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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

EMMANUEL TEMPLE, THE HOUSE OF PRAISE; CARL E. HARRIS; LIGHTHOUSE OUTREACH CENTER ASSEMBLY OF GOD; JOE HUNKIN, JR. Plaintiffs, vs. NEIL ABERCROMBIE, in his official capacity as Governor of the State of Hawaii; LORETTA J. FUDDY, in her official capacity as Director of Health of the State of Hawaii; STATE OF HAWAII, Defendants.	CIVIL NO: 11-790 JMS-KSC PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION; CERTIFICATE OF SERVICE

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

The Attorney General's Office (hereinafter "AG"), as the legal counsel for Defendants has decided that it can also decide what is a valid religious belief and what is not a valid religious belief on private church property under the guise of same-sex discrimination. See AG Response at pp. 7, 13, 14, 15.

The AG claiming that same-sex discrimination claims can be pursued for Plaintiffs declining to perform a funeral for a same sex couple, or for refusing a same-sex couple a same-sex ceremony on church grounds places the anti-discrimination provisions of 489 made an imminent threat though Act 1, superior to the Plaintiffs' First Amendment rights.

The State's position is absurd. The Church cannot be forced to allow its property to be used for a same-sex ceremony (an act of sacrilege according to Church Teachings and the Gospel of Jesus Christ) anymore than Plaintiffs could be ordered to allow a civil union between a man and woman on Church property (fornication). Because civil unions are fornication in the eyes of Plaintiffs' religion, any such union, same-sex or not, is prohibited under the teachings of Plaintiffs' Church and the Gospel of Jesus Christ.

As either the AG or the HCRC may prosecute Plaintiffs for refusing to rent it properties to same-sex couples for ceremonies and receptions, and both have made clear their intent to refuse to honor the First and Fourteenth Amendments,

this action is ripe as of January 1, 2012, should Act I take effect in its present form without any First Amendment restriction.

Act 1 in its present form violates the Plaintiffs' First Amendment Rights made applicable by the Fourteenth Amendment. Plaintiffs' should not be forced to stand trial or face the other burdens of litigation for refusing to allow same-sex ceremonies or receptions on its property.

If Plaintiffs certify this action as a class, then for judicial economy, the First Amendment protections applicable to hundreds of churches in the State of Hawaii will be shielded from the discriminatory intent of the Defendants, to not allow churches to turn away same-sex couples from renting their property for ceremonies and/or receptions. Otherwise, the potential for hundreds of Section 1983 actions to swell the Court docket for each and every violation of the First Amendment are sure to open the flood gates to a round of intense litigation in this forum.

Both the Attorney General or the Civil Rights Commission, are authorized pursuant to HRS § 489-8, to seek fines of $500 to $10,000 for each violation specified in the AG's Response at pp. 7, 13, 14, 15.

Both the HCRC and the AG's office have made clear that they will not allow any full and fair opportunity for Plaintiffs to litigate their constitutional claims effective January 1, 2012, as both the AG and the State believe that the church refusing to rent its property for same-sex celebrations and receptions is

discrimination in violation of HRS 489 rather than Plaintiffs' guaranteed First Amendment Rights.

Plaintiff is seeking both declaratory relief and injunctive relief in this case. Plaintiffs have shown that they wish to engage in specific conduct (not allowing same-sex couples to use their facilities to celebrate civil unions or receptions) and that the challenged action poses a real and immediate danger to their interests.

Moreover, this Honorable Court should not require, especially in the context of a First Amendment case such as this that the Plaintiffs risk prosecution by failing to comply with state law. See Doe v. Bolton, 410 U.S. 179, 188, 35 L. Ed. 2d 201, 93 S. Ct. 739 (1973); see also Bland v. Fessler, 88 F.3d 729, 736-37 (9th Cir. 1996).

Rather, this Honorable Court should seek to encourage a plaintiff's "commendable respect for the rule of law" by affording a pre-enforcement opportunity to test the constitutionality of a challenged statute. See Bland, 88 F.3d at 737. *see also Secretary of State v. Joseph H. Munson Co.*, 467 U.S. 947, 956, 81 L. Ed. 2d 786, 104 S. Ct. 2839 (1984) ("when there is a danger of chilling free speech, the concern that constitutional adjudication be avoided whenever possible may be outweighed by society's interest in having the statute challenged"); *Dombrowski v. Pfister*, 380 U.S. 479, 486-87, 14 L. Ed. 2d 22, 85 S. Ct. 1116 (1965).

The threat is ripe. Any ripeness challenge is foreclosed by *Steffel* v. *Thompson*, 415 U.S. 452 (1974), and *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922 (1975). *Steffel* held that a reasonable threat of prosecution for conduct allegedly protected by the Constitution gives rise to a sufficiently ripe controversy. 415 U.S., at 458-460.

The HCRC's position, already stated in testimony to the Hawaii State Legislature, and now the AG's position that Churches cannot refuse to allow rental of their property for same-sex ceremonies and receptions creates a sufficiently ripe controversy.

The Attorney General of this State, has likewise adopted the Civil Rights Commission's position, and even expanded it. See AG Response at pp. 7, 13, 14, 15. This is the best evidence that both the HCRC and the AG refuses to recognize the First and Fourteenth Amendments in the context of a church refusing to allow its property to be desecrated for same-sex events.

The AG's official position in writing filed on December 29, 2011, clearly runs afoul of the First Amendment, applicable to the States under the Fourteenth Amendment. The Free Exercise Clause of the First Amendment, which has been applied to the States through the Fourteenth Amendment, see *Cantwell* v. *Connecticut*, 310 U.S. 296, 303, 84 L. Ed. 1213, 60 S. Ct. 900 (1940), provides that "Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof . . . ." Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 531 (U.S. 1993) shows how the State of Hawaii is intent on unconstitutionally trampling every church's First Amendment Right through the use of its Act 1 in conjunction with HRS 489.

Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 531 (U.S. 1993) shows the protection churches are entitled to: "Although the practice of animal sacrifice may seem abhorrent to some, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." "In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general". Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 532 (U.S. 1993). "Indeed, it was "historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause." Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 532 (U.S. 1993). "The Free Exercise Clause protects against governmental hostility which is masked as well as overt." Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 534 (U.S. 1993).

The Free Exercise Clause commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures.

Those in office must be resolute in resisting importunate demands and must ensure that the sole reasons for imposing the burdens of law and regulation are secular. Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. The laws here in question were enacted contrary to these constitutional principles, and they are void. Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 547 (U.S. 1993)

By enacting Act 1 without providing full religious immunities to Plaintiffs and others similarly situated (freedom of religion, expression and freedom of association), the State of Hawaii has put itself in direct conflict with the First Amendment to the federal constitution.

A GREAT POSSIBILITY OF IRREPARABLE HARM EXISTS

Without the requested temporary injunction and preliminary injunction, Plaintiffs are subject to injunctive relief, civil damages and civil fines for refusing to rent their church grounds for same-sex ceremonies and receptions.

THE BALANCE OF HARDSHIPS FAVORS THE PLAINTIFF

The balance of hardship favors Plaintiffs because the entering of this TRO and preliminary injunction will allow Plaintiffs to retain their 1st, 5th and 14th amendment rights. Moreover, Defendants will not suffer any hardship in being temporarily delayed in implementing what amounts to a wrongful infringement upon religious liberty and freedom of association as guaranteed by the First Amendment to the U.S. Constitution. Moreover, Defendants will not suffer any

significant hardship in the delay when balanced against the irreparable harm to Plaintiffs. Without the entering of this TRO and preliminary injunction, Plaintiffs will be unable maintain their 1st, 5th and 14th Amendment rights without being subjected to injunctions, fines and other penalties for refusing to rent their church grounds for same-sex ceremonies and receptions. Any alleged loss of revenue to tourism is speculative and exaggerated by the State.

CONCLUSION

In conclusion, Plaintiffs respectfully request that this Court enter an order granting a TRO and preliminary injunction in accordance with F.R.C.P. Rule 65 mandating that Act 1 cannot be implemented until a trial on the merits. Alternatively, at the very least this Honorable Court should rule that Plaintiffs, and those similarly situated in the State of Hawaii, cannot be forced to rent their properties to same-sex couples for ceremonies or receptions and enjoin said threat until a trial on the merits.

Dated: Honolulu, Hawaii, December 30, 2011.

/s/ SHAWN A. LUIZ
SHAWN A. LUIZ
Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of "PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION" was duly served upon the below-identified parties at their respective address by means of CM/ECF on December 30, 2011

David M. Loui
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Dated: Honolulu, Hawaii, December 30, 2011.

/s/ SHAWN A. LUIZ
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