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Supreme Court, U.S.
FILED

OCT 10 2019

ELBERT LIN
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FILE NO: 080116.0000006

October 10, 2019

Via Hand Delivery

The Honorable Scott Harris
Clerk of Court
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543

Re: No. 18-260, *County of Maui v. Hawai'i Wildlife Fund, et al.*

Dear Mr. Harris:

I am Counsel of Record for the County of Maui on this case. The County of Maui Corporation Counsel has asked me to submit the attached letter in response to Maui County Council Chair Kelly T. King's letter of October 9, 2019.

Please let me know if you have any questions.

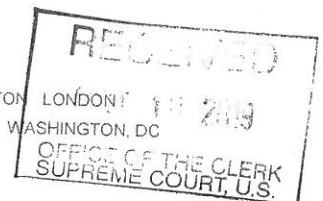
Sincerely,

Elbert Lin / with permission

Elbert Lin

Enclosure

cc: Moana Lutey
Richelle Thomson



MICHAEL P. VICTORINO
Mayor

MOANA M. LUTEY
Corporation Counsel

EDWARD S. KUSHI, JR.
First Deputy

LYDIA A. TODA
Risk Management Officer

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
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October 9, 2019

The Honorable Scott S. Harris
Clerk of the Supreme Court of the United States
One First Street, NE
Washington, DC 20543

SUBJECT: **County of Maui v. Hawai'i Wildlife Fund, et al., No. 18-260**

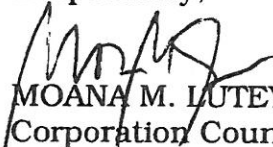
Dear Mr. Harris:

Please accept my sincerest apologies for the letter dated October 9, 2019, from Maui County Council Chair Kelly T. King, requesting dismissal or postponement of the November 6, 2019, oral argument in the above-listed matter. I was unaware that this letter was going to be sent to you.

I am the Corporation Counsel for the County of Maui, which means that I am "[t]he chief legal advisor and legal representative of the County of Maui." As such, I am charged with "[r]epresent[ing] the county in all legal proceedings." Accordingly, I am able to represent to this Court that the County of Maui is **not** requesting a delay or dismissal in this matter. Any alleged conflict involving the County Charter is a matter that may be addressed independently.

Thank you for your attention to this matter.

Respectfully,


MOANA M. LUTEY
Corporation Counsel

Enclosure

cc: Mayor Michael P. Victorino
Kelly T. King, County Chair
Elbert Lin, Esq.
Colleen Doyle, Esq.

Council Chair
Kelly T. King



COPY



Director of Council Services
Traci N. T. Fujita, Esq.

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Rilei Hlokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuiki Lei K. Sugimura

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

October 9, 2019

RECEIVED
CORPORATION COUNSEL
2019 OCT -9 PM 2:54

The Honorable Scott S. Harris
Clerk of the Supreme Court of the United States
One First Street, NE
Washington, DC 20543

**SUBJECT: NO. 18-260, COUNTY OF MAUI VS. HAWAIIAN
WILDLIFE FUND, ET AL.**

Dear Mr. Harris:

I am aware that you received correspondence from EarthJustice, representing the Hawai'i Wildlife Fund, et al., in Case No. 18-260 previously scheduled for oral argument on November 6, 2019. I write to confirm that on September 20, 2019, the Maui County Council settled the case by adopting Resolution 19-158 authorizing settlement and the withdrawal of the case from the US Supreme Court.

I believe you received my letter to the Corporation Counsel requesting they direct Special Counsel to withdraw the appeal, because we settled the case. Corporation Counsel refused. They have now adopted the unsubstantiated position that the County Council does not have the authority to settle the case without the Mayor's agreement. While Section 3-6.7 of the revised Charter of the County of Maui, 2019 Edition, gives authority to Councilmembers to "designate attorneys within the office of council services to serve as legal advisors", the Charter does not provide for our own attorneys in the Office of Council Services to represent the Council in court. Hence, Corporation Counsel's refusal to represent and take client-direction from the Maui County Council in this matter has created a "crisis of the Charter".

While the Maui County Administration and the Council disagree on the interpretation of the Charter, **Section 2-2. Exercise of Powers** makes it clear that the Council may ultimately resolve any questionable issues: "All powers of the county shall be carried into execution as provided by this charter, or, if the

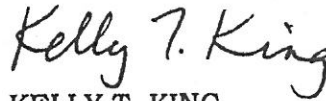
October 9, 2019

Page 2

charter makes no provisions, as provided by ordinance or resolution of the county council." A resolution to appoint special counsel to represent the Maui County Council will be considered next week.

I respectfully request the U.S. Supreme Court dismiss Case No. 18-260, or, at the very least, postpone the hearing until Maui County can resolve our Charter crisis by determination of the Council's authority in court within the State of Hawai'i or otherwise.

Sincerely,

A handwritten signature in cursive script that reads "Kelly T. King". The signature is written in dark ink and is positioned above the printed name.

KELLY T. KING
Council Chair

No. 18-260

IN THE SUPREME COURT OF THE UNITED STATES

COUNTY OF MAUI

Petitioner,

**HAWAI'I WILDLIFE FUND, SIERRA CLUB – MAUI GROUP, SURFRIDER
FOUNDATION, WEST MAUI PRESERVATION ASSOCIATION,**

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2019, one (1) copy of the foregoing letter was served as required by U.S. Supreme Court Rule 29.3, on the following:

David L. Henkin
EARTHJUSTICE
850 Richards Street, Suite 400
Honolulu, Hawai'i 96813
(808) 599-2436

Counsel for Respondents

Noel J. Francisco
Solicitor General
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W., Room 5616
Washington, D.C. 20530-0001
(202) 514-2217

Counsel for Amicus Curiae United States

The following e-mail addresses have also been served electronically:

dhenkin@earthjustice.org
SupremeCtBriefs@usdoj.gov

I further certify that all parties required to be served have been served.

Elbert Lin / with permission
Elbert Lin