

IN THE SUPREME COURT OF THE STATE OF HAWAII

ANONYMOUS DONORS,

Petitioners,

vs.

CLARE CONNORS, Attorney General of  
Hawai'i; and JUDGE OF THE TENTH  
DIVISION OF THE FIRST CIRCUIT  
COURT;

Respondents,

KAHEA: HAWAIIAN ENVIRONMENTAL  
ALLIANCE, a non-profit corporation; and  
FIRST HAWAIIAN BANK, a domestic profit  
corporation,

Respondents / Real Parties in Interest.

S.P. No. 19-0000062 (JHA)

PETITION FOR WRIT OF MANDAMUS

Electronically Filed  
Supreme Court  
SCPW-20-0000102  
20-MAR-2020  
01:42 PM

CLARE CONNORS,  
ATTORNEY GENERAL OF HAWAII  
FIRST CIRCUIT COURT  
JUDGE OF THE TENTH DIVISION

**[PROPOSED] BRIEF OF *AMICI CURIAE* ACLU OF HAWAII FOUNDATION;  
JAPANESE AMERICAN CITIZENS LEAGUE OF HAWAII, HONOLULU CHAPTER;  
AND THE IWAMOTO FAMILY FOUNDATION IN SUPPORT OF ANONYMOUS  
DONORS' PETITION FOR WRIT OF MANDAMUS**

**DECLARATION OF JONGWOOK "WOOKIE" KIM**

MATEO CABALLERO 10081  
JONGWOOK "WOOKIE" KIM 11020  
ACLU of Hawaii Foundation  
P.O. Box 3410  
Honolulu, Hawaii 96801  
Telephone: (808) 522-5905  
Facsimile: (808) 522-5909  
E-mail: [mcaballero@acluhawaii.org](mailto:mcaballero@acluhawaii.org)  
[wkim@acluhawaii.org](mailto:wkim@acluhawaii.org)

Attorneys for *Amici Curiae*  
ACLU of Hawai'i Foundation; Japanese American Citizens League of Hawaii, Honolulu  
Chapter; Iwamoto Family Foundation

## **TABLE OF CONTENTS**

I. INTRODUCTION .....	1
II. STATEMENT OF FACTS.....	2
III. STATEMENT OF REASONS FOR ISSUING THE WRIT .....	7
A. In Issuing The Order, Respondent Judge Committed Flagrant And Manifest Abuse Of Discretion By Ignoring Significant Constitutional Issues Raised By KAHEA Relating to It And Its Members And Supporters, Including Anonymous Donors.....	7
1. The Subpoena, in encompassing the identities of Anonymous Donors, threatens their constitutional rights to freedom of association and privacy .....	9
i. The Subpoena infringes Anonymous Donors’ First Amendment and article I, section 4 right to freedom of association .....	9
ii. The Subpoena infringes Anonymous Donors’ article I, section 6 right to privacy .....	12
iii. The Subpoena infringes Anonymous Donors’ article I, section 7 right to privacy .....	13
2. The Subpoena was improperly issued to investigate protected speech and association, not unlawful activity, and was not supported by evidence .....	14
i. The AG improperly based the Subpoena on the investigation of constitutionally protected activity .....	15
ii. The AG proffered no evidence that KAHEA was engaging in or supporting illegal activity on Mauna Kea .....	16
3. The State appears to have used its investigatory power to retaliate against KAHEA for exercising its constitutional rights to freedom of speech.....	18
IV. CONCLUSION .....	21

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Arizona v. Evans</i> , 514 U.S. 1 (1995).....	14
<i>Bates v. City of Little Rock</i> , 361 U.S. 516 (1960).....	10
<i>Blaisdell v. Dep’t of Pub. Safety</i> , 113 Haw. 315, 151 P.3d 796 (2007) .....	7, 8
<i>Brandenburg v. Ohio</i> , 395 U.S. 444 (1969).....	18
<i>Brende v. Hara</i> , 113 Haw. 424, 153 P.3d 1109 (2007) .....	8, 9, 13
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976).....	9, 10
<i>Capp v. Cty. of San Diego</i> , 940 F.3d 1046 (9th Cir. 2019) .....	19, 20
<i>Crosby v. State Dep’t of Budget &amp; Fin.</i> , 76 Haw. 332, 876 P.2d 1300 (1994) .....	15
<i>De Jonge v. State of Oregon</i> , 299 U.S. 353 (1937).....	15
<i>Gibson v. Florida Legislative Investigation Comm.</i> , 372 U.S. 539 (1963).....	10
<i>Grube v. Trader</i> , 142 Haw. 412, 420 P.3d 343 (2018) .....	8, 11
<i>Honolulu Police Dep’t v. Town</i> , 122 Haw. 204, 225 P.3d 646 (2010) .....	8
<i>Janra Enterprises, Inc. v. City &amp; Cty. of Honolulu</i> , 107 Haw. 314, 113 P.3d 190 (2005) .....	12
<i>Kema v. Gaddis</i> , 91 Haw. 200, 982 P.2d 334 (1999) .....	7

<i>Kusper v. Pontikes</i> , 414 U.S. 51 (1973).....	9
<i>Lacey v. Maricopa Cty.</i> , 693 F.3d 896 (9th Cir. 2012) .....	19, 20
<i>Louisiana ex rel. Gremillion v. NAACP</i> , 366 U.S. 293 (1961).....	10, 11
<i>Mendocino Envtl. Ctr. v. Mendocino Cty.</i> , 192 F.3d 1283 (9th Cir. 1999) .....	19
<i>NAACP v. Alabama ex rel. Flowers</i> , 377 U.S. 288 (1964).....	11
<i>NAACP v. Alabama ex rel. Patterson</i> , 357 U.S. 449 (1958).....	9, 10
<i>NAACP v. Button</i> , 371 U.S. 415 (1963).....	15, 16
<i>NAACP v. Claiborne Hardware Co.</i> , 458 U.S. 886 (1982).....	16, 17, 18
<i>Nakano v. Matayoshi</i> , 68 Haw. 140, 706 P.2d 814 (1985) .....	13
<i>O'Brien v. Welty</i> , 818 F.3d 920 (9th Cir. 2016) .....	19
<i>Office of Hawaiian Affairs v. State of Hawai‘i</i> , No. 1CC171001823 (Haw. Cir. Ct. Nov. 7, 2017) .....	3
<i>Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.</i> , 138 Haw. 14, 375 P.3d 1252 (2016) .....	12
<i>Perry v. Schwarzenegger</i> , 591 F.3d 1147 (9th Cir. 2010) .....	8, 9, 10, 11
<i>Santopietro v. Howell</i> , 857 F.3d 980 (9th Cir. 2017) .....	18
<i>State v. Biggar</i> , 68 Haw. 404, 716 P.2d 493 (1986) .....	13

<i>State v. Russo</i> , 141 Haw. 181, 407 P.3d 137 (2017) .....	15
<i>State v. Walton</i> , 133 Haw. 66, 324 P.3d 876 (2014) .....	13, 14
<i>Scales v. United States</i> , 367 U.S. 203 (1961) .....	18
<i>United States v. Miller</i> , 425 U.S. 435 (1976) .....	13
<i>United Transp. Union v. State Bar of Mich.</i> , 401 U.S. 576 (1971) .....	15
<i>White v. Lee</i> , 227 F.3d 1214 (9th Cir. 2000) .....	19, 20
<b>U.S. Constitution</b>	
U.S. Const. amend. I .....	<i>passim</i>
<b>Hawai‘i Constitution</b>	
Haw. Const. art. I, sec. 4 .....	<i>passim</i>
Haw. Const. art. I, sec. 6 .....	8, 9, 12
Haw. Const. art. I, sec. 7 .....	9, 13, 14
<b>Statutes</b>	
Haw. Rev. Stat. § 711-1105 .....	12, 17
<b>Other Authority</b>	
Dep’t of the Attorney General, <i>Answers to Frequently Asked Questions About Hawaii’s Charity Registration Requirements</i> (Aug. 2017), <a href="https://ag.hawaii.gov/tax/files/2017/08/Charities-Registration-FAQs.pdf">https://ag.hawaii.gov/tax/files/2017/08/Charities-Registration-FAQs.pdf</a> .....	11
Leonard S. Rubinowitz et. al., <i>A “Notorious Litigant” and “Frequenter of Jails”: Martin Luther King, Jr., His Lawyers, and the Legal System</i> , 10 Nw. J. L. & Soc. Pol’y 494, 497 (2016) ....	16
IRS General Counsel Memorandum, GCM 38415 (I.R.S. June 1980) .....	16, 17

## I. INTRODUCTION

The American Civil Liberties Union of Hawai‘i Foundation (“ACLU of Hawai‘i”), the Japanese American Citizens League of Hawaii, Honolulu Chapter (“JACL Honolulu”), and the Iwamoto Family Foundation (“IFF”) (together, “Nonprofit Amici”) respectfully submit this *amicus* brief in support of Anonymous Donors’ petition for writ of mandamus (“Petition”).

Mandamus relief is appropriate as to Respondent Judge of the Tenth Division of the First Circuit Court (“Respondent Judge”)<sup>1</sup> because Respondent Judge, in issuing the order denying-in-part KAHEA’s Motion to Quash the State Attorney General’s Subpoena *Duces Tecum* (“Order”), committed flagrant and manifest abuse of discretion by completely disregarding three important constitutional issues raised in the special proceeding that prompted the Petition: (1) whether the subpoena issued by the State of Hawai‘i Attorney General (“State” or “AG”)—which sought *all* of KAHEA’s financial records held with its bank, including records disclosing the identities and private information of Anonymous Donors—is overbroad in violation of the associational and privacy rights of KAHEA, its members, and its supporters, including Anonymous Donors; (2) whether the AG improperly issued the subpoena to investigate not unlawful activity, but KAHEA’s protected speech and association—and did so without enough evidence; and (3) whether the AG pursued the subpoena in retaliation against KAHEA’s exercise of First Amendment-protected activity. Because these constitutional issues are meritorious, and strongly weigh in favor of KAHEA and Anonymous Donors, Respondent Judge’s failure to grapple with these issues was highly prejudicial. Anonymous Donors also lack alternative means of redress, as they are not parties to the proceeding that resulted in the Order, and would suffer irreparable

---

<sup>1</sup> Nonprofit Amici do not take a position on Anonymous Donors’ petition as it relates to Respondent Attorney General Clare Connors.

harm to their constitutional rights if the Order remains in effect and the AG executes on the Subpoena. Thus, Nonprofit Amici submit that a writ directing Respondent Judge to vacate the Order is warranted here. Such writ would benefit not only Anonymous Donors, but also other people and organizations, including Nonprofit Amici, who may be chilled from engaging in political advocacy relating to controversial public issues, or expressing viewpoints on public issues that the State dislikes, for fear of facing similarly retaliatory and overbroad investigations.

## II. STATEMENT OF FACTS

Nonprofit Amici adopt the Statement of Facts from Anonymous Donors' Petition. The identity and interest of Nonprofit Amici are outlined in their Memorandum in Support of Motion For Leave to File Brief in Support of Anonymous Donors' Petition for Writ of Mandamus. Nonprofit Amici also provide this statement as context for understanding the issues presented:

The dispute giving rise to this Petition concerns advocacy that has been occurring around the planned construction of the Thirty Meter Telescope ("TMT"), a superlatively large observatory, on top of Mauna Kea—a mountain that many consider as among the most sacred places in Hawai'i, culturally, spiritually, historically, and ecologically.<sup>2</sup> As with any significant issue of public concern, groups have been advocating on every side of the issue, including by demonstrating on or near the road leading to the TMT's construction site; indeed, in recent months, *thousands* of people, including prominent political figures and celebrities, have traveled to Mauna Kea to participate in demonstrations.<sup>3</sup> Such advocacy has at times been vigorous. Last month, for instance, both "[s]upporters and opponents of the [TMT] [we]re clashing over debris

---

<sup>2</sup> Pet. Muneoka Decl. ¶¶ 6-7.

<sup>3</sup> Pet. Muneoka Decl. ¶¶ 13, 17; *see also* Declaration of Jongwook "Wookie" Kim ("Kim Decl.") ¶ 4 & Ex. 1 (news article noting that politicians Rep. Gabbard, Gov. Ige, Lt. Gov. Green, Hawai'i County Mayor Kim, and celebrities Dwayne "The Rock" Johnson and Jason Momoa had visited Mauna Kea to speak about TMT).

at the encampment at Mauna Kea.”<sup>4</sup> While those demonstrating against the TMT have been more visible, pro-TMT protesters have routinely held large rallies in public spaces.<sup>5</sup> Other prominent non-profit organizations have also provided outside support to those engaged in demonstrations on Mauna Kea.<sup>6</sup>

The State has expressed strong support for the TMT, and has prioritized its construction, with Governor Ige stating that he “fully support[s]” the project,<sup>7</sup> and even issuing an emergency proclamation as part of his “commit[ment] to enforcing the law and seeing this project through.”<sup>8</sup>

Meanwhile, starting in fall 2019, the AG began serving subpoenas on several organizations that allegedly provided support to anti-TMT demonstrators. First, in September 2019, the AG served a subpoena on the Office of Hawaiian Affairs (“OHA”) seeking “detailed information about support that OHA has provided to the Thirty Meter Telescope opponents” demonstrating on or near Mauna Kea Access Road.<sup>9</sup> OHA had engaged in anti-TMT advocacy, including by filing a 2017 lawsuit alleging mismanagement of Mauna Kea.<sup>10</sup> In response to the subpoena, OHA disclosed it had spent money to pay for things like toilet rentals, trash hauling and disposal fees, tent rental and lighting, and travel for staff to conduct site visits and legal observations relating to Mauna Kea.<sup>11</sup> Then, in October 2019, the AG served a separate

---

<sup>4</sup> Kim Decl. ¶ 5 & Ex. 2.

<sup>5</sup> Kim Decl. ¶ 6 & Ex. 3.

<sup>6</sup> Pet. App. C (reporting that “Kamehameha Schools is also providing help to the demonstrators camped at the bottom of the access road, including providing a large tent and support for documentation of the protests through livestreams, photos and videos”).

<sup>7</sup> Kim Decl. ¶ 7 & Ex. 4 (Governor Ige: “To be very clear, I fully support @TMTHawaii. #TMT”).

<sup>8</sup> Kim Decl. ¶ 8 & Ex. 5.

<sup>9</sup> Pet. App. C.

<sup>10</sup> See Complaint, *Office of Hawaiian Affairs v. State of Hawai‘i*, No. 1CC171001823 (Haw. Cir. Ct. Nov. 7, 2017), available at <https://19of32x2yl33s8o4xza0gfl4-wpengine.netdna-ssl.com/wp-content/uploads/2017-11-07-Complaint.pdf>. The lawsuit is still pending.

<sup>11</sup> Kim Decl. ¶ 9 & Ex. 6.



subpoena on Hawaiian Airlines seeking “the names of people who donated their frequent-flyer miles to activists who wanted to travel to the Big Island to join the Mauna Kea protests.”<sup>12</sup> After Hawaiian Airlines resisted disclosure of its customers’ records, the AG withdrew that subpoena.<sup>13</sup> Publicly available information does not reflect any pro-TMT organizations or groups receiving investigative subpoenas from the AG.<sup>14</sup>

On November 14, 2019, the AG issued a subpoena to First Hawaiian Bank seeking “all financial records of KAHEA” in the bank’s possession (“Subpoena”).<sup>15</sup> This subpoena relating to KAHEA came on the heels of the earlier subpoenas to OHA and Hawaiian Airlines—and falls in line with the AG’s trend of targeting organizations opposing the TMT. Anonymous Donors are those who have donated to KAHEA, and whose identities and private information risk being exposed without mandamus relief.<sup>16</sup>

On December 24, 2019, KAHEA moved to quash the Subpoena, initiating the special proceeding that resulted in the Order (*i.e.*, 1CSP-19-0000062).<sup>17</sup> In opposition, the AG proffered two justifications for the Subpoena. First was KAHEA’s failure to file a copy of its IRS Form 990 with the AG, which oversees charities operating in Hawai‘i.<sup>18</sup> Second was that KAHEA allegedly did not operate for a charitable purpose because it “facilitate[s]” and “support[s]” “illegal activity” relating to Mauna Kea.<sup>19</sup> The AG’s “evidence” for such assertion was that KAHEA supported individuals who wanted to go to Mauna Kea to demonstrate, encouraged or

---

<sup>12</sup> Pet. App. D.

<sup>13</sup> *Id.*

<sup>14</sup> Kim Decl. ¶¶ 2-3.

<sup>15</sup> Pet. App. A at 1.

<sup>16</sup> Pet. Muneoka Decl. ¶¶ 10-11, 32-33.

<sup>17</sup> Pet. App. H.

<sup>18</sup> *See* Pet. App. I at 4-6.

<sup>19</sup> *Id.* at 6, 7.

supported such demonstrations, helped with travel to get to Mauna Kea, and offered bail money for those improperly arrested.<sup>20</sup> The AG also cited KAHEA’s Aloha ‘Aina Support Fund.<sup>21</sup> According to KAHEA, the Aloha ‘Aina Support Fund is a fund “administered by KAHEA board and staff” that distributes money to “groups, other nonprofits, and individuals organizing non-violent direct actions” and, in doing so, “prioritize[s] funding for frontline logistics, including provision of bail where appropriate, supplies, transportation, technical services, and community meetings convened for such purposes.”<sup>22</sup> The AG argued without any evidence that the Aloha ‘Aina Support Fund took KAHEA outside of a proper charitable purpose because “the ‘non-violent direct actions’ supported by donations to Kahea plainly refer to the five month long illegal blockade of Mauna Kea Access road.”<sup>23</sup>

On January 29, 2020, Respondent Judge held a motion hearing, during which KAHEA’s counsel raised several First Amendment arguments against the Subpoena, including: (1) that the AG’s purpose in issuing the Subpoena was “to stifle First Amendment advocacy”; (2) that the AG, in issuing subpoenas against entities “who disagree with government,” was engaged in a “pattern” of violating First Amendment rights; and (3) that the AG was “trying to put a chilling effect and intimidation on people from contributing to KAHEA to perform its mission of advocating” in a way that amounted to “an unconstitutional infringement upon their First Amendment rights.”<sup>24</sup> On multiple occasions, KAHEA’s counsel also clarified that he was invoking the First Amendment rights of both “KAHEA and its members.”<sup>25</sup>

---

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *See id.* at 2-3, 7.

<sup>22</sup> Pet. App. I, Ex. C.

<sup>23</sup> Pet. App. I at 3.

<sup>24</sup> Pet. App. K at 9:1-10:9; *id.* at 18:1-9.

<sup>25</sup> Pet. App. K at 15:10-15; *see also id.* at 9:10-12 (“They’re violating the civil rights of my client. They’re violating the civil rights of my client’s members . . .”).

Respondent Judge did not address—at *all*—the First Amendment issues raised on behalf of KAHEA and its members and donors. In fact, Respondent Judge appeared to believe that KAHEA’s counsel was attempting to invoke *only* the rights of the 39 demonstrators arrested on Mauna Kea, and not those of KAHEA or its members and donors.<sup>26</sup> Instead, Respondent Judge found the Subpoena was appropriately issued, “agree[ing] with the State’s overall position” that investigation into KAHEA was justified because of the AG’s “reasonable” belief that “charitable contributions to KAHEA might [have] be[en] used to support and assist in the potential commission of crimes” through the Aloha ‘Aina Support Fund’s “funding of bail and provision of supplies, transportation, and other services to groups and individuals” demonstrating at Mauna Kea.<sup>27</sup> Further—even though KAHEA had raised the issues of the First Amendment and donor anonymity—Respondent Judge also stated KAHEA “ha[d] not shown any basis” to “conclude that the subpoena information is subject to any recognized privilege.”<sup>28</sup>

On February 7, 2020, Respondent Judge held a second motion hearing, during which Respondent Judge again did not address the First Amendment arguments that KAHEA had raised earlier—and re-raised repeatedly that same day.<sup>29</sup> KAHEA’s counsel also restated concerns about the “identities of donors to KAHEA,” and how disclosure to the AG “would put a

---

<sup>26</sup> Pet. App. K at 16:23-17:11 (“[T]hese 39 arrestees are not at issue here. I believe you’re trying to invoke First Amendment rights of somebody else other than your client. . . . I think you’re confusing the 39 [arrestees] with the entity.”).

<sup>27</sup> Pet. App. K at 28:13-30:17.

<sup>28</sup> Pet. App. K at 30:17-19.

<sup>29</sup> See, e.g., Pet. App. M at 17:19-22 (“[W]e strenuously submit again that this is targeting at them – at KAHEA . . . and its members for its opposition to the government.”); *id.* at 20:22-21:14 (stating that the Subpoena “violates KAHEA and its members’ First and Fourteenth Amendment, and Article I, Section 4, of the Hawaii State Constitution, its rights under those provisions”).

chilling effect” on their constitutional rights.<sup>30</sup> Respondent Judge did not address the donor disclosure issue, and whether or how the Subpoena should be analyzed in light of that issue.

On February 26, 2020, Respondent Judge issued the Order, which authorizes the AG to obtain a broad swath of KAHEA’s bank records—including those that will disclose Anonymous Donor’s identities and private information—over a multi-year period.<sup>31</sup> That same day, KAHEA filed a motion for stay pending appeal,<sup>32</sup> which motion is pending.

On February 28, 2020, Anonymous Donors filed the Petition.

### **III. STATEMENT OF REASONS FOR ISSUING THE WRIT**

#### **A. In Issuing The Order, Respondent Judge Committed Flagrant And Manifest Abuse Of Discretion By Ignoring Significant Constitutional Issues Raised By KAHEA Relating to It And Its Members And Supporters, Including Anonymous Donors**

Nonprofit Amici submit that mandamus relief against Respondent Judge is warranted because Respondent Judge failed to consider three meritorious constitutional issues raised by KAHEA relating to it and its members and donors, including Anonymous Donors, and such failure constituted flagrant and manifest abuse of discretion. Thus, the Order should be vacated.

To obtain mandamus relief, Anonymous Donors must show “a clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action.” *Kema v. Gaddis*, 91 Haw. 200, 204, 982 P.2d 334, 338 (1999). “Where a trial court has discretion to act,” one basis for mandamus is when the court “has committed a flagrant and manifest abuse of discretion.” *Id.* at 205. One way a court abuses its discretion is when it “disregards rules or principles of law to the substantial detriment of a party

---

<sup>30</sup> Pet. App. M at 23:9-25; *see also id.* at 24:20-22 (“We are very concerned about the identities of donors and putting a chilling effect on them.”).

<sup>31</sup> Pet. App. B at 2; Pet. Muneoka Decl. ¶¶ 32-33.

<sup>32</sup> Pet. App. N.

litigant.” *Blaisdell v. Dep’t of Pub. Safety*, 113 Haw. 315, 319, 151 P.3d 796, 800 (2007). This Court has found that a “respondent judge’s refusal to quash [a] subpoena duces tecum” can “constitute[] a flagrant and manifest abuse of discretion” that “demonstrate[s] a clear and indisputable right to a vacatur” of an order denying a motion to quash. *Honolulu Police Dep’t v. Town*, 122 Haw. 204, 216, 225 P.3d 646, 658 (2010).

As a threshold matter, Anonymous Donors have no alternative means of redress. They are not parties to the special proceeding at issue, so have no avenue to appeal. *See Town*, 122 Haw. at 217, 225 P.3d at 659. (holding that “HPD properly sought redress from the [disputed] order by mandamus” because “HPD is not a party to the case” and, “[a]s a nonparty, HPD is not authorized to appeal the respondent judge’s” order). Even assuming they had been parties to that proceeding, the Subpoena is directed at a *third party*, First Hawaiian Bank, which alone can decide—and has decided—to disclose the financial records at issue to the AG.<sup>33</sup> And because “injury to . . . First Amendment rights” occurs via the “disclosure itself,” injury from such disclosure necessarily “will not be remediable on appeal.” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1158 (9th Cir. 2010). Under these circumstances, the Petition is Anonymous Donors’ only recourse. Indeed, this Court has found that petitioners who similarly faced disclosure of constitutionally protected information to third parties, or other infringements of constitutional rights, had no other option but the writ. *See, e.g., Grube v. Trader*, 142 Haw. 412, 429, 420 P.3d 343, 360 (2018) (granting mandamus based on infringement of First Amendment and article I, section 4 rights of access to court proceedings in criminal cases); *Brende v. Hara*, 113 Haw. 424, 426, 153 P.3d 1109, 1111 (2007) (“[W]e hold that petitioners are entitled to mandamus relief because . . . disclosure . . . of petitioners’ health information produced in discovery will violate

---

<sup>33</sup> Pet. Muneoka Decl. ¶¶ 24-25.

petitioners' informational privacy right under article I, section 6."').<sup>34</sup>

Further, as explained below, Anonymous Donors have a clear and indisputable right to mandamus relief because Respondent Judge did not consider three constitutional issues, each of which is highly meritorious, and each of which points to quashal of the Subpoena. Thus, Nonprofit Amici submit that Respondent Judge's failure to consider these meritorious constitutional issues amounted to "flagrant and manifest" abuse of discretion warranting the issuance of a writ of mandamus ordering vacatur of the Order.

**1. The Subpoena, in encompassing the identities of Anonymous Donors, threatens their constitutional rights to freedom of association and privacy**

The Subpoena encompasses records that may disclose the identities of Anonymous Donors in violation of KAHEA and Anonymous Donors' rights to freedom of association under the First Amendment and article I, section 4, and their rights to privacy under article I, sections 6 and 7. Accordingly, Respondent Judge's failure to consider these rights warrants mandamus.

***i. The Subpoena infringes Anonymous Donors' First Amendment and article I, section 4 right to freedom of association***

The U.S. Supreme Court has stated that the "freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First [Amendment]." *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973). And that freedom encompasses the right to associate with and support causes *anonymously*.<sup>35</sup> See *NAACP*

---

<sup>34</sup> See also *Perry*, 591 F.3d at 1157 (holding that petition raising "the scope of the First Amendment privilege against compelled disclosure of internal campaign communications" was "an extraordinary case in which mandamus review is warranted"); § 3935.3Mandamus Use in Civil Action—Discovery Orders, 16 Fed. Prac. & Proc. Juris. § 3935.3 (3d ed.) ("[M]andamus review is most likely to be available to protect claims that discovery threatens an irreparable invasion of important privacy interests.").

<sup>35</sup> This principle applies equally to donors and members of an advocacy organization. See *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) ("Our past decisions have not drawn fine lines between contributors and members but have treated them interchangeably.").

*v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) (describing “[i]nviolability of privacy in group association” as being “indispensable to preservation of freedom of association”); *Bates v. City of Little Rock*, 361 U.S. 516, 523-24 (1960) (holding that “compulsory disclosure of the membership lists” of advocacy organization “would work a significant interference with the freedom of association of their members”). As early as 1958, the Court recognized that it was “hardly a novel perception that “compelled disclosure of affiliation with groups engaged in advocacy may constitute a[n] effective . . . restraint on freedom of association[.]” *Patterson*, 357 U.S. at 462. Since then, the Court has “repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” *Buckley*, 424 U.S. at 64. This is because “[c]ompelled disclosures concerning protected First Amendment political associations have a profound chilling effect on the exercise of political rights.” *Perry*, 591 F.3d at 1156 (citing *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 557 (1963)).

Because the Subpoena—by reaching the identities of Anonymous Donors—plainly covers documents protected by the First Amendment, the government’s demand “must survive exacting scrutiny.” *Buckley*, 424 U.S. at 64; *see also Patterson*, 357 U.S. at 460-61 (“[S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.”); *Perry*, 591 F.3d at 1164-65 (granting organization’s petition for writ of mandamus seeking a protective order on First Amendment grounds because the trial court “did not apply . . . the First Amendment’s more demanding heightened relevance standard[.]” which the court “must apply”). This means the State must “convincingly show”: (1) an “overriding and compelling state interest,” *Gibson*, 372 U.S. at 545-46; a (2) “substantial relation between the information sought” and that interest, *id.*; and (3) “narrowly drawn” means. *Louisiana ex rel.*

*Gremillion v. NAACP*, 366 U.S. 293, 297 (1961); *see also Perry*, 591 F.3d 1147 (requiring “carefully tailored” request).

Even though KAHEA’s counsel squarely raised the issue of donor anonymity, and a chilling effect, Respondent Judge did not analyze whether the AG’s demand for information protected by the First Amendment and article I, section 4 met “exacting scrutiny.” That failure warrants mandamus relief. *See Grube*, 142 Haw. at 423-28 (granting mandamus relief because, among other things, respondent judge made findings that were “fully lacking in the specificity required to demonstrate a compelling interest” and also failed to conduct “narrow tailoring” analysis). Compounding the prejudice to Anonymous Donors is the fact that, had such analysis been conducted, it was clear that the AG failed to meet every part of its burden. While the State arguably may have a compelling interest in policing charitable fraud, the fact that the State’s two proffered justifications appear pretextual,<sup>36</sup> and also appear to have been used to justify

---

<sup>36</sup> The AG proffered two justifications in the “public interest” for the Subpoena centering on the laws governing charitable organizations: first, KAHEA failed to file an IRS form with the AG and, second, KAHEA is allegedly not operating for a charitable purpose. Pet. App. I at 4-7. Framed this way, the AG suggests the Subpoena concerns a routine matter of corporate law.

However, “[t]his case, in truth, involves not the privilege of a corporation to do business in a State, but rather the freedom of individuals to associate for the collective advocacy of ideas.” *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 309 (1964). As Respondent Judge correctly held, the first justification was clearly pretextual. Even accepting that KAHEA failed to file a copy of an IRS form that had already been filed with the IRS, such failure would in no way justify the pursuit of *all* of KAHEA’s bank records. *Cf. id.* at 305 (noting that the failure of a corporation to register with the state justifies monetary fines, but does not justify the “consequence of permanent ouster” from the state). That the AG escalated immediately to serving a subpoena—without pursuing less-intrusive alternatives—raises serious questions about the State’s motivations for investigating KAHEA, especially because this also was a departure from the AG’s standard practice. As local non-profit experts have recently explained, “a charity’s failure to file a financial report with the AG does not typically result in a subpoena of records.” Pet. App. L, Ex. 1 at 3. Instead, the AG will normally send a letter or make a phone call, and then consider civil fines. *See id.* The AG itself has published guidance stating that “the penalt[y] for failing to timely file the annual report” is to “assess late fees of \$20 per day up to a maximum of \$1,000.” Kim Decl. ¶ 9 & Ex. 7 at 6.



retaliation against KAHEA, undercuts that possibility. The all-encompassing financial records the AG seeks also have only a minimal to nonexistent relation to the proffered interests. For example, as KAHEA argued, the AG’s purported need to investigate KAHEA’s failure to file *one* IRS form for *one* year had “no nexus” to the AG’s request to obtain *all* of KAHEA’s bank records for a more-than-three-year period. Pet. App. J at 2. In seeking effectively all of KAHEA’s bank records—and in also encompassing the identities of Anonymous Donors—the Subpoena is not narrowly tailored.

***ii. The Subpoena infringes Anonymous Donors’ article I, section 6 right to privacy***

The Hawai‘i Constitution provides additional protection against unwarranted privacy intrusions that are arguably infringed here. Article I, section 6 provides that “[t]he right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest.” Haw. Const., art. I, sec. 6. As this Court has recognized, article I, section 6 “provides Hawaii’s people with powerful protection against *any* infringement of their right to privacy, by state *and* private actors.” *Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 138 Haw. 14, 19 (2016). Further, it “generally provides greater privacy to Hawaii’s people than its federal analogs.” *Id.*; *see also Janra Enterprises, Inc. v. City & Cty. of Honolulu*, 107 Haw. 314, 320 (2005) (observing that article I, section 6 “afford[s] much greater privacy rights than the federal right to privacy” (citation omitted)). Article I, section 6 specifically protects “highly

---

The second justification—the AG’s theory that KAHEA aided and abetted demonstrators engaged in illegal acts of civil disobedience—is also invalid. The AG contended that KAHEA’s “Aloha ‘Aina Support Fund” supported and encouraged purportedly illegal activity—including the acts of “obstruction” allegedly committed by 39 people arrested under HRS § 711-1105. Pet. App. I at 6-7. By providing such assistance, KAHEA has, in the AG’s view, been operating for an improper charitable purpose. As explained below, the AG’s theory—which Respondent Judge accepted, *see, e.g.*, Pet. App. K at 29:8-30:19, 28:16-18 (“I agree with the State’s overall position and I find that the Attorney General can issue a subpoena here.”)—is immensely problematic.

personal and intimate” information, which includes “medical, financial, educational, or employment records[.]” *Brende*, 113 Haw. at 430 (citations omitted), as well as the “personal financial affairs” of “the people of Hawaii.” *Nakano v. Matayoshi*, 68 Haw. 140, 148 (1985). Here, the bank records at issue—which disclose the identities and contribution amounts of Anonymous Donors—squarely implicate the highly personal and intimate personal financial affairs. Yet, Respondent Judge did not grapple with this analysis; in fact, Respondent Judge made no mention of “compelling interests” during either hearing. Mandamus is warranted.

***iii. The Subpoena infringes Anonymous Donors’ article I, section 7 right to privacy***

Separately, the AG—in seeking confidential bank records, as part of a criminal investigation, without obtaining a warrant—may have infringed KAHEA’s and Anonymous Donors’ rights to privacy under article I, section 7 of the Hawai‘i Constitution. That provision provides that “[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause . . . .” Haw. Const. Art. I, Sec. 7. It specifically protects “all information in which individuals have a legitimate expectation of privacy.” *State v. Walton*, 133 Haw. 66, 91 (2014); *see also State v. Biggar*, 68 Haw. 404, 407 (1986). While the U.S. Supreme Court has held that people do not have a legitimate expectation of privacy in bank records (because such records are “revealed to a third party”), *United States v. Miller*, 425 U.S. 435, 442-43 (1976), this Court has held that “a mechanical application” of the federal “third party” doctrine “cannot be justified in all situations” under the Hawai‘i Constitution. *Walton*, 133

Haw. at 96.<sup>37</sup> Instead, to determine whether information disclosed to a third party is protected, a court must decide whether a person “held a legitimate expectation that such information would not be shared with others” by considering the following five issues:

[W]hether the individual considered such information to be private, whether that information reveals ‘intimate details of a person’s life,’ whether the individual released the information to a third party to obtain a necessary service, whether there was no realistic alternative but to disclose the information, and the extent to which disclosing such information would jeopardize an individual’s sense of security.

*Id.* at 97 (citations omitted). If such information falls within the scope of article I, section 7, the government “must obtain a warrant before conducting such searches, thus subjecting the issue to the scrutiny of a neutral disinterested magistrate before a search is conducted.” *Id.* at 97-98. Respondent Judge did not consider this issue, even though all five factors seem to weigh in favor of the conclusion that KAHEA and Anonymous Donors had a legitimate expectation of privacy in the bank records at issue, particularly when they disclose private, constitutionally protected identities that, if disclosed, would jeopardize donors’ sense of security.

## **2. The Subpoena was improperly issued to investigate protected speech and association, not unlawful activity, and was not supported by evidence**

There are two additional related problems with the Order. First, Respondent Judge erroneously accepted the AG’s argument that the Subpoena was targeting unlawful activity when, in fact, the conduct targeted by the AG was KAHEA’s *constitutionally protected* political advocacy. Second, based on that first error, Respondent Judge incorrectly found that the AG had made a sufficient showing that KAHEA’s support of the protected and peaceful demonstrations violated the law, or otherwise aided and abetted the alleged acts of unlawful civil disobedience.

---

<sup>37</sup> Indeed, in departing from the federal “third party” doctrine, this Court cited the U.S. Supreme Court’s statement that “state courts are absolutely free to interpret state constitutional provisions to accord greater protection to individual rights than do similar provisions of the United States Constitution.” *Walton*, 133 Haw. at 98 (quoting *Arizona v. Evans*, 514 U.S. 1, 8 (1995)).

Both errors mean that the Order impermissibly intrudes on KAHEA's and Anonymous Donors' First Amendment and article I, section 4 associational and speech rights.

***i. The AG improperly based the Subpoena on the investigation of constitutionally protected activity***

The AG admitted that it relied on KAHEA's expressed support for the Mauna Kea demonstrators as the predicate for its far-reaching investigation. But the "frontline logistical support" that KAHEA provided through its Aloha 'Aina Support Fund to those demonstrating on Mauna Kea is protected under the First Amendment to the U.S. Constitution and article I, section 4 of the Hawai'i Constitution,<sup>38</sup> and thus cannot justify the Subpoena. Respondent Judge's adoption of the AG's position—and disregard of this principle—is manifest abuse of discretion.

The U.S. Supreme Court has long held that "associat[ing] for the purpose of *assisting persons* who seek legal redress for infringements of their constitutionally guaranteed and other rights" is among the "modes of expression and association protected by the First and Fourteenth Amendments." *NAACP v. Button*, 371 U.S. 415, 428-29 (1963) (emphasis added); *see also United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 578-79 (1971) (stating that "the First Amendment guarantees of free speech, petition, and assembly" includes "the right to cooperate in helping and advising one another in asserting their [legal] rights"); *De Jonge v. State of Oregon*, 299 U.S. 353, 365 (1937) ("*Those who assist* in the conduct of [meetings for peaceable political action] cannot be branded as criminals on that score." (emphasis added)). This type of "vigorous advocacy" is "a form of political expression" that "the First Amendment also protects .

---

<sup>38</sup> This Court "has interpreted the free speech rights afforded by the Hawai'i Constitution to be at least as expansive as those provided by the United States Constitution." *State v. Russo*, 141 Haw. 181, 190 (2017). This Court has also said that, "in some circumstances," it "may find that the Hawai'i Constitution affords greater free speech protection than its federal counterpart." *Id.* (quoting *Crosby v. State Dep't of Budget & Fin.*, 76 Haw. 332, 339 n.9 (1994) (citation omitted)).

. . against governmental intrusion.” *Button*, 371 U.S. at 429.

Indeed, in *NAACP v. Claiborne Hardware Co.*—a case that, like the underlying special proceeding, related to mass demonstrations—the U.S. Supreme Court specifically rejected the notion that an organization supporting its members with legal costs, such as “post[ing] bond” and “provid[ing] legal representation” for those arrested during the demonstration at issue, could expose the organization to civil liability. 458 U.S. 886, 931 n.78 (1982). KAHEA’s provision of similar legal and other support services to demonstrators also falls squarely within the scope of the First Amendment’s protections, and could not justify the Subpoena.

***ii. The AG proffered no evidence that KAHEA was engaging in or supporting illegal activity on Mauna Kea***

Despite invoking “illegal activity” as the basis for its investigation, the AG had no evidence that KAHEA’s constitutionally protected support for peaceful demonstrations on Mauna Kea was instead intended to aid and abet isolated acts of alleged civil disobedience. Respondent Judge’s mechanical acceptance of the AG’s position is manifest abuse of discretion.

The AG incorrectly assumed that KAHEA’s provision of “frontline logistical support” to people engaged in “non-violent direct actions” meant it was definitively supporting “illegal activity.” See Pet. App. I at 3 (“The ‘non-violent direct actions’ supported by donations to Kahea *plainly refer* to the five month long illegal blockade of Mauna Kea Access road.” (emphasis added)). But “non-violent direct action” plainly includes expressive conduct protected by the First Amendment, including actions “such as boycotts, marches, and demonstrations.”<sup>39</sup> The IRS similarly recognizes that a non-profit may lawfully use direct action, such as “nonviolent confrontation activities,” to accomplish its charitable purposes. See IRS Gen. Counsel

---

<sup>39</sup> Leonard S. Rubinowitz et. al., *A “Notorious Litigant” and “Frequenter of Jails”: Martin Luther King, Jr., His Lawyers, and the Legal System*, 10 Nw. J. L. & Soc. Pol’y 494, 497 (2016).

Memorandum, GCM 38415, at \*7 (I.R.S. June 1980). In other words, “non-violent direct action” is not inherently synonymous with, or a form of, “illegal activity,” as the AG inferred, and as Respondent Judge accepted. The AG presented zero evidence that KAHEA intended to support anything other than constitutionally protected expressive conduct of demonstrators.

The impropriety of the AG’s inference—that the Aloha ‘Aina Support Fund inevitably supports or assists an illegal “blockade”—is even plainer to see in light of the context behind the Mauna Kea demonstrations. Over the past half year, *thousands* of people, including prominent political figures and celebrities, have traveled to Mauna Kea to engage in varying kinds of lawful non-violent direct action. *See* Kim Decl. ¶ 4 & Ex. 1. While *some* of the people demonstrating on Mauna *may* have engaged in civil disobedience or participated in a “blockade,” the AG offered no evidence that KAHEA itself engaged in, directly supported, or intended any such acts.

The AG nevertheless attempted to connect the acts of the 39 demonstrators who were arrested under HRS § 711-1105 to KAHEA. *See, e.g.,* Pet. App. I at 7 (noting KAHEA’s “*apparent* support of the blockade” (emphasis added)). But even assuming some of the 39 people being prosecuted had some tie to KAHEA (something that the AG did not show), that theory disregards a central tenet of First Amendment doctrine, reflected in U.S. Supreme Court case law: KAHEA cannot be liable for the illegal conduct of others on the basis of association alone; rather, the AG must establish that KAHEA (1) authorized, directed, ratified those illegal acts *and* (2) specifically intended such illegal acts. *See Claiborne Hardware Co.*, 458 U.S. at 930 (holding that the First Amendment guarantees that an organization can be liable only for “the acts of its agents . . . that are undertaken within the scope of their actual or apparent authority” or “other conduct of which it had knowledge and specifically ratified”); *id.* at 920 (holding that the First Amendment forbids imposing liability for advocacy or association that unintentionally leads

others to commit unlawful acts; there must be proof that the person “held a specific intent to further th[e] illegal aims” of those engaged in the “unlawful acts.”); *see also Healy v. James*, 408 U.S. 169, 186 (1972); *Brandenburg v. Ohio*, 395 U.S. 444, 447-49 (1969); *Scales v. United States*, 367 U.S. 203, 229 (1961). The AG showed neither here.

The AG presented no evidence that KAHEA itself authorized, directed, or ratified any illegal acts—it only offered speculation. Nor did the AG present any evidence that KAHEA or any of its agents or officers had the specific intent to support the allegedly illegal activity of the 39 arrested demonstrators (as opposed to supporting protected speech activity). Absent such evidence, the AG could not convert KAHEA’s protected expressive activity into unprotected activity simply because *some* people that KAHEA associated with may have independently violated the law. *See, e.g., Santopietro v. Howell*, 857 F.3d 980, 990-91 (9th Cir. 2017) (holding that street performer who solely engaged in constitutionally protected expressive activity alongside another street performer who engaged in some unprotected activity could not be liable, in part because “[t]here is no evidence at all . . . of a prior agreement” between the two performers to engage in unprotected activity).

No matter how KAHEA’s activities relating to Mauna Kea (including its use of the Aloha ‘Aina Support Fund) are framed, they constituted forms of advocacy and speech protected by the federal and state constitutions. Accordingly, the AG’s investigation and subpoena—which was predicated on such protected activity being “illegal,” or at least in aid of “illegal activity”—was unconstitutional. Respondent Judge’s acceptance of the AG’s position—and concurrent failure to consider these binding legal principles—was manifest abuse.

### **3. The State appears to have used its investigatory power to retaliate against KAHEA for exercising its constitutional rights to freedom of speech**

In stark contrast to the AG’s lack of evidence for issuing the Subpoena, there is

significant evidence that the AG was investigating KAHEA to retaliate against the organization for its anti-TMT viewpoint. If the AG’s investigation (and related subpoena) were issued with such retaliatory intent, it would plainly violate the constitutional prohibition against retaliation for engaging in First Amendment-protected activity.

“To state a First Amendment retaliation claim, a plaintiff must plausibly allege ‘that (1) he was engaged in a constitutionally protected activity, (2) the defendant’s actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the defendant’s conduct.’” *Capp v. Cty. of San Diego*, 940 F.3d 1046, 1053 (9th Cir. 2019) (quoting *O’Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016)).

The record strongly suggests the AG did engage in First Amendment retaliation against KAHEA precisely because KAHEA expressed views that the State dislikes. Regarding the first element, as already explained, KAHEA was engaged in constitutionally protected advocacy. Indeed, “[i]n opposing their local government’s approval of the [TMT] project, [KAHEA] engaged in activity paradigmatically protected by the First Amendment.” *White v. Lee*, 227 F.3d 1226 (9th Cir. 2000). Regarding the second element, the State’s actions seem designed to chill KAHEA’s—and other similarly situated organizations’—protected speech. While KAHEA “need not show [that its] ‘speech was actually inhibited or suppressed[,]’” the fact that the AG issued a “broad, invalid subpoena[]” against KAHEA seeking confidential, private, and protected information would be enough to make that showing. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 916-17 (9th Cir. 2012) (quoting *Mendocino Envtl. Ctr. v. Mendocino Cty.*, 192 F.3d 1283, 1300 (9th Cir. 1999)). Indeed, what is sought by the Subpoena “far exceeded what was reasonable for the purpose of ascertaining” KAHEA’s compliance with corporate law, “and thus



intruded unnecessarily on their First Amendment rights.” *White*, 227 F.3d at 1237. That the AG may only be investigating—and has not (yet) penalized—KAHEA is immaterial because an “intrusive investigation that d[oes] not culminate in an arrest” or penalty can still be held to “chill the exercise of First Amendment rights.” *Lacey*, 693 F.3d at 917 (citing *White*, 227 F.3d at 1237-38).

Regarding the third element, a strong inference can be drawn that KAHEA’s protected speech was a substantial factor (or *the* motivating factor) in the AG’s initiation of its investigation of KAHEA—in other words, that there is “a ‘causal connection’ between the government defendant’s ‘retaliatory animus’ and the plaintiff’s ‘subsequent injury.’” *Capp*, 940 F.3d at 1053 (citation omitted). First, the AG’s pursuit of the subpoenas against OHA and Hawaiian Airlines miles donors for their support of the demonstrations on Mauna Kea strongly suggests that the AG issued the Subpoena as retaliation against KAHEA to discourage its constitutionally protected political advocacy. Second, the AG’s overbroad approach and reliance on non-standard investigative practices (*e.g.*, issuing a subpoena without considering less-intrusive, less-burdensome means) further demonstrates retaliatory animus. Finally, that Respondent Judge found one of the reasons proffered by the AG for the Subpoena (*i.e.*, KAHEA’s alleged initial failure to file certain required financial reports) to be essentially pretextual further underscores the likely retaliatory animus behind this investigation.

In sum, the present record raises a strong inference that the AG is investigating KAHEA because of the State’s hostility towards KAHEA’s anti-TMT viewpoint, and that it is doing so precisely “to punish [KAHEA and its members] for their First Amendment activities and deter them from future activities.” *Lacey*, 693 F.3d at 917. Yet, even though KAHEA repeatedly raised concerns about First Amendment-related retaliation, Respondent Judge disregarded this

important First Amendment doctrine.

#### IV. CONCLUSION

Nonprofit Amici respectfully request that the Court consider these facts and legal doctrines as part of its disposition of Anonymous Donors’ Petition. Further, because Respondent Judge disregarded several critically important First Amendment principles—all of which materially affected the Order to the serious detriment of KAHEA and Anonymous Donors—Nonprofit Amici respectfully submit that Respondent Judge committed flagrant and manifest abuse of discretion warranting mandamus relief through vacatur of the Order on KAHEA’s motion to quash.

DATED: Honolulu, Hawai‘i, March 20, 2020.

Respectfully submitted,

/s/ Jongwook “Wookie” Kim  
JONGWOOK “WOOKIE” KIM  
MATEO CABALLERO

ACLU OF HAWAI‘I FOUNDATION  
Attorneys for *Amicus Curiae*

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

ANONYMOUS DONORS,

Petitioners,

vs.

CLARE CONNORS, Attorney General of  
Hawai‘i; and JUDGE OF THE TENTH  
DIVISION OF THE FIRST CIRCUIT  
COURT;

Respondents,

KAHEA: HAWAIIAN ENVIRONMENTAL  
ALLIANCE, a non-profit corporation; and  
FIRST HAWAIIAN BANK, a domestic profit  
corporation,

Respondents / Real Parties in Interest.

S.P. No. 19-0000062 (JHA)

PETITION FOR WRIT OF MANDAMUS

CLARE CONNORS,  
ATTORNEY GENERAL OF HAWAI‘I  
  
FIRST CIRCUIT COURT  
JUDGE OF THE TENTH DIVISION

**DECLARATION OF JONGWOOK “WOOKIE” KIM**

I, JONGWOOK “WOOKIE” KIM, declare as follows:

1. I am counsel for *amici curiae*, The American Civil Liberties Union of Hawai‘i Foundation (“ACLU of Hawai‘i”), the Japanese American Citizens League of Hawaii, Honolulu Chapter (“JACL Honolulu”), and the Iwamoto Family Foundation (“IFF”) (together, “Nonprofit Amici”) in the above-captioned matter.

2. I prepared Nonprofit Amici’s present motion for leave to file an *amicus curiae* brief in support of Anonymous Donors’ petition for writ of mandamus (“Motion”).

3. In preparing the Motion, I searched publicly available online information for any indication that the State of Hawai‘i Attorney General (“State” or “AG”) served investigative

subpoenas on any organization or group supporting the construction of the Thirty Meter Telescope (“TMT”). I found no such indication.

4. Attached as **Exhibit 1** is a true and correct copy of an August 12, 2019 article published by Big Island Now reporting on the demonstrations relating to TMT on Mauna Kea. *See* Big Island Now, *Rep. Gabbard Visits Mauna Kea*, Big Island Now (Aug. 12, 2019), <https://bigislandnow.com/2019/08/12/gabbard-visits-mauna-kea>.

5. Attached as **Exhibit 2** is a true and correct copy of a February 17, 2020 article published by Hawaii News Now reporting on TMT-related demonstrations. *See* Mahealani Richardson, *TMT Supporters, Opponents Clash Over Debris at Mauna Kea Camp*, Hawaii News Now (Feb. 17, 2020), <https://www.hawaiinewsnow.com/2020/02/18/tmt-supporters-opponents-debate-over-debris-mauna-kea>.

6. Attached as **Exhibit 3** is a true and correct copy of an August 16, 2019 article published by the Hawaii Tribune-Herald reporting on a rally held by TMT supporters. *See* Michael Brestovansky, *TMT Supporters Hold Rally*, Hawaii Tribune-Herald (Aug. 16, 2019), <https://www.hawaiitribune-herald.com/2019/08/16/hawaii-news/tmt-supporters-hold-rally>.

7. Attached as **Exhibit 4** is a true and correct copy of a September 28, 2017 Tweet posted by Governor Ige on Twitter regarding his support for the TMT. *See* @GovHawaii, Twitter (Sept. 28, 2017), <https://twitter.com/GovHawaii/status/913517639690895360>.

8. Attached as **Exhibit 5** is a true and correct copy of a July 17, 2019 press release issued by Governor Ige regarding an emergency proclamation for Mauna Kea. *See* Press Release, *Governor Ige Issues Emergency Proclamation For Mauna Kea*, Office of the Governor (July 17, 2019), <https://governor.hawaii.gov/newsroom/latest-news/office-of-the-governor-news-release-governor-ige-issues-emergency-proclamation-for-mauna-kea>.

9. Attached as **Exhibit 6** is a true and correct copy of a September 27, 2019 article published by the Honolulu Star-Advertiser relating to the subpoena that the AG served on the Office of Hawaiian Affairs (“OHA”). See Timothy Hurley, *OHA Reveals Protest Support, Subpoena Response*, Honolulu Star-Advertiser (Sept. 27, 2019), <https://www.staradvertiser.com/2019/09/27/hawaii-news/oha-reveals-protest-support-subpoena-response>.

10. Attached as **Exhibit 7** is a true and correct copy of an August 2017 guidance document published by the State of Hawai‘i Department of the Attorney General containing answers to frequently asked questions about Hawaii’s charity registration requirements. See Dep’t of the Attorney General, *Answers to Frequently Asked Questions About Hawaii’s Charity Registration Requirements* (Aug. 2017), <https://ag.hawaii.gov/tax/files/2017/08/Charities-Registration-FAQs.pdf>.

I, JONGWOOK “WOOKIE” KIM, declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai‘i, March 20, 2020.

Respectfully submitted,

/s/ Jongwook “Wookie” Kim  
JONGWOOK “WOOKIE” KIM

ACLU OF HAWAI‘I FOUNDATION  
Attorney for *Amici Curiae*

# BIG ISLAND NOW

(/)

# BIG ISLAND NOW (/)

Search Big Island Now

Q

- News +
- Weather +
- Lifestyle +
- Visitor Guides +
- Deals & Offers +
- Videos +
- Special Sections +
- About +

For Maui, Hawaii News, Visit  
**MauiNow.com** (<http://mauinow.com>)

;

☰ Sections (/)

- Big Island News (/category/news/)
- Coronavirus Updates (/category/coronavirus/)
- Job Listings (/category/jobs/)
- Business (/category/business/)
- Food & Dining (/category/food/)
- Entertainment (/category/arts-entertainment/)
- Weather (/category/weather/)

[Videos \(/hawaii-videos/\)](#)

[Events \(/events/\)](#)

[Activities \(/category/activities/\)](#)

**NEWS ([HTTPS://BIGISLANDNOW.COM/CATEGORY/NEWS/](https://bigislandnow.com/category/news/))**

# Rep. Gabbard Visits Mauna Kea

**By Big Island Now**

August 12, 2019, 2:14 PM HST (Updated August 12, 2019, 5:16 PM)



**Recommend**

[Sign Up](#) to see what your friends recommend.

Text Size:

A

A

A



(<https://media.bigislandnow.com/file/bigislandnow/2019/08/Screen-Shot-2019-08-12-at-2.07.55-PM.png>)

Hawaii Island resident Zanira Musa with Congresswoman Tulsi Gabbard during visit to Mauna Kea Sunday, Aug. 11, 2019. PC: Nayeve Florie

Rep. Tulsi Gabbard (Hawai'i—District 2), Democratic presidential candidate and member of the US House of Representatives, visited Mauna Kea on Sunday Aug. 11, 2019, where protestors have camped out for nearly a month to block construction of the Thirty Meter Telescope (TMT) on what they consider a sacred peak.

Gabbard spoke to a crowd of several thousand protestors—some of whom have been on the mountain for nearly a month, and others who were in attendance for a TMT-opponent based event titled Jam 4 Mauna Kea. People from across the state and the world synced up on Sunday via the internet, signing the same song at the same time in solidarity for their cause.

During her visit, Gabbard reiterated talking points that were part of a message she released weeks ago, when the Congresswoman implored Gov. David Ige to rescind an emergency proclamation he'd declared with regards to the situation on the mountain.

The gist of Gabbard's initial message, as well as her words Sunday, was that the demonstration on Mauna Kea speaks to more than the construction of the \$1.4 billion telescope. It also speaks to a long history of disenfranchisement of the Hawaiian people.

Gov. David Ige, Lt. Gov. Josh Green and Hawai'i County Mayor Harry Kim are among several politicians, who like Gabbard, have ascended the mountain since the demonstration began in mid-July.

Notable celebrities like Dwayne "The Rock" Johnson and Jason Momoa have also made the jaunt to the intersection of Daniel K. Inouye Highway and the Mauna Kea Access Road, where the self-dubbed "protectors" of Mauna Kea have galvanized in their efforts to block TMT construction over the

---



last several weeks.

ADVERTISEMENT

Print (?print)

SHARE THIS ARTICLE



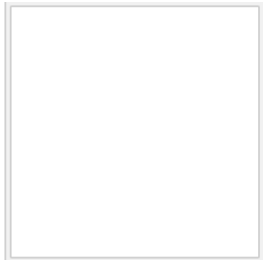
NEXT STORY

Planning Office to Scale Back Public Service Hours

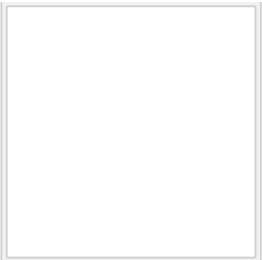
(https://bigislandnow.com/?p=263902)



YOU MIGHT ALSO LIKE



Surfers For Mauna Kea Unite in Solidarity  
(//bigislandnow.com/2019/08/12/surfers-for-mauna-kea-unite-in-solidarity/)



Rep. Gabbard Video: U.S. Must Not Go to War With Iran  
(//bigislandnow.com/2019/05/16/rep-gabbard-video-u-s-must-not-go-to-war-with-iran/)



TMT Addresses Building Permit Application for La Palma  
(//bigislandnow.com/2019/08/05/tmt-addresses-building-permit-application-for-la-palma/)

Get Weekly Updates

Get a quick summary of what's happening  
on Hawaii with our weekly email of news  
highlights:

Your E-Mail Address

Subscribe

ARTICLE COMMENTS ( 11 )

View Comments

Quick Links

- News

West Hawaii News

Sports

Business

Discussion

Kapa Cafe
- East Hawaii News

North Hawaii News

Weather

Arts & Entertainment

Food

Company Info

- About Big Island Now (/about)
- Contact Information (/contact-information)
- Advertise With Us (http://pmghawaii.com)
- Subscribe to Our Newsletter



(https://bigislandnow.com/)

(https://bigislandnow.com/)

Copyright © 2020 Big Is

All Rights Reserv

## NEWS

## TMT supporters, opponents clash over debris at Mauna Kea camp



TMT supporters, opponents debate clash over debris at Mauna Kea encampment

By [Mahealani Richardson](#) | February 17, 2020 at 4:43 PM HST - Updated February 17 at 8:46 PM

HONOLULU, Hawaii (HawaiiNewsNow) - Supporters and opponents of the Thirty Meter Telescope are clashing over debris at the encampment at Mauna Kea.

A couple of TMT supporters have been taking videos and photos of what they call trash and debris left by the protesters. But TMT opponents say it's an effort to discredit and undermine the kiai.

TMT supporters Lisa Malakaua and Mike Nathaniel, of Mountain View, say they took video and photos of the anti-TMT encampment at Mauna Kea last week.

They call the broken tents and piles of camping gear "trash" left behind by the opponents of the Thirty Meter Telescope.

### EXHIBIT 2

"They are being a disgrace up there to Hawaii," said Malakaua.

"There was just so much damage being done, irreversible damage and who's going to be paying for it again, the taxpayers."

The images were posted on Facebook by Thayne Currie, a Mauna Kea astronomer, who asked TMT supporters to contact lawmakers about the trash, environment, safety and upholding the law.

"There is civil disobedience because civil there's nothing civil that's going on up there and they're certainly being disobedient," said Malakaua.

"Shame. That's not the way I was brought up," said Nathaniel.

But TMT opponents say the social media posts and calls to lawmakers are effort to discredit and undermine the kiai, those who consider themselves protectors of Mauna Kea.

"That's just their tactic and we think it's pretty low, but they've been doing this since we took our stand," said Noe Noe Wong-Wilson, a spokesperson for the kiai.

She says early last week high winds during a storm damaged some of the larger tents and they've been cleaning up with a large roll off dumpster.

"We alone are responsible for taking care for what happens at the camp and I think our people and our volunteers have done an excellent job to make sure everything is as clean and tidy as we can possibly be," said Wong-Wilson.

She says more high winds are expected so larger tents and flags are not being put back up and if people haven't retrieved their personal tents, they've been taken down.

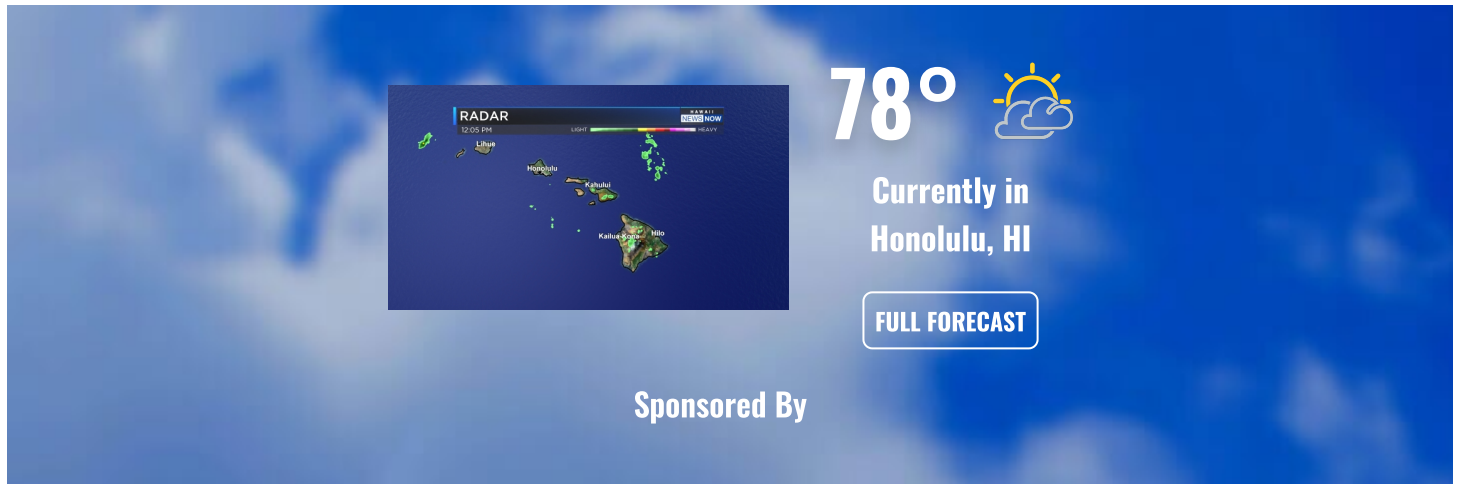
"This is an organized concerted effort by pro TMT astronomers who work on the mountain, that's more about undermining us than anything else," said TMT opponent Andre Perez.


Currie deferred questions to Malakaua and Nathaniel who say they are not affiliated with TMT or the astronomers.

At last word, Hawaii County Mayor Harry Kim was going to see if the moratorium on TMT construction could be extended past the end of February. Wong-Wilson says they have not heard

anything new.

*Copyright 2020 Hawaii News Now. All rights reserved.*



**78°** 

Currently in  
Honolulu, HI

**FULL FORECAST**

Sponsored By

## AUTHOR

### Mahealani Richardson

Evening News Anchor

Honolulu, HI



Hawaii News Now anchor and reporter. PBN's 2017 Women Who Mean Business Women To Watch honoree. Pacific Century Fellows. Mom.

## RECENT CONTENT

# HAWAII NEWS NOW THIS.IS.NOW

▶ WATCH 'This is Now': More states institute lockdowns as coronavirus cases soar

Get the latest on news from around Hawaii and the world.



## DOWNLOAD THE HAWAII NEWS NOW APP

Track the latest coronavirus updates on the Hawaii News Now mobile app

Stay informed about the COVID-19 pandemic by downloading the Hawaii News Now mobile app. You'll get local and national headlines related to the outbreak, plus video seen on Hawaii News Now's television newscasts.

By **HNN Staff**



## Hawaii artists take concerts online to lift spirits during coronavirus outbreak

Published 55m at 11:14 AM



## City: One-day drive-thru testing site planned for Kakaako

Published 1h at 10:51 AM



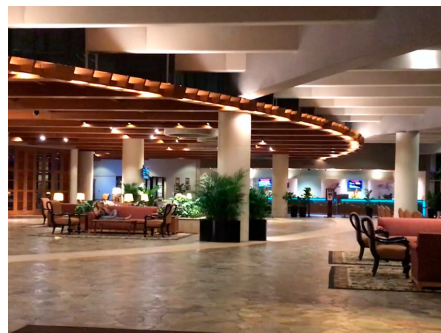
## Hawaii nurses on front lines say they're forced to overuse protective gear

Published 1h at 10:36 AM



## As state asks visitors to stay away, major Waikiki hotel closes its doors

Published 2h at 9:45 AM



NEWSNOW

420 Waiakamilo Road, Suite 205

Honolulu, HI 96817

Main (808) 847-3246

News (808) 847-1112

[CONTACT US ▶](#)

[KHNL FCC PUBLIC FILE](#)

[KHNLPUBLICFILE@HAWAIINEWSNOW.COM](mailto:KHNLPUBLICFILE@HAWAIINEWSNOW.COM)

(808) 847-3246

[KHNL EEO REPORT](#)

[KGMB FCC PUBLIC FILE](#)

[KGMBPUBLICFILE@HAWAIINEWSNOW.COM](mailto:KGMBPUBLICFILE@HAWAIINEWSNOW.COM)

(808) 847-3246

[KGMB EEO REPORT](#)

[CLOSED CAPTIONING](#)

[KHNL/KGMB CAREERS](#)

[PRIVACY POLICY](#)

[TERMS OF SERVICE](#)





About (https://www.hawaiitribune-herald.com/about/) e-Edition (https://www.hawaiitribune-herald.com/e-edition/) **Subscribe** (https://www.hawaiitribune-herald.com/subscribe/)  
Advertise (https://www.hawaiitribune-herald.com/advertise/) Contact Us (https://www.hawaiitribune-herald.com/contact-us/)  
/hawaiitribuneherald/ (http://longs.staradvertiser.com/)

(https://twitter.com/HITribuneHerald)  
(https://www.instagram.com/hawaiitribuneherald/)

Home (/www.hawaiitribune-herald.com/) Local (https://www.hawaiitribune-herald.com/category/hawaii-news/)

Sports (https://www.hawaiitribune-herald.com/category/sports/)

Commentary (/www.hawaiitribune-herald.com/category/opinion/)

Community (https://www.hawaiitribune-herald.com/category/community/)

Obituaries (https://www.hawaiitribune-herald.com/category/obituaries/)

Features (https://www.hawaiitribune-herald.com/category/features/) More Q Search


**Hawaii Tribune-Herald** (https://www.hawaiitribune-herald.com)


Friday, March 20, 2020 | Today's Paper (https://printreplica.hawaiitribune-herald.com/) | 77.801°  
(https://www.hawaiitribune-herald.com/weather/)


**Hawaii News (https://www.hawaiitribune-herald.com/category/hawaii-news/)**

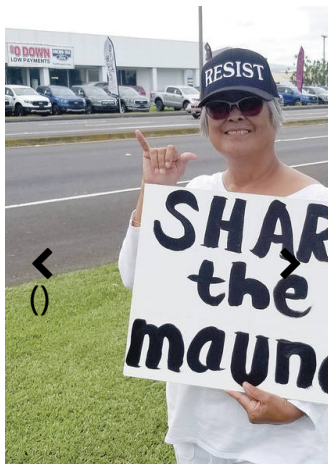
## TMT supporters hold rally

By **MICHAEL BRESTOVANSKY** Hawaii Tribune-Herald (https://www.hawaiitribune-herald.com/author/michael-brestovansky/) | Friday, August 16, 2019, 12:05 a.m.

Share this story 

 (https://twitter.com/intent/tweet?text=https://www.hawaiitribune-herald.com/2019/08/16/hawaii-news/tmt-supporters-hold-rally/)

 (mailto:?subject=TMT supporters hold rally&body=https://www.hawaiitribune-herald.com/2019/08/16/hawaii-news/tmt-supporters-hold-rally/)



MICHAEL BRESTOVANSKY/Tribune-Herald Hilo r sign in support of the TMT project.

Approximately 100 people gathered along Kanoiehua

Avenue Thursday afternoon to show support for the Thirty Meter Telescope project, while hundreds more drivers gave appreciative honks in agreement.

The sign-waving crowd was the third such rally at Kanoelehua Avenue in support of the controversial project, and drew a comparable number of supporters to the last one, which took place July 25.

"A picture's worth a thousand words," said Jason Chu, a post-doctoral fellow with Gemini Observatory. "We want to show [Gov. David] Ige and [Mayor Harry] Kim that we are 100 percent behind them in supporting the law."

Chu, whose wife Laurie Chu organized both the July 25 and Thursday's rallies, said the previous rally was a morale booster for TMT supporters who may feel as though their position is unpopular.

"I'm not without sympathy for the sovereignty movement, and how the Hawaiian people have been treated," said Hilo resident Sylvia Dahlby. "I do believe [Maunakea] is a holy place, a sacred place. It's a portal to the universe."

On the mountain, Dahlby said, nations from all around the world work together in peace to better humanity's understanding of the universe.

"It's the most noble project we can be a part of," Dahlby said.

Alyssa Grace, a Gemini outreach assistant, said she knows friends and family who support the construction of the telescope, but have received aggressive, sometimes threatening backlash online for voicing that support.

"We want people to not be

afraid of saying what they believe," Grace said.

That said, Hilo resident Theresa De Mello said the majority of people she interacts with also support the project, even if they aren't vocal about it. And even those who disagree with her — including her granddaughter — remain respectful and friendly with her.

But even if the majority of Hawaii residents do support the TMT project, the turnout on Thursday was a fraction of the typical daily attendance of the protest opposing the project at Maunakea Access Road, which has continued uninterrupted for an entire month and regularly sees over a thousand participants.

"Other than reasons like people having to work, you have to remember that there's fewer people here because it's supporting the law," Jason Chu said. "It's like holding a rally saying 'let's enforce the speed limit.' Not a lot of people are going to come to that."

Grace said similar rallies will continue in the future, possibly on a bi-weekly or monthly basis.

"But even without the rallies, there are other ways to show support," Grace said, mentioning social media groups and other astronomy events.

"Even if we're not here, telescopes like TMT will be a benefit to the community, even if they won't necessarily benefit me directly," Jason Chu said.

Email Michael Brestovansky at [mbrestovansky@hawaiitribune-herald.com](mailto:mbrestovansky@hawaiitribune-herald.com).

**◀ PREVIOUS STORY**  
**NEXT STORY ▶**  
(<https://www>) (<https://www>)

**.hawaiitribun  
e-herald.com  
/2019/08  
/15/hawaii-  
news/nws-  
cloud-  
formation-  
likely-  
airplane-  
contrail/)  
ONLINE:  
Meteorolo  
gist says  
cloud  
formation  
over West  
Hawaii  
was likely  
airplane  
contrail  
(https://w  
ww.hawaii  
tribune-  
herald.co  
m/2019/08  
/15/hawaii  
-  
news/nws-  
cloud-  
formation-  
likely-  
airplane-  
contrail/)**

**.hawaiitribun  
e-herald.com  
/2019/08  
/17/hawaii-  
news/state-  
briefs-for-  
august-17-4/)  
State  
briefs for  
August 17  
(https://w  
ww.hawaii  
tribune-  
herald.co  
m/2019/08  
/17/hawaii  
-  
news/stat  
e-briefs-  
for-august-  
17-4/)**

Share this story



[\(https://twitter.com/intent/tweet?text=https://www.hawaiitribune-herald.com/2019/08/16/hawaii-news/tmt-supporters-hold-rally/\)](https://twitter.com/intent/tweet?text=https://www.hawaiitribune-herald.com/2019/08/16/hawaii-news/tmt-supporters-hold-rally/)



[\(mailto:?subject=TMT supporters hold rally&body=https://www.hawaiitribune-herald.com/2019/08/16/hawaii-news/tmt-supporters-hold-rally/\)](mailto:(mailto:?subject=TMT supporters hold rally&body=https://www.hawaiitribune-herald.com/2019/08/16/hawaii-news/tmt-supporters-hold-rally/))

✉ Get the latest news by e-mail

(<http://oahupublications.com> Sign Up (<http://oahupublications.com/hawaiitribuneherald/newsletter/hawaiitribuneherald/newsletter/subscription/signup.php>)

### Most Popular

- 1 **Police: Officers fire shots at stolen Jeep; 2 in custody**  
(<https://www.hawaiitribune-herald.com/2020/03/19/hawaii-news/police-officers-fire-shots-at-stolen-jeep-2-in-custody/>)

---

- 2 **Inouye in isolation; Big Isle senators react after Nishihara tests positive for COVID-19**  
(<https://www.hawaiitribune-herald.com/2020/03/20/hawaii-news/inouye-in-isolation-big-isle-senators-react-after-colleague-tests-positive-for-covid-19/>)

---

- 3 **DOH emphasizes social distancing**  
(<https://www.hawaiitribune-herald.com/2020/03/20/hawaii-news/doh-emphasizes-social-distancing/>)

---




- 4 **Grounded fishing boat moved to Hilo Harbor**  
(<https://www.hawaiitribune-herald.com/2020/03/20/hawaii-news/grounded-fishing-boat-moved-to-hilo-harbor/>)

---

- 5 **Obituaries for March 20**  
(<https://www.hawaiitribune-herald.com/2020/03/20/hawaii-news/obituaries-for-march-20-8/>)

 (<https://www.hawaiitribune-herald.com>)

Copyright © 2020 Hawaii Tribune-Herald. All rights reserved. [Privacy Policy](https://www.hawaiitribune-herald.com/privacy-policy/) (<https://www.hawaiitribune-herald.com/privacy-policy/>) | [Terms of Service](https://www.hawaiitribune-herald.com/terms-of-service/) (<https://www.hawaiitribune-herald.com/terms-of-service/>)  
355 Kinoole Street, Hilo, HI 96720. Telephone: (808) 935-6621

 (<https://www.facebook.com/hawaiitribuneherald>)  (<https://twitter.com/HITribuneHerald>)  (<https://www.instagram.com/hawaiitribuneherald/>)

[About \(https://www.hawaiitribune-herald.com/about/\)](https://www.hawaiitribune-herald.com/about/)   [Subscribe \(https://www.hawaiitribune-herald.com/subscribe/\)](https://www.hawaiitribune-herald.com/subscribe/)  
[e-Edition \(https://www.hawaiitribune-herald.com/e-edition/\)](https://www.hawaiitribune-herald.com/e-edition/)   [Advertise \(https://www.hawaiitribune-herald.com/advertise/\)](https://www.hawaiitribune-herald.com/advertise/)   [Contact Us \(https://www.hawaiitribune-herald.com/contact/\)](https://www.hawaiitribune-herald.com/contact/)   [Place a Classified Ad \(http://classified.hawaiitribune-herald.com/g/listingManager/selectProduct\)](https://classified.hawaiitribune-herald.com/g/listingManager/selectProduct)   [Legal Center](#)  
[FAQs \(http://classified.hawaiitribune-herald.com/g/events-notice-legal-and-public-notice-26754510-b\)](http://classified.hawaiitribune-herald.com/g/events-notice-legal-and-public-notice-26754510-b)   [Do Not Sell My Personal Information \(https://www.hawaiitribune-herald.com/frequently-asked-questions/\)](https://www.hawaiitribune-herald.com/frequently-asked-questions/)   [Do Not Sell My Personal Information \(https://www.hawaiitribune-herald.com/do-not-sell-my-personal-information/\)](https://www.hawaiitribune-herald.com/do-not-sell-my-personal-information/)

<https://hawaiitribune-herald.com/newsletter/signup.php>



**Governor David Ige**   
@GovHawaii

To be very clear, I fully support @TMTHawaii. #TMT

11:35 AM · Sep 28, 2017 from Honolulu, HI · Twitter for iPhone

12 Retweets 44 Likes



**Kahookahi Kanuha** @kahookahi · Sep 28, 2017  
Replying to @GovHawaii and @TMTHawaii  
And couldnt care less about Hawaiian people, land and culture



**Marufa Bhuiyan** @MithilaMarufa · Sep 28, 2017  
Replying to @GovHawaii and @TMTHawaii  
Thank you Mr. Governor. #TMT should be the first priority! Please make sure you choose the right people. Aloha!



**Kahookahi Kanuha** @kahookahi · Sep 29, 2017  
Yeah, not important issues like homelessness, education, natural resource management, etc because that would just make too much sense

This account owner limits who can view their Tweets. [Learn more](#)



**Z @zeyzbone** · Sep 30, 2017  
You're the man John



**Christoph Baranec** @CBaranec · Sep 28, 2017  
Replying to @GovHawaii and @TMTHawaii  
Just make sure to back up your words with actions Governor.



**Mcnoogan!**  @LibbyPander · Sep 28, 2017  
Replying to @GovHawaii and @TMTHawaii  
Disagree with you on most things but respect and agree with your stance on this. Progress in science, technology and education is needed.

This Tweet is from a suspended account. [Learn more](#)



**Manaulenui** @U\_Money · Sep 29, 2017  
Listening to everyone but those who have problems with it

This Tweet is from a suspended account. [Learn more](#)


This Tweet is from a suspended account. [Learn more](#)


**New to Twitter?**

Sign up now to get your own personalized timeline!

Sign up


**Relevant people**



**Governor David Ige**   
@GovHawaii

Follow


The official Twitter account of Hawaii's Governor David Ige. Updated by staff. To contact our office, visit [governor.hawaii.gov/contact-us/](https://governor.hawaii.gov/contact-us/)



**TMTHawaii**  
@TMTHawaii

Follow

The Thirty Meter Telescope (TMT) and Maunakea

**Trends** 

1 · Trending

**#FreeCallofDuty**

Trending with: #CODPromo

2 · Politics · Trending

**#TrumpMeltdown**

16.9K Tweets

3 · Video Games · Trending

**#freecodefridaycontest**

11.8K Tweets

4 · Trending

**Boosie**

32.2K Tweets

[Show more](#)

Terms Privacy policy Cookies Ads info More

© 2020 Twitter, Inc.

https://twitter.com/GovHawaii/status/913517639690895360

EXHIBIT 4

1/2



Ilima Long @ItsIlima · Sep 28, 2017

Replying to @GovHawaii and @TMTHawaii

Yes, your record of arresting Hawaiians on Maunakea and Haleakala leaves no question.

2

2

12

6 more replies



Manaulenui @U\_Money · Sep 29, 2017

Why don't you push to be built on Fuji-San, I would fully support

1

1 more reply



dandelion alchemy @dandionalchemy · Sep 28, 2017

Replying to @GovHawaii and @TMTHawaii



The Battle Above

The U.S. and China are locked in a high stakes contest over satellites that are critical to national security and everyday life

[cbsnews.com](https://www.cbsnews.com)

Show more replies

New to Twitter?

Sign up now to get your own personalized timeline!

Sign up

Relevant people



Governor David Ige

@GovHawaii

The official Twitter account of Hawaii's Governor David Ige. Updated by staff. To contact our office, visit [governor.hawaii.gov/contact-us/](https://governor.hawaii.gov/contact-us/)

Follow



TMTHawaii

@TMTHawaii

The Thirty Meter Telescope (TMT) and Maunakea

Follow

Trends

1 · Trending

#FreeCallofDuty

Trending with: #CODPromo

2 · Politics · Trending

#TrumpMeltdown

16.9K Tweets

3 · Video Games · Trending

#freecodefridaycontest

11.8K Tweets

4 · Trending

Boosie

32.2K Tweets

Show more

Terms Privacy policy Cookies Ads info More

© 2020 Twitter, Inc.

https://twitter.com/GovHawaii/status/913517639690895360

2/2



## Latest information on Coronavirus Disease 2019 (COVID-19)

---

**Home » Latest News, Press Releases »** OFFICE OF THE GOVERNOR – News Release – Governor Ige issues emergency proclamation for Mauna Kea

# OFFICE OF THE GOVERNOR – NEWS RELEASE – GOVERNOR IGE ISSUES EMERGENCY PROCLAMATION FOR MAUNA KEA

Posted on Jul 17, 2019 in [Latest News](#), [Press Releases](#)

---

Link to emergency proclamation [here](#)

HONOLULU – Gov. David Ige today issued an [emergency proclamation](#) to protect the health, safety, and welfare of the people on Hawai'i Island and across the State of Hawai'i, to also ensure the execution of the law, prevent lawless violence, and the obstruction of the execution of the law.

The emergency proclamation gives law enforcement increased flexibility and authority to close more areas and restrict access on Mauna Kea. This will allow law enforcement to improve its management of the site and surrounding areas and ensure public safety.

“Our top priority is the safety and security of our communities and the TMT construction teams. This is a long-term process and we are committed to enforcing the law and seeing this project through,” said Ige.

###

**EXHIBIT 5**

## Latest information on Coronavirus Disease 2019 (COVID-19)

---

Office of the Governor

Office: 808-586-0043

Mobile: 808-798-3929

[jodi.c.leong@hawaii.gov](mailto:jodi.c.leong@hawaii.gov)

Cindy McMillan

Communications Director

Office of the Governor

Office: 808-586-0012

Mobile: 808-265-7974

[cindy.mcmillan@hawaii.gov](mailto:cindy.mcmillan@hawaii.gov)

" src="cid:image003.png@01D53CBF.009C6FD0" alt="image003.png" border="0" class="Apple-web-attachment Singleton" style="width: 0.3125in; height: 0.3125in;">  
" src="cid:image004.png@01D53CBF.009C6FD0" alt="image004.png" border="0" class="Apple-web-attachment Singleton" style="width: 0.3125in; height: 0.3125in;">  
" src="cid:image005.png@01D53CBF.009C6FD0" alt="image005.png" border="0" class="Apple-web-attachment Singleton" style="width: 0.3125in; height: 0.3125in;">  
" src="cid:image006.png@01D53CBF.009C6FD0" alt="image006.png" border="0" class="Apple-web-attachment Singleton" style="width: 0.3125in; height: 0.3125in;">

## **Latest information on Coronavirus Disease 2019 (COVID-19)**

---

HAWAII NEWS

# OHA reveals protest support, subpoena response

By [Timothy Hurley](#) · Sept. 27, 2019

The Office of Hawaiian Affairs has spent more than \$39,000 in support of the protest against the construction of the Thirty Meter Telescope on Mauna Kea.

The OHA board of trustees released its expenditures to the public Thursday and also said it provided some but not all of the Mauna Kea support-related documents demanded by a subpoena from the state Attorney General’s Office.

“While OHA has provided the Attorney General certain documents responsive to its subpoena, we are reviewing each category of items requested for production by the AG on a case by case basis,” the agency said in a statement Thursday.

The trustees reviewed OHA’s Mauna Kea expenditures in front of a full house at its Iwilei headquarters during a meeting in which scores of beneficiaries thanked the board for its Mauna Kea support and appealed for more aid.

The OHA trustees approved a resolution July 25 that authorized the agency’s administration to advocate for the rights, safety and well-being of Native Hawaiian “protectors” and provide related assistance.

As of Sept. 17, OHA spent \$39,052 and committed 159 staff hours on digital media services while fulfilling the mandate of a resolution, according to a report by interim OHA CEO Sylvia Hussey.


Three-fourths of the money went to the Puu Huluhulu protest camp at the base of Mauna Kea Access Road and paid for toilet rentals and servicing, dumpster removal and landfill disposal fees, and tent rental and lighting.

More than \$8,000 went to staff and trustee travel for site visits and beneficiary assessments and for a community meeting, and more than \$2,200 underwrote legal observers, including workshop supplies and travel.

Officials were quick to point out that no funds were authorized for the legal defense of those arrested on the mountain, although they did add that less than \$1,000 was used to send to the Big Island a handful of attorneys interested in providing pro bono representation.

“We’ve been focusing specifically on the rights of our beneficiaries to exercise their constitutional rights and providing for the public health and safety of our beneficiaries,” said Jocelyn Doane, OHA’s public policy manager. “I think that’s really important because the media is suggesting that we’re paying for their legal defense or paying for their bail fund, that we’re paying for all kinds of things we’re not paying for.”


Chairwoman Colette Machado added, “This is an update that we wanted to give to the public. We don’t have anything to hide.”

 **STAY INFORMED ABOUT COVID-19**

By clicking submit, you agree to Star-Advertiser's [Terms of Service](#) and [Privacy Policy](#). This site is protected by reCAPTCHA and the Google [Privacy Policy](#) and [Terms of Service](#) apply.

**Get free email updates:**

Enter your email address

 Sign Up

The mostly Native Hawaiian protesters have been blocking Mauna Kea Access Road since July 15, preventing construction of the \$1.4 billion next-generation project planned as one of the most powerful telescopes in the world.

OHA trustee Carmen Hulu Lindsey was one of dozens of demonstrators who were arrested July 17. Trustee Dan Ahuna was on the mountain the day before, and several of the trustees have visited the camp at other times. The trustees visited the Mauna Kea protest site as a group last week during an annual trip to Hawaii island.

Lindsey volunteered that OHA funds were not used in her case.

“I have my own attorney. I was up on the mountain that day at my own expense. So nothing here other than the travel of the one trip is accountable to me. I just wanted to make that clear,” she said.

Kamehameha Schools also has acknowledged providing help to the protest, including a large tent and support for documentation of the protests through livestreams, photos and videos.

OHA spokesman Sterling Wong said the agency expects to monitor the needs of the encampment and continue to provide a level of support that fulfills the mandate of the board’s resolution as long as necessary.

The OHA trustees took a number of positions in the resolution, including condemning any further provocation or intimidation of those seeking to protect the mountain and discouraging the use of unwarranted force against peaceful protest.

The resolution also called on the governor to rescind his emergency proclamation, which he did, but offered no position on the actual location of the TMT.

During some two hours of testimony Thursday, testifiers praised the board for its financial support and said OHA was helping to give rise to a cultural renaissance.

“Our nation is finally rising,” former Hawaiian-studies teacher Malia Marquez said. “I beg of you to continue to support our lahui (nation). The people of the world are watching.”

Lanakila Mangauil, one of the leaders of the kiai, or “protectors” of the mountain, offered his appreciation.

“Aloha for doing what OHA is supposed to be doing,” he said. “This is what’s galvanizing our people — unlike we’ve ever seen before. Right now, as we speak, in Waimanalo our people are standing. They are being arrested for standing for the right to protect aina. And for too long we’ve all been ignored, and that’s why you’ve got this monstrosity of a city here.

“We are waking up. We are going to continue to stand, and your support is greatly needed. The other side has a lot of support behind them. They have dropped over a half a million dollars in media just a couple of months ago. They got choke support already.”

University of Hawaii graduate student Ilima Long said OHA’s financial support has helped to buttress a new thirst for knowledge among Hawaiians.

She said 651 classes have been held at the Mauna Kea encampment, as part of what’s being called Puu Huluhulu University. The classes, she said, have been taught by 42 college-level professors, 12 lecturers and a variety of others with cultural and special knowledge.

“People are absolutely inspired by what they see up on the mauna,” Long said. “They see that now is a time to really know who we are, to know where we come from, to know our culture, to know our language, and that is what this movement is inspiring, which is absolutely in alignment with the strategic priorities of OHA.”

Teacher Imaikalani Winchester brought a bunch of students from Halau Ku Mana Public Charter School to witness the board meeting.

“It’s time to say aole to bad business,” Winchester told the trustees. “It’s time to say aole to desecration, aole to exploitation. And the division that is being caused by the media throughout our communities have failed. They’ve only made us stronger.”

## OHA OFFERINGS

**\$28,772.20**

Puu Huluhulu support

\$2,246.36

Legal observers

\$8,033.05

Travel

\$39,051.61

Total

159.5

Hours from Digital Print Media staff

[Click here](#) to see our full coverage of the coronavirus outbreak.





**DEPARTMENT OF THE ATTORNEY GENERAL  
TAX & CHARITIES DIVISION  
ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT HAWAII'S CHARITY  
REGISTRATION REQUIREMENTS**

These FAQs cover the following subjects and questions:

1. Who is required to register?.....	2
2. What is a "charitable organization" for purposes of the registration law? .....	2
3. What does "solicit" mean?.....	2
4. What is a "contribution" and does it include grants from government agencies, foundation grants, and dues from members? .....	3
5. How does an organization register with the Attorney General? .....	3
6. Does an organization have to annually renew its registration? Is there an annual report? .....	4
7. When is the deadline for a registered organization to submit its annual report to the Attorney General? .....	4
8. Does a registered organization have to notify the Attorney General that it obtained an extension of time to file its IRS Form 990/990EZ? .....	4
9. What are the filing requirements when an organization changes its accounting period? .....	4
10. What are the annual fees and how are they calculated? .....	5
11. How are the annual fees paid to the Attorney General? .....	6
12. What are the penalties for failing to timely file the annual report or failing to timely pay the annual fee? .....	6
13. Which organizations are exempt from the registration requirement?.....	6
14. Whom should I contact for more information? .....	7

### **1. Who is required to register?**

A charitable organization that solicits contributions in Hawaii, or for which any contributions are solicited by others in Hawaii, must register unless it satisfies one of the exemptions in the registration law.

### **2. What is a “charitable organization” for purposes of the registration law?**

A “**charitable organization**” is any organization that solicits funds in Hawaii that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. A **charitable organization** also includes any person who is or holds itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that has a tendency to suggest there is a charitable purpose to the solicitation.

### **3. What does "solicit" mean?**

The terms **solicit or solicitation** is very broadly defined in the current law to include any request for money or anything of value for a charitable purpose:

"**solicit**" and "**solicitation**" mean a request directly or indirectly for money, credit, property, financial assistance, or thing of value on the plea or representation that the money, credit, property, financial assistance, or thing of value, or any portion thereof, will be used for a charitable purpose or to benefit a charitable organization. These terms shall include the following:

- (1) Any oral or written request.
- (2) The making of any announcement to any organization for the purpose of further dissemination, including announcements to the press, over the radio or television, or by telephone, telegraph, or facsimile, concerning an appeal or campaign by or for any charitable organization or purpose.
- (3) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication that directly or by implication seeks to obtain public support.
- (4) Where the sale or offer or attempted sale, of any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with which any appeal is made for any charitable organization or purpose; or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale; or where in connection with any sale, any statement is made that the whole or any part of the proceeds from any sale will be used for any charitable purpose or to benefit any charitable organization.
- (5) A request made through the use of receptacles for contributions such as honor boxes, vending machines, wishing wells, contribution boxes, and novelty



machines, where a charitable appeal is used or referred to or implied as an inducement or reason to contribute.

A solicitation occurs whether or not the person making the solicitation receives any contribution. However, the term shall not include the submission of a grant or subsidy proposal or application to a governmental authority or any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

A solicitation does not necessarily occur when an organization that does not solicit contributions receives a charitable contribution.

**4. What is a "contribution" and does it include grants from government agencies, foundation grants, and dues from members?**

The term "**contribution**" is defined as follows:

“the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of a charitable organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in the charitable organization confers a bona fide right, privilege, professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority, or a grant or subsidy from any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code.”

Thus, a grant received from the government or another 501(c)(3) charitable, educational, or religious organization is not a “contribution.” Membership dues and assessments are also not considered contributions.

**5. How does an organization register with the Attorney General?**

Hawaii uses an internet-based registration system for organizations to complete and submit their unified registration statement (URS) and to file annual financial reports. The link to the Hawaii registration site is <http://efile.form990.org/states/hawaii>.

Users will need to obtain a login and password from this site and then return to complete and submit the registration data. The registration site will also allow professional advisors, like law firms or accountants, to complete the registration statement and other forms for that organization. The registration statement has 22 questions and requires 1 officer or authorized agent of the organization to electronically sign.

There is no fee to submit a registration with the Hawaii Attorney General.

**We highly recommend that you review the online guide before starting the registration process—it will answer many questions and simplify your registration process:**  
[https://ag.hawaii.gov/tax/files/2017/08/702131\\_1.pdf](https://ag.hawaii.gov/tax/files/2017/08/702131_1.pdf)

**6. Does an organization have to annually renew its registration? Is there an annual report?**

In Hawaii, organizations do not renew their registration statement (URS), but they must submit annual financial reports to the Attorney General. An organization's first annual report should be for the year immediately after the year on which the URS is based. For example, if an organization registers with the Attorney General in January 2016 based on the most recent tax year 2014 information, the organization must submit its first annual report for tax year 2015 when the 2015 annual report is due, and thereafter.

The law also requires submission of an audit report if the organization receives over \$500,000 in **contributions** or if the organization obtains an audit report pursuant to a requirement by a governmental authority or third party. **Contributions do not include grants from governmental authorities or 501(c)(3) organizations.** Contributions include those received from any jurisdiction, not just Hawaii.

**7. When is the deadline for a registered organization to submit its annual report to the Attorney General?**

For organizations that file an IRS Form 990 or 990EZ, the annual report is due within ten business days of the date that the organization files the form with the Internal Revenue Service.

For organizations that file a Form 990-N or organizations that are not required to file a Form 990 or 990-EZ, a special Hawaii transmittal must be submitted to the Department no later than the fifteenth day of the fifth month following the close of its fiscal year.

Organizations that have filed a unified registration statement (URS) for Hawaii should receive a courtesy filing reminder email from the [efile.form990.org](http://efile.form990.org) website the day after the organization's fiscal year end and the day after the initial due date of the Form 990, without extensions.

**8. Does a registered organization have to notify the Attorney General that it obtained an extension of time to file its IRS Form 990/990EZ?**

No. However, if the Attorney General requests to see a copy of the organization's extension to file Form 990 or 990EZ granted by the IRS, the organization must provide a copy to the Attorney General within 20 days after the request.

**9. What are the filing requirements when an organization changes its accounting period?**

The procedures for filing a Hawaii annual report when there is a change in accounting period depend on whether the change in accounting period will result in having to file two IRS forms for the same tax year. We illustrate the procedures for two examples: the first example is when the change in accounting period does not result in having to file two Form 990 filings for the same tax year, and the second example is when the change in accounting period results in having to file two Form 990 filings for the same tax year.

In either of these cases, please send an email to [ATG.Charities@hawaii.gov](mailto:ATG.Charities@hawaii.gov) to let us know the name of the organization, its FEIN, and its new year end so that we can update our system.

Example 1: Fiscal year end to a calendar year end (the change in accounting period does not result in having to file two Form 990 filings for the same tax year)

In this situation, the organization files the Hawaii annual report for each of its tax years separately, including the short year. For example, if an organization switches from a 6/30/2015 year end to a 12/31/2015 year end, the following are due:

7/1/2014-6/30/2015 (full FYE year) = 2014 tax year Hawaii annual report  
7/1/2015-12/31/2015 (short year) = 2015 tax year Hawaii annual report  
1/1/2016-12/31/2016 (full calendar year) = 2016 tax year Hawaii annual report

The Hawaii annual reports are due within 10 business days after the organization files each of its Forms 990 with the IRS.

Example 2: Calendar year end to fiscal year end (the change in accounting period results in having to file two Form 990 filings for the same tax year)

In this situation, the organization will have two periods that have the same tax year. The organization will need to combine the two periods for the same tax year and submit only one combined Hawaii annual report for that year. For example, if an organization switches from a 12/31/2014 year end to a 6/30/2015 year end, the following are due:

1/1/2014-12/31/2014 (full calendar year) = 2014 tax year Hawaii annual report  
1/1/2015-6/30/2015 (short year) = 2015 tax year Hawaii annual report  
7/1/2015-6/30/2016 (full fiscal year) = 2015 tax year Hawaii annual report

The Hawaii annual report for the 2015 year will be due 10 business days after the organization files its FYE 6/30/2016 Form 990 with the IRS. The 2015 Hawaii annual report should include both the short year and the full fiscal year.

**10. What are the annual fees and how are they calculated?**

The law requires each registered organization to pay an annual fee based on the organization's annual *gross revenue* (Part I, lines 12 and 9 of the Form 990 and 990EZ, respectively):

Annual Gross Revenue	Annual Fee
Less than \$25,000	None
At least \$25,000 but less than \$50,000	\$25.00
At least \$50,000 but less than \$100,000	\$50.00
At least \$100,000 but less than \$250,000	\$100.00
At least \$250,000 but less than \$500,00	\$150.00
At least \$500,000 but less than \$1 million	\$200.00

At least \$1 million but less than \$2 million	\$250.00
At least \$2 million but less than \$5 million	\$350.00
\$5 million and over	\$600.00

These fees are used to support personnel positions needed to administer and enforce the registration law, to investigate fraudulent solicitations, and to make the registration data and other filings available to the public and publicly searchable.

#### **11. How are the annual fees paid to the Attorney General?**

After the Attorney General has accepted an organization's annual financial report, the registration system will send a courtesy payment reminder email to the email address listed for the organization and to the email address of the person who authenticated the annual report. The email will direct the organization to the Hawaii Charities Online site to complete the payment of the annual fees by credit card or electronic check. After the annual fees become available to be paid, the organization will have 14 days to pay the annual fee without incurring any late fees.

Organizations may also access the Hawaii payment processing site at <http://ag.hawaii.gov/charity/fein.html>.

#### **12. What are the penalties for failing to timely file the annual report or failing to timely pay the annual fee?**

Under Hawaii law, the Attorney General may assess late fees of \$20 per day up to a maximum fee of \$1,000 against an organization for the failure to timely file its annual report. Additionally, the Attorney General may assess late fees of \$20 per day up to a maximum fee of \$1,000 against an organization that fails to timely pay its annual filing fees.

#### **13. Which organizations are exempt from the registration requirement?**

An organization may apply to the Attorney General for an exemption from the registration requirement. To qualify for an exemption, an organization must fall within at least one of the following categories:

- (1) A duly organized religious corporation, institution or society that is exempt from filing Form 990 with the Internal Revenue Service under I.R.C. §§ 6033(a)(3)(A)(i) and (iii) and 6033(a)(3)(C)(i).
- (2) A parent-teacher association.
- (3) An educational institution that is licensed or accredited by any of the following organizations:
  - a. Hawaii Council of Private Schools
  - b. Hawaii Association of Independent Schools
  - c. Western Association of Schools and Colleges
  - d. Middle States Association of Colleges and Schools

- e. New England Association of Schools and Colleges
  - f. North Central Association of Schools and Colleges
  - g. Northwest Association of Schools and Colleges
  - h. Southern Association of Schools and Colleges
  - i. The National Association for the Education of Young Children
  - j. The Northwest Accreditation Commission for Primary and Secondary Schools
- (4) An organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code that has an established identity with and expressly authorized by one of the foregoing accredited educational institutions. **Note: This exemption applies only to organizations that solicit contributions primarily from parents, alumni, students and faculty of the educational institution.**
- (5) A nonprofit hospital licensed by the State or any similar provision of the laws of any other state.
- (6) A corporation established by act of Congress that is required by federal law to submit to Congress annual reports, fully audited by the United States Department of Defense, of its activities.
- (7) An agency of Hawaii, another state, or the federal government.
- (8) A charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not compensate any professional solicitor or professional fundraising counsel. For purposes of this exemption, “normally receives less than \$25,000” means that the average contributions received from the last 3 years is less than \$25,000. Contributions do not include grants from governmental authorities or 501(c)(3) organizations. Contributions include those received from any jurisdiction, not just Hawaii.

If the organization believes it qualifies for an exemption, the organization must apply for an exemption with the Attorney General online at <https://ag.hawaii.gov/charity/apply.html>.

#### **14. Whom should I contact for more information?**

Department of the Attorney General  
Tax & Charities Division  
425 Queen Street  
Honolulu, HI 96813

Phone: (808) 586-1480  
Email: [ATG.Charities@hawaii.gov](mailto:ATG.Charities@hawaii.gov)  
Website: <http://ag.hawaii.gov/tax>