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Counsel for amici curiae

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

SYNGENTA SEEDS, <i>et al.</i>,	)	Case No.: 14-cv-00014-BMK
)	
<i>Plaintiffs,</i>	)	MOTION OF FREE SPEECH
	)	FOR PEOPLE, EQUAL JUSTICE
v.	)	SOCIETY, NATIONAL CENTER
	)	FOR LESBIAN RIGHTS, AND
COUNTY OF KAUA'I,	)	EARTHRIGHTS
	)	INTERNATIONAL FOR LEAVE
<i>Defendant,</i>	)	TO FILE BRIEF AS AMICI
	)	CURIAE IN OPPOSITION TO
and	)	PLAINTIFFS MOTION FOR
	)	PARTIAL SUMMARY
KA MAKANI HO'OPOONO,	)	JUDGMENT ON CLAIM FOUR
CENTER FOR FOOD SAFETY,	)	[DKT #47]
PESTICIDE ACTION)	
NETWORK NORTH AMERICA,	)	<u>HEARING:</u>
and SURFRIDER	)	Date: July 23, 2014
FOUNDATION,	)	Time: 2:00 PM
	)	Judge: Hon. Barry M. Kurren
<i>Intervenor-</i>)	
<i>Defendants.</i>)	

MOTION OF FREE SPEECH FOR PEOPLE, EQUAL JUSTICE SOCIETY, NATIONAL CENTER FOR LESBIAN RIGHTS, AND EARTHRIGHTS INTERNATIONAL FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN OPPOSITION TO PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT ON CLAIM FOUR [DKT #47]

Free Speech For People, Equal Justice Society, National Center for Lesbian Rights, and EarthRights International respectfully move this Court for leave to file the attached Memorandum as Amici Curiae in Opposition to Plaintiff's Motion for Partial Summary Judgment on Claim Four. Counsel for Defendant and for Intervenor-Defendants have consented to our amicus participation. Defendant and Intervenor-Defendants' counsel have consented to our *amicus* participation. Plaintiffs Syngenta Seeds, Inc. & Syngenta Hawai'i, BASF Plan Science LP LLC, Pioneer Hi-Bred International, Inc. & Agrigenetics, Inc., have stated they do not consent.

As permitted by Fed. R. Civ. P. 78(b), *amici* respectfully request that this Court rule upon this motion without an oral hearing. *Amici* do not request the opportunity to participate in oral argument.

As grounds for this motion, *amici* state:

1. Plaintiffs allege that Kaua'i Ordinance 960 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. Free Speech For People is a national non-partisan nonprofit organization that works on constitutional law, and participates in state and federal court litigation involving claims that democratically enacted laws violate the constitutional rights of corporations. In particular, Free Speech For People monitors litigation around the country where corporations challenge local legislation or ballot initiatives under the federal Equal Protection Clause and misapply equal protection precedent designed to protect disfavored minorities.

3. Free Speech For People has provided legal counsel to parties and amici curiae in cases involving corporate constitutional rights claims in state and federal court cases at every level. Free Speech For People has submitted amicus curiae briefs on corporate First Amendment claims in the United States Supreme Court in *Conestoga Wood Specialties, Inc. v. Sebelius*, No. 13-356 (S. Ct. argued Mar. 25, 2014) and *American Tradition Partnership, Inc. v. Bullock*, 132 S.Ct. 2490 (2012), and in the Montana Supreme Court in *Western Tradition Partnership, Inc. v. Attorney General*, 271 P.3d 1 (Mont. 2011). Currently, Free Speech For People serves as co-counsel in a Missouri case involving a challenge to a municipal ballot initiative regarding tax incentives for corporations under the Equal Protection Clause. See *Noel v. Bd. of Elec. Comm'rs*, No. 1422-CC00249,

slip op. (Mo. Circuit Ct. May 27, 2014),

<http://www.scribd.com/doc/226514463/Permanent-injunction-against-Take-Back-STL>.

4. Free Speech For People has experience and expertise with regard to the Equal Protection Clause issue raised in this case. The resolution of the equal protection issue in this case may have national impact, implicating the interests of Free Speech For People in defending other laws and ballot initiatives against constitutional equal protection claims from state-created corporate entities.

5. The Equal Justice Society (EJS) is transforming the nation's consciousness on race through law, social science, and the arts. A national legal organization focused on restoring constitutional safeguards against discrimination, EJS's goal is to help achieve a society where race is no longer a barrier to opportunity. Specifically, EJS is working to fully restore the constitutional protections of the Fourteenth Amendment and the Equal Protection Clause, which guarantees all people receive equal treatment under the law. We use a three-pronged approach to accomplish these goals, combining legal advocacy, outreach and coalition building, and education through effective messaging and communication strategies. As part of our mission of restoring the Equal Protection Clause, we are interested in

safeguarding the clause and its jurisprudence from misuse and dilution in cases that do not involve equal protection.

6. Founded in 1977, the National Center for Lesbian Rights (NCLR) is one of the nation's leading legal advocacy groups for lesbian, gay, bisexual, and transgender people. NCLR has litigated many cases involving the federal constitutional rights of persons who are treated differently because of their sexual orientation or gender identity, including many cases involving the Fourteenth Amendment's Equal Protection Clause. NCLR has a strong interest in ensuring that the heightened equal protection review applied in *Romer v. Evans*, 517 U.S. 620 (1996), and other similar cases is properly applied only to laws that target disfavored individuals and groups for discriminatory treatment, not to ordinary economic regulation.

7. EarthRights International (ERI) is a human rights organization based in Washington, D.C., that litigates and advocates on behalf of victims of human rights abuses worldwide, in particular, in which corporations are complicit. More generally, ERI works to ensure that courts do not create new, unwarranted constitutional rights for corporations.

8. *Amici* have no parent corporations, and no publicly held corporation owns more than 10% of any of the *amici* organizations.

9. *Amici* wish to participate in this matter by filing the attached

memorandum. This brief will assist the Court's understanding of well-established constitutional jurisprudence on the distinction between "rational basis" review and "rational basis with bite" review, and assist the Court in determining the correct standard of scrutiny for this case.

10. This motion and the attached memorandum are timely filed, having been filed on or before June 2, 2014, the due date for defendants' opposition to plaintiff's motion for partial summary judgment. Although there is no local rule governing the procedures for obtaining leave to file as *amicus curiae*, the Federal Rules of Appellate Procedure require such briefs and motions for leave to be filed "no later than 7 days after the principal brief of the party being supported is filed." Fed. R. App. P. 29(e). This will provide plaintiffs with the opportunity to respond to *amicus's* arguments on virtually the same schedule as that ordered by the Court for plaintiff's response to defendants' opposition to the motion for partial summary judgment.

11. The attached memorandum complies with the Federal and Local Rules of Civil Procedure, including the page limitations set forth in Local Rule of Civil Procedure 7.5.

12. No party's counsel authored the attached memorandum in whole or in part. No party or party's counsel contributed money that was

intended to fund preparing or submitting the memorandum. No person other than *amici*, their members, or their counsel contributed money that was intended to fund preparing or submitting the memorandum.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant this motion and permit their participation in this case as *amici curiae*.

Respectfully submitted,

DATED: May 29, 2014, Honolulu, Hawai'i.

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