermore, if such expansion occurs, sufficient funds are not in place, nor likely to be in place to cover a genuine expansion of the program to a statewide level; and

WHEREAS, when considering the potential for statewide implementation, the Hawai'i State Campaign Commission reported that Massachusetts and Kentucky have terminated their full funding program due to costs and Connecticut reports increases from \$15 million in fiscal year 2006 to a projected cost of \$45 million for fiscal year 2008; and

WHEREAS, the Hawai'i State Campaign Commission stated that the Hawai'i fund would be bankrupt within the first year of a statewide program, and the additional check-off would not generate anywhere near the required funds to maintain a viable program, which would then require an appropriation from the state legislature out of the general fund; and

WHEREAS, Hawai'i County expending such a large portion of the Hawai'i Election Campaign Fund, which is contributed to by the entire State, is not fair to those seeking partial public funding for other races on other Islands in addition to the multitude of other needs placed on the fund; now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI'I** that it supports HB 345 and asks the State Legislature to postpone the implementation of comprehensive public funding for County Council elections until 2014.

**BE IT FURTHER RESOLVED** that the council finds that state regulation of elections should confer powers, duties, and responsibilities on the counties by way of general laws.

**BE IT FURTHER RESOLVED** by the council that a true pilot program will encompass all counties, not just Hawai'i County, to determine if such a program could be feasible on a statewide basis and urges the Legislature to further amend Act 244 to include all county elections, notwithstanding elections for mayor and prosecutor.

**BE IT FURTHER RESOLVED** that the council believes the provisions of Act 244 must be refined prior to being implemented to ensure that the comprehensive public funding program is a genuine pilot program with empirical objectives to determine its rate of success and potential for expansion.

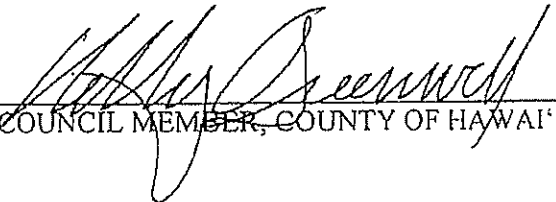
**BE IT FURTHER RESOLVED** that the council is concerned that, with no objective means to empirically measure the success of such a "pilot program," that a statewide program could be the result, which is completely economically unfeasible in the foreseeable future and could have disastrous effects on the State's general fund and operating budget.

**BE IT FURTHER RESOLVED** that the council believes that unless adequate funding can be provided to ensure a fair and equitable distribution of funds for all candidates who wish to participate, the implementation of public funding for County Council elections should be delayed.

**BE IT FINALLY RESOLVED** that the County Clerk shall forward a copy of this resolution to the Honorable Senator Brain T. Taniguchi, Chair, Committee on Judiciary and Government Operations; the Honorable Senator Donna Mercado Kim, Chair, Committee on Ways and Means; the Honorable Senator Colleen Hanabusa, President of the Senate; the Honorable Representative Calvin K. Y. Say, Speaker of the House; the Honorable Representative Jon Riki Karamatsu, chair, Committee on Judiciary; the Honorable Representative Marcus R. Oshiro, chair, Committee on Finance; and the Honorable Governor Linda Lingle.

Dated at Hilo, Hawai'i, this 13th day of April, 2009.

INTRODUCED BY:

  
 COUNCIL MEMBER, COUNTY OF HAWAII'I

COUNTY COUNCIL  
 County of Hawai'i  
 Hilo, Hawai'i

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on April 13, 2009.

ATTEST:

  
 COUNTY CLERK      CHAIRPERSON & PRESIDING OFFICER

ROLL CALL VOTE

	AYES	NOES	ABS	EX
ENRIQUES	X			
FORD		X		
GREENWELL	X			
HOFFMANN		X		
IKEDA	X			
NAEOLE	X			
ONISHI	X			
YAGONG		X		
YOSHIMOTO	X			
	6	3	0	0

Reference: C-248/Waived FC  
 RESOLUTION NO. 98 09





There shall be no personal delivery of this Complaint between 10:00 p. m. and 6:00 a. m. on premises not open to the public, unless a Judge of the Circuit Court permits, in writing on this Summons, personal delivery during these hours.

DATED: Kealahou, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
CLERK OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WEST HAWAII TODAY, ) Civil No. 09-1-279K  
 ) (Declaratory Judgment and  
Plaintiff, ) Injunction) (Kona)  
 )  
vs. ) NOTICE OF MOTION AND  
 ) CERTIFICATE OF SERVICE  
COUNTY COUNCIL OF THE COUNTY )  
OF HAWAII, J STANLEY )  
YOSHIMOTO, DONALD IKEDA, GUY )  
ENRIQUES, DENNIS "FRESH" )  
ONISHI, EMILY I. NAEOLE, )  
DOMINIC YAGONG, BRENDA FORD, )  
KELLY GREENWELL, PETE )  
HOFFMAN, in their official )  
capacities as members of the )  
Hawaii County Council of the )  
County of Hawaii, JOHN DOES )  
1-10, JANE DOES 1-10, DOE )  
CORPORATIONS, PARTNERSHIPS, )  
GOVERNMENTAL UNITS or OTHER )  
ENTITIES 1-20, )  
 )  
Defendants. )  
\_\_\_\_\_ )

NOTICE OF MOTION

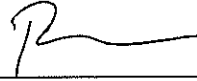
TO THE PARTIES LISTED ON THE ATTACHED CERTIFICATE OF SERVICE:

NOTICE IS HEREBY GIVEN that the undersigned has filed with the above-entitled court the attached motion. Any response to this motion must be filed with the Court no later than ten (10) days after the date of the attached certificate of service. Please also note that an application for oral hearing will be submitted to the Court, seeking a hearing.

If service of the Motion has been made pursuant to Rule 6(e) of the Hawaii Rules of civil Procedure, any response

to this Motion must be filed with the Court no later than  
twelve (12) days after the date of the Certificate of Service.

DATED: Kealahou, Hawaii, 9.1.09.



\_\_\_\_\_  
ROBERT D.S. KIM


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following person at her last known address by United States Mail, postage prepaid to and via email:

LINCOLN ASHIDA, ESQ.  
Assistant Corporation Counsel  
County of Hawaii  
Hilo Lagoon Centre  
101 Aupuni Street, Suite 325  
Hilo, Hawaii 96720

Attorney for Defendants  
COUNTY COUNCIL OF THE  
COUNTY OF HAWAII, J STANLEY  
YOSHIMOTO, DONALD IKEDA,  
GUY ENRIQUES, DENNIS "FRESH"  
ONISHI, EMILY I. NAEOLE,  
DOMINIC YAGONG, BRENDA FORD,  
KELLY GREENWELL, PETE HOFFMAN,  
in their official capacities

DATED: Kealahou, Hawaii, 9.1.09.

  
\_\_\_\_\_  
ROBERT D.S. KIM

Attorney for Plaintiff  
WEST HAWAII TODAY