

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

DR. ORLY TAITZ, ESQ. , Plaintiff, vs. LORETTA FUDDY IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE DEPARTMENT OF HEALTH, STATE OF HAWAII, DR. ALVIN T. ONAKA, IN HIS OFFICIAL CAPACITY AS THE REGISTRAR, DEPARTMENT OF HEALTH, STATE OF HAWAII , Defendants.	}	CIVIL NO. 11-1-1731
---	---	---------------------

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE RHONDA NISHIMURA, Tenth Judge,
presiding, on Wednesday, October 12, 2011. MOTION TO
DISMISS PETITION FOR A WRIT OF MANDAMUS REQUEST FOR
INSPECTION OF RECORDS UNDER UNITED (SIC) INFORMATION
PRACTICES ACT STATUTE 92F, STATE OF HAWAII FILED 8/10/11

APPEARANCES:

DR. ORLY TAITZ, ESQ. Plaintiff, Pro
JILL T. NAGAMINE, ESQ. REBECCA E. QUINN, ESQ. Deputies Attorney General For the State of Hawaii

REPORTED BY:
FLORENCIA L. FINES, CSR NO. 124
OFFICIAL COURT REPORTERS
STATE OF HAWAII

FLORENCIA L. FINES, CSR NO. 124
Official Court Reporter
First Circuit Court
State of Hawaii

1 WEDNESDAY, OCTOBER 12, 2011 A.M. SESSION
2 Honolulu, Hawaii

3 --oOo--

4 (The case was called.)

5 MS. NAGAMINE: Good morning, Your Honor.

6 Jill Nagamine and Rebecca Quinn, Deputies Attorney General
7 representing the defendants.

8 MS. TAITZ: Good morning, Your Honor. Only
9 Taitz for plaintiff, pro se.

10 THE COURT: Okay. And I believe KHON has
11 submitted Application for Extended Coverage; is that
12 correct? Any objection?

13 MS. TAITZ: I'm sorry, Your Honor?

14 THE COURT: KHON. Is that correct?

15 MS. TAITZ: Oh, no objection.

16 MS. NAGAMINE: No objection, Your Honor.

17 THE COURT: I believe we just got it this
18 morning.

19 All right. Without further ado, what's
20 before this Court is a Motion to Dismiss, and I believe
21 that the State is moving pursuant to Rule 12(b) HRCP; is
22 that correct?

23 MS. NAGAMINE: That's correct, Your Honor.

24 THE COURT: All right. Assume that the Court
25 has read the motion, the memo in op, the reply memo, and

1 if you could summarize your arguments without being
2 repetitive. And I believe you're also involved in the
3 Justice vs. Fuddy case?

4 MS. TAITZ: Yes, I was.

5 THE COURT: And this was at 125 Hawaii 104
6 Hawaii App. that just came out this year?

7 MS. NAGAMINE: Yes, it did, Your Honor.

8 THE COURT: Of similar issues.

9 MS. NAGAMINE: Very similar.

10 THE COURT: Not the same, but similar.

11 MS. NAGAMINE: Very similar. That one also
12 had to do with the Uniform Information Practices Act
13 applying to government records that are otherwise
14 protected by law, and the Court ruled in that case that
15 those records that are protected by the state law are --
16 there's no exception created by the Chapter 92F.

17 In this case, first of all, our argument is
18 that the Court has no personal jurisdiction over the
19 defendants because the defendants have not yet been
20 served. Secondly, the Court has no subject matter over
21 this matter because the plaintiff has filed this as a
22 petition for a writ of mandamus, and that relief has been
23 specifically precluded by the rules. I want to get mostly
24 to the merits of the argument, in case the Court is
25 inclined to do that.

1 THE COURT: Right, because looking at the
2 memo in opposition, I believe the opposition has brought
3 forth several alternatives or several arguments. Number
4 one, in lieu of viewing this as a petition for writ of
5 mandamus, if the Court could view it as a complaint;
6 number two; in terms of the insufficiency of the service
7 of process, there are certain arguments being made, but
8 alternatively she is asking leave or asking the Court to
9 perhaps give her the opportunity to make proper service if
10 that becomes an issue.

11 So going beyond the procedural, the writ of
12 mandamus or the other argument go to the substantive
13 nature of the argument, looking at the various HRS
14 sections.

15 MS. NAGAMINE: Yes, Your Honor.

16 State law, specifically HRS 338-18, makes it
17 unlawful for the Department of Health to disclose
18 confidential vital records to any people but those who
19 have a direct and tangible interest in those records, and
20 the direct and tangible interest is specifically listed at
21 338-18(b).

22 THE COURT: How about the argument that that
23 list is not exclusive or exhaustive?

24 MS. NAGAMINE: Your Honor, we have asked the
25 Court to look at the Office of Information Practices'

1 opinion which we believe supports that that is an
2 exhaustive list, and while this Court isn't bound by the
3 precedent of that opinion, the legislature has given the
4 Office of Information Practices that role in government to
5 make determinations of how Chapter 92F ought to be applied
6 and what it applies to.

7 So we would ask the Court to consider the
8 Office of Information Practices' opinion very strongly as
9 well as the legislative history which we have cited that
10 supports that that is an exhaustive list, and thus -- and
11 the plaintiff has not suggested that she is one of those
12 persons who has a direct and tangible interest in the
13 record. She goes on to say in her opposition to our
14 motion that Rule 92F, the provision allowing compelling
15 circumstances to override the state law, that is what
16 allows her to get this record. However, Your Honor --

17 THE COURT: Well, in looking at the
18 complaint, since this is a Rule 12(b) motion, it's a
19 motion to dismiss the complaint. So the Court is governed
20 by the complaint itself that was filed, and in looking at
21 the allegations in the complaint, and I believe they are
22 starting from page one through page six, the allegations
23 contained therein, there are no allegations whereby she
24 does claim that she has any type of direct or tangible
25 interest.

1 MS. NAGAMINE: That's correct.

2 THE COURT: Now, number two, with respect to
3 her memorandum in opposition, she does mention about the
4 compelling circumstance, and that was a situation that was
5 addressed by the Justice vs. Fuddy case. But in looking
6 at the allegations in the complaint in particular on page
7 five, paragraph five -- and maybe I'm not reading it
8 correctly, but under 92F-2 in paragraph five she talks
9 about the chapter shall be applied and construed to
10 promote its underlying purposes and policies, which are to
11 promote the public interest in disclosure; provide for
12 accurate, relevant, timely and complete government
13 records; enhance governmental accountability through a
14 general policy of access to government records; make
15 government accountable to individuals in the collection,
16 use and dissemination of information relating to them; and
17 balance the individual privacy interest and the public
18 access interest. I don't see any wording that talks about
19 compelling circumstance.

20 MS. NAGAMINE: You're correct, Your Honor.
21 Their complaint was actually very limited, but I was --

22 THE COURT: Addressing the opposition?

23 MS. NAGAMINE: I was addressing all of
24 plaintiff's arguments, but I'd be very happy to limit it
25 to those things that the plaintiff actually alleged in her

1 complaint, which was that the person of interest who -- by
2 that, I believe she means President Obama -- has waived
3 any claims of privacy by publicly disclosing the document
4 in question on April 27th. It's not the President's right
5 to waive. Anybody who has a direct and tangible interest
6 in a confidential vital record can get a copy of that
7 confidential record, as the President did with his own
8 record.

9 After the person with a direct and tangible
10 interest gets a copy of the record, they can do whatever
11 they want with it, but that doesn't change the state
12 mandate that the State of Hawaii Department of Health,
13 which is charged with maintaining and preserving and
14 protecting the vital records in its charge, that doesn't
15 change the obligation pursuant to 338-18 that makes it
16 unlawful for the Department to disclose that information.

17 So the President can do whatever he wants
18 with his birth certificate, as can anyone who lawfully
19 gets their own record, but the law remains for the
20 Department. The plaintiff also argues that after April
21 27th when the President published his copy of the long
22 form birth certificate, that 338-18 no longer applies to
23 the long form birth certificate, and she gives absolutely
24 no authority for that. And on the face of the law, it
25 still makes it unlawful for the Department of Health to

1 disclose these confidential vital records; we cannot do
2 it.

3 Plaintiff in her complaint also claims that
4 the defendants are obligated to allow her to inspect the
5 long form birth certificate which she seeks under the
6 Uniform Information Practices Act. There is no
7 justification to allow her to inspect that record.
8 Ms. Taitz has no authority by law to verify whether the
9 records of the Department of Health are those records that
10 they purport to be. The Department of Health by law has
11 that authority, and 338-12 and -13 define what
12 verification is and what certification is.

13 Any record that is in the Department of
14 Health is prima facie evidence of the facts contained in
15 that record, and if the Department certifies a copy as it
16 did with the President's copy, if they certify the copy it
17 makes, that certification is the Department of Health
18 saying we have the original record, the original prima
19 facie evidence of the facts contained therein, we have
20 that in our possession.

21 So for Ms. Taitz to say that she needs to
22 come and bring her experts to verify this is a really
23 "iffy argument" at best. For her to verify it, she can't
24 verify it. She has no authority to verify it. And her
25 last argument -- no, I'm sorry that was her last argument.

1 She's claiming costs and fees, and there's no authority
2 under UIPA to go for costs and fees in this situation,
3 Your Honor.

4 THE COURT: And when you say UIPA, for the
5 court reporter, U-I-P-A, Uni form Information Protection
6 Act, correct?

7 MS. NAGAMINE: No, Uni form Information
8 Practices Act.

9 THE COURT: And then I believe under the
10 Justice vs. Fuddy case they looked at all three sections
11 and acts -- the UIPA, the Chapter 92F and HRS Section 338?

12 MS. NAGAMINE: Yes, they do, Your Honor.

13 Just one last point that I would like to
14 make, and I think this strays onto plaintiff's opposition,
15 but because it's a point that she has raised, I would like
16 to address it.

17 In terms of her seeking this record so that
18 she can verify whether the President is eligible to hold
19 office, she has given no authority to this Court that
20 would provide us with any reason to believe that she is in
21 a position of power to make a determination over the
22 holder of the White House. She herself as just an
23 individual cannot determine whether the President is
24 eligible to hold office or not.

25 So even if what she had said in her complaint

1 or her document can be construed as a complaint and we
2 address it as a complaint, it should still be dismissed
3 because she fails to state any cause of action upon which
4 relief can be granted to her and on which she can get what
5 she's seeking.

6 THE COURT: And in addition, in looking at
7 the Justice case, there is certain language contained
8 therein. For example, plaintiff's reason for seeking
9 disclosure of President Obama's birth records does not
10 state an overpowering or urgent need for the record to
11 save the life or protect the safety of an individual in a
12 medical or safety emergency. Looking at the compelling
13 circumstance exception under the United States
14 Constitution, the power to remove a sitting president
15 resides in Congress.

16 Plaintiff's asserted need to inspect
17 President Obama's birth records is diminished by the fact
18 that plaintiff does not have the power or authority to
19 determine President Obama's eligibility to serve as
20 president. Being that certain language contained in the
21 opinion, I think that goes along with what you have just
22 mentioned.

23 MS. NAGAMINE: It does, Your Honor, and I'm
24 actually looking for the exact quote from 92F -- I think
25 it's 12. I apologize, I may have that mixed up with 13.

1 Well, I can't find it, but it's where the compelling
2 circumstances apply to that individual's health and
3 safety.

4 Ms. Taitz is making some ambiguous argument
5 about the health and safety of Hawaiians, about the health
6 and safety of American citizens. Even if there were merit
7 to those arguments, which we strongly disagree with, even
8 if there were merit to those, compelling circumstances is
9 talking about her personal health and safety, and she's
10 alleged nothing that this is impacting her personal health
11 and safety.

12 THE COURT: And that was further explained
13 again in the Justice vs. Fuddy. The subsection requires a
14 showing, which should be documented, of compelling
15 circumstances affecting the health or safety of the
16 individual claiming, or enabling identification for
17 purposes of aiding a doctor to save such person's life.
18 The discretion authorized here is intended to be used
19 rarely and a precise record of the reasons for the
20 disclosures must be made, and in the particular
21 case they looked at the House Committee Report.

22 "The committee is of the view that special
23 consideration must be given to valid emergency situations
24 such as an airline crash or an epidemic where consent
25 cannot be obtained because of time and instance, and

1 instant action is required perhaps as a matter of life and
2 death." And they looked at other cases, and that
3 compelling circumstance was intended to apply only to life
4 and death situations where instant action was required to
5 further define it as to what would be applicable in those
6 situations.

7 MS. NAGAMINE: Exactly, Your Honor, and
8 plaintiff has not suggested that any of that applies to
9 her.

10 THE COURT: Well, notwithstanding the fact
11 that she has not alleged anything of that nature in her
12 complaint itself. Because you're coming in under Rule
13 12(b)?

14 MS. NAGAMINE: Yes.

15 THE COURT: But you are addressing her
16 opposition regarding the compelling circumstance argument.

17 MS. NAGAMINE: I try to address the
18 allegations in her petition as well as her opposition.

19 THE COURT: All right, thank you. I
20 understand your argument.

21 MS. NAGAMINE: Thank you, Your Honor.

22 THE COURT: Go ahead.

23 MS. TAITZ: Thank you, Your Honor.

24 Well, I would start by saying that what --

25 THE COURT: Well, first of all, why don't we

1 address the procedural.

2 MS. TAITZ: Yes, absolutely.

3 THE COURT: I know you mentioned, though, in
4 your opposition about the service of process and the
5 mandamus.

6 MS. TAITZ: Absolutely, Your Honor.

7 First of all, of course the defense is talking about the
8 service of process. HRCP 4(d)5 states that the
9 service should be done upon the officer or agency of the
10 State, by serving the State and by delivering a copy of
11 the summons and of the complaint to such officer and
12 agency.

13 Additionally, in regards to the Attorney
14 General, it says "... Upon the State by delivering a copy
15 of the summons and of the complaint to the Attorney
16 General of the State or to the Assistant Attorney
17 General."

18 The defendant conceded that I did serve them
19 and I served them by certified mail; return receipt was
20 obtained. It is, it was filed with the Court.

21 THE COURT: Well, excuse me. When you said
22 you filed it upon the Attorney General, in looking at the
23 complaint itself, I see where persons have signed Director
24 of Health, Ms. Fuddy, and I see Dr. Onaka. But I don't
25 see any signature from the AG's Office.

1 MS. TAITZ: I believe in the --

2 THE COURT: You mailed it in terms of service
3 of process, in terms of receipt thereon?

4 MS. TAITZ: It is my understanding
5 that Ms. --

6 THE COURT: They may have been forwarded, but
7 in terms of actual service upon them, because they need to
8 acknowledge the service.

9 MS. TAITZ: I did provide certified mail a
10 letter to the Office of the Attorney General, as well as
11 to Ms. Fuddy and Mr. Onaka. It does not state anywhere
12 that it has to be done by the process server.

13 What the defense is saying is the certified
14 mail is not a proper service of process. It does not
15 state anywhere in the statute that that is not a proper
16 service of process. They conceded that they were served,
17 they are arguing on the merits, so I believe there is no
18 longer an issue as they indeed were served.

19 The second issue, in regards to the second
20 procedural matter, and that's the form of the complaint --

21 THE COURT: Because they do say this is
22 a petition for a writ of mandamus.

23 MS. TAITZ: That's true. That's true, Your
24 Honor, and as you know, I'm an out-of-state pro se
25 plaintiff. However, on the complaint as you can see, at

1 the very top I did write "agency appeal," and you can see
2 in big letters it states it's an agency appeal, so I did
3 request to review this as an agency appeal.

4 Now, in the reply, the defense is stating
5 plaintiff's claim is not an agency appeal. They are
6 stating that plaintiff attempts to argue that her
7 complaint should be considered an agency appeal and cites
8 HRS 91-14. Plaintiffs' reliance on HRS 91-14 is
9 misplaced because HRS 91-14 applies to the judicial review
10 of contested cases, and the case before the Court does not
11 involve a contested case as defined at HRS 91-14.

12 Now, so we're going to 91-15. What does it
13 state? "Contested" means a proceeding in which the legal
14 rights, duties or privileges of specific parties are
15 required by law to be determined after an opportunity for
16 agency hearing.

17 THE COURT: Now, did this go through an
18 agency hearing?

19 MS. TAITZ: Absolutely, Your Honor. It's
20 right here in the complaint. On May 4th, 2011 it states,
21 Your Honor, on page four at the very top, paragraph 25.

22 On May 4th of 2011, they sent certified mail
23 request to Defendant Loretta Fuddy, Director of Health,
24 and Defendant Onaka requesting inspection of Obama's 1961
25 original birth certificate under the Uniform Information

1 Practices Act of Hawaii codified as 92F.

2 The State received a response from Alvin C.
3 Onaka dated May 19th, whereby Onaka stated that he is
4 responding on behalf Fuddy and his own behalf and refused
5 to allow inspection citing privacy concerns and State
6 statute HRS 338-18. The State requested an administrative
7 appeal and reconsideration due to the fact that Obama
8 already waived any claims of privacy in regards to his
9 long form birth certificate.

10 THE COURT: So, in other words, anyone who
11 submits a request to, for example, an agency, that
12 constitutes a contested case hearing?

13 MS. TAITZ: It is. I have submitted a
14 request to the agency, I requested specific information
15 under UIPA, and the agency was obligated to respond. They
16 did not respond -- I apologize, they did not provide the
17 information. Mr. Onaka responded on behalf of Ms. Fuddy
18 and himself and stated that they are refusing, and their
19 response was totally misguided as a response of the
20 Attorney General's Office, because Section 338-18 and the
21 particular part of it that deals with disclosure of
22 information is completely irrelevant to this case, it has
23 absolutely nothing to do with this case.

24 THE COURT: So instead of a petition for writ
25 of mandamus, are you asking the Court to treat this as a

1 contested case hearing, vis-a-vis agency appeal?

2 MS. TAITZ: As an agency, Your Honor,
3 absolutely.

4 THE COURT: Or are you asking the Court to
5 treat it as a complaint? I'm not sure.

6 MS. TAITZ: As an agency appeal, because it
7 is worded on the top of the paperwork in the caption
8 "agency appeal," and I'm respectfully asking Your Honor to
9 treat it as an agency appeal.

10 THE COURT: So you agree that this is not a
11 proper matter for a writ of mandamus?

12 MS. TAITZ: Yes, I apologize. It is -- I
13 should not have entered writ of mandamus, I should have
14 left only agency appeal.

15 THE COURT: Thank you.

16 MS. TAITZ: Next issue, Your Honor. In
17 response, the defense is stating 92F, and that's a statute
18 that is dealing with a really certain information, and of
19 course under the statute we are dealing with
20 a balancing.

21 THE COURT: Well, under HRS 338-18(b) with
22 respect to the list of people who can get copies of the
23 birth certificate --

24 MS. TAITZ: Oh, that's irrelevant, Your
25 Honor. That has nothing to do with this case.

1 THE COURT: Okay. Are you acknowledging that
2 you do not have a direct and tangible interest?

3 MS. TAITZ: Oh, Your Honor, I never asked for
4 disclosure of information. This list again has nothing to
5 do with my case. This list was relevant in the case that
6 was filed by Dr. Justice in Justice vs. Fuddy, because at
7 that time Mr. Obama did not disclose the information, and
8 he was seeking disclosure. I'm not asking for any
9 disclosure, so that the whole motion is completely
10 irrelevant to my case.

11 THE COURT: So you're asking permission to
12 inspect the original long form?

13 MS. TAITZ: The original long form in lieu of
14 the certified copy. And that's provided in the statutes.

15 THE COURT: But not only yourself, but you're
16 also seeking permission on behalf of certain experts?

17 MS. TAITZ: With the experts because, Your
18 Honor, I am not a forensic document expert, and therefore
19 I'm asking inspection and verification in lieu of
20 certified records.

21 THE COURT: Okay, so under what
22 justification?

23 MS. TAITZ: Sure.

24 THE COURT: Go ahead.

25 MS. TAITZ: So we agree that this is a proper

1 agency appeal.

2 THE COURT: Well, I'm not saying I agree with
3 you.

4 MS. TAITZ: Okay.

5 THE COURT: But that's your position?

6 MS. TAITZ: Yes, Your Honor.

7 When the defense has provided this long list,
8 as I stated, this list deals only with disclosures. I'm
9 not asking them to disclose anything that was not
10 disclosed before, nothing. And that's why it's all
11 irrelevant.

12 The only thing that I'm asking is
13 verification, and when we go to 338-18, Subchapter G, it
14 states, "The Department shall not issue a verification in
15 lieu of a certified copy of any such record or any part
16 thereof unless it is satisfied that the applicant
17 requesting a verification is a private -- look at number
18 four -- a private or government attorney who seeks to
19 confirm information about a vital event relating to any
20 such record which was acquired during the course or for
21 purposes of legal proceedings," and that's exactly what I
22 asked of Mr. Onaka, and here is a copy. This is a copy of
23 the letter, and I believe that the agency was supposed to
24 deliver to you, Your Honor, the whole file of the agency
25 appeal in order for you to review it.

1 It specifically states request to access --
2 of access to records under the Uniform Information
3 Practices Act of 1975.

4 "Dear Mr. Onaka: For the last three years
5 there were multiple requests made for release of Mr. Barak
6 Hussein Obama's long form birth certificate.

7 In December of 2010 a highly decorated U.S. military
8 officer, Bronze Star recipient, Lieutenant Colonel Terry
9 Lakin, was imprisoned after he questioned whether
10 President Obama is legitimate for office in light of the
11 fact that he does not have a valid long form birth
12 certificate.

13 Lakin stated that if he as an officer is
14 required to show his birth certificate, so should the
15 Commander in Chief. When Lt.C. Dr. Lakin stated that he
16 would redeploy only after he could see a valid long form
17 birth certificate from Obama, he was court-martialed,
18 stripped of his military pension after 17 years of service
19 and imprisoned.

20 At the time --

21 THE COURT: Slow down for the court reporter,
22 please.

23 MS. TAITZ: I apologize.

24 "At the time Mr. Obama ignored all requests
25 from hundreds of citizens, refused to show his long form

1 birth certificate, and Lt. C. Lakin was sent to rot in Fort
2 Leavenworth's prison.

3 Recently multi-billionaire Donald Trump
4 raised this issue and quickly rose in polls as a leading
5 presidential candidate for the 2012 election. At the same
6 time the Ninth Circuit Court of Appeals allowed my case,
7 Keyes Barnett et al vs. Obama, to be presented at oral
8 argument."

9 THE COURT: So in terms of all the assertions
10 and allegations that you've mentioned, in looking at your
11 opposition, you've mentioned that that constitutes
12 compelling circumstance such as to --

13 MS. TAITZ: Oh, no, Your Honor. I don't even
14 need to state any compelling interest.

15 THE COURT: Because I'm looking at your
16 opposition, because that's what you mention.

17 MS. TAITZ: Oh, yes. But, however, as I came
18 and prepared -- and, you know, I flew here to Hawaii
19 yesterday, and I was preparing for this oral argument,
20 I decided to go to your law library right by this building
21 to verify what the defense was saying in regards to
22 statute 338-18, and what I saw is that they're not telling
23 the truth, and there is indeed a big difference between
24 request to disclose information that is kept private, then
25 you have to state that there is a compelling interest,

1 because people have a right to privacy.

2 However, it's completely different when you
3 are dealing with verification in lieu of a certified copy.
4 I had a hearing, Your Honor, I'm an attorney who was
5 representing 40 high ranking officers of the U.S. military
6 in the Ninth Court of Appeals which is controlling this
7 Court. It was May 2nd, just a few days after Mr. Obama
8 has released his birth certificate. I was representing
9 Alan Keyes, who was a presidential candidate, and ten
10 state representatives.

11 THE COURT: Is that the case where summary
12 judgment was granted in favor of the defendants?

13 MS. TAITZ: No, no. There is no decision
14 from the Ninth Circuit here, it's still under submission,
15 and that's why that's so important to review the original
16 document in order to forward this to Ninth Circuit, as
17 during the hearing the U.S. Attorney's Office stated that
18 the case is moot, as Mr. Obama has provided his birth
19 certificate and that a certified copy is available on
20 WhiteHouse.Gov.

21 The argument was made by the Assistant U.S.
22 Attorney the May 2nd hearing in the Ninth Circuit Court of
23 Appeals in front of Judges Fisher, Pregerson and Berzon,
24 and two days after the hearing I sent a letter to Mr.
25 Onaka stating: Mr. Onaka, I'm an attorney, according to

1 the rules, I'm supposed to receive verification, because
2 the U.S. Attorney's Office is claiming that this is a
3 valid document, and --

4 THE COURT: And so you're seeking the --

5 MS. TAITZ: All I am seeking --

6 THE COURT: You wish to inspect it to assist
7 you in pending litigation?

8 MS. TAITZ: Absolutely, in verification in
9 lieu of certified copy. Not only the U.S. Attorney's
10 Office has flaunted this birth certificate in front of
11 three-judge panel in the Ninth Circuit, they also refer to
12 it in a case -- I have actually two cases currently in the
13 U.S. District Court for the District of Columbia in front
14 of Judge Lamberth, and in those cases as well as in the
15 Ninth Circuit they are stating that the issue is moot as
16 the birth certificate was already provided, certified copy
17 was posted on line.

18 So, Your Honor, I'm not asking you to
19 disclose any information, I didn't ask the agency, and I'm
20 not asking you for any disclosure. I'm asking for a very
21 simple matter, and that's verification for authenticity of
22 the certified copies that were provided to the public.
23 And, Your Honor, for that I don't need to even state any
24 compelling interest. All I have to provide is that I am a
25 private or governmental attorney, I am a licensed

1 attorney, I seek confirmation of information about a
2 vital event relating to any such record which was acquired
3 during the course or for purposes of legal proceedings.
4 That's it, and I've already proven my case.

5 Moreover, it is an important matter in that
6 on April 27th when Mr. Obama has provided his alleged
7 certified copy -- when he provided his alleged certified
8 copy right before his press conference, there was a press
9 conference by White House Counsel Robert Bauer, by the
10 press secretary Mr. Carney and by his communications
11 director Mr. Pfeiffer, and during this conference --

12 THE COURT: Is all of this contained in your
13 opposition?

14 MS. TAITZ: This part --

15 THE COURT: I don't think so.

16 MS. TAITZ: This part is not part of the
17 opposition.

18 THE COURT: Okay, you have to limit yourself,
19 because that's what's before the Court.

20 MS. TAITZ: Sure. I would like to bring
21 forward just one -- just couple small points. In terms of
22 verification, Your Honor, the defense is stating that
23 there is an ambiguity in evaluating the records between --
24 there is an ambiguity between 338 and 91, and I submit to
25 you that there is no ambiguity because 338, I believe it's

1 -- yes, 338-41 states that Hawaiian birth certificates --
2 okay. The Department of Health may make regulations
3 respecting the form of Hawaiian birth certificates and
4 certified copies of such certificates and other matters
5 relating to Hawaii birth certificates as appear necessary,
6 and the regulations, when approved and made in accordance
7 with Chapter 91, shall have the force of law.

8 So clearly Chapter 91, which is your Title
9 Eight, your administrative codes, is controlling.

10 Anything that the Department of Health is doing has to be
11 in accordance with Chapter 91. And when we go to Chapter
12 91-10, and that's Chapter 91-10, Rules of Evidence --

13 THE COURT: Excuse me. When you're
14 referencing Chapter 91 and everything, I don't see that in
15 your opposition.

16 MS. TAITZ: Your Honor, that I'm replying to
17 their reply, because they have submitted their reply. So
18 I reviewed their reply, and in the oral argument, I'm just
19 providing clarification as to what is happening here, and
20 all I'm stating, Your Honor, I never asked for any
21 disclosures. I'm not asking you to give me disclosure of
22 anything. All I'm asking -- and apparently their agency
23 and their agency's attorney did not understand what I'm
24 asking for. All I'm asking is verification as an
25 attorney, I'm asking for verification of record that in

1 lieu of a certified copy.

2 THE COURT: Well, you know that Chapter 91
3 deals with contested case hearings.

4 MS. TAITZ: Yes. Yes, and it is a contested
5 case hearing, as I did request this information from the
6 agency and they refused, and it is a contested case
7 hearing as I am contesting the denial that I received from
8 the agency, and Chapter 91 states that documentary
9 evidence may be received in the form of copies or excerpts
10 if the original is not readily available, provided that
11 upon request parties shall be given an opportunity to
12 compare the copy with the original. So all I'm asking is
13 to just compare the certified copy with the original,
14 that's all I'm asking, Your Honor.

15 Thank you.

16 THE COURT: All right. Brief reply?

17 MS. NAGAMINE: I'm just going to address the
18 main point, Your Honor. I believe that Ms. Taitz has
19 confused what verification is. Verification of a vital
20 record is basically like a yes or no question. Those
21 people who are entitled to verification -- and we get this
22 from government agencies trying to update lists of
23 records. The Social Security Administration wants to know
24 are these people dead. Birth records or the -- it's a yes
25 or no question, and the yes or no question on President

1 Obama's birth record, because it has been such a
2 frequently asked question, has been put on the Department
3 of Health website, and the publicly available information
4 related to the index information on the President's birth
5 record is on the website.

6 It says: Barak Hussein Obama, II; male;
7 born. That's all index information is, and a verification
8 would be if someone says I have this record here, was
9 Barak Hussein Obama, II here born in Hawaii? And the
10 answer, the verification would be yes. Or: Do you have a
11 record? Yes. Verification is not somebody coming in and
12 going through ancient records that are held in the vault
13 of the Department of Health. Verification is yes or no,
14 do you have it, don't you have it. That's all it is.

15 I'd just like to say, plaintiff did mention
16 that we had conceded that we had been served. No, we do
17 not concede that, we still don't concede that. And in
18 terms of this being an agency appeal, there was no hearing
19 on this matter, and the agency -- this is the first time,
20 so we stick with our pleadings, Your Honor, we would ask
21 the Court to dismiss this matter.

22 MS. TAITZ: Your Honor, if I may say a few
23 words in relation to what --

24 THE COURT: Few words.

25 MS. TAITZ: Yes. Thank you, Your Honor.

1 THE COURT: Go ahead.

2 MS. TAITZ: The defense is stating that
3 verification is a yes or no question. She just made it
4 up. It's nowhere, it just doesn't exist.

5 And, you know, I didn't want to mention this,
6 but I actually wrote Ms. Nagamine to verify this, and I
7 believe that Ms. Nagamine's husband was an attorney for
8 Mr. Obama's family, and I believe he handled his sister's
9 prior divorce. So, you know, it is important to
10 understand that the Attorney General's Office should not
11 argue the case as a criminal defense attorney. They
12 should be acting on behalf of the people, and there is
13 nowhere anywhere in the statute saying that verification
14 is a yes or no question. It's absolutely preposterous.
15 It's the opposite, it's stating that the copy should be
16 verified against the original, and the original should be
17 provided.

18 And moreover, I have provided in my paperwork
19 ample evidence that according to expert after expert after
20 expert what Mr. Obama has posted on-line is a forgery,
21 it's a clear forgery, and I have listed the documents that
22 were released during those times were on white paper, it
23 was yellow, aged paper, not on this green paper, clear
24 borders. I have shown affidavits from experts saying that
25 there is clear evidence of forgery, Your Honor. When they

1 posted this on line, they forgot to flatten the file, and
2 one could open this document in Adobe Illustrator and can
3 see layers, layers showing how this forgery was created.

4 For example, they took Obama's mother's
5 signature, which is probably from his sister's document,
6 for the birth certificate, and they took Stanley M. Dunham
7 -- I'm sorry, Stanley M. D. Soetoro, took out Soetoro and
8 added with computer graphics Ann Obama, and that's how
9 they came up with Stanley M. Dunham Obama. I have
10 provided in the complaint, Your Honor, evidence from
11 experts showing that different types of ink were used,
12 that some are scanning as black and white, some are
13 scanning as gray scale, some are scanning as color.

14 This is appalling that -- they are writing
15 about upholding the integrity of the records. Yes, Your
16 Honor, I'm here to make sure that there is integrity of
17 records, that we don't have a situation where this state
18 agency is providing 311 million American citizens with a
19 clear forgery, according to all of the experts that are
20 relating to this document in Court, in the Ninth Circuit
21 Court of Appeals in the U.S.. District Court, claiming
22 that this is a valid certified copy of the original. And
23 then they are hiding and they're refusing to provide
24 access?

25 THE COURT: Remember, I allowed you a

1 brief reply.

2 MS. TAITZ: Yes.

3 THE COURT: I believe you took as long as --
4 or longer than the defense.

5 MS. TAITZ: Thank you, Your Honor.

6 THE COURT: Okay, in terms of this particular
7 situation, the Court has read everything, considered
8 everything, and I believe the petitioner, the plaintiff
9 Ms. Taitz has acknowledged that this is not proper for a
10 petition for writ of mandamus and is requesting that the
11 Court treat it as an agency appeal. Is that correct?

12 MS. TAITZ: Yes, Your Honor.

13 THE COURT: Now, in looking at agency appeal,
14 this is governed by Chapter 91. What had occurred does
15 not constitute a contested case hearing, number one.
16 Number two, even going beyond that, should the Court
17 alternatively treat it as a complaint in terms of the
18 request. In looking at all the different chapters
19 involved -- UIPA, Chapter 92F, as well as Section
20 338 -- the Court will grant motion to dismiss.

21 State to prepare the order.

22 MS. NAGAMINE: Thank you, Your Honor.

23 (Proceedings concluded.)

24 --oOo--

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU)
_____) ss.

I, FLORENCIA L. FINES, an Official Court Reporter for the First Circuit Court, State of Hawaii, do hereby certify that the foregoing pages comprises a full, true and correct transcription of my stenographic notes, to the best of my ability, of the proceedings held in the above-entitled cause.

Dated this 24th day of October, 2011.

OFFICIAL COURT REPORTER

/s/ Florencia L. Fines

FLORENCIA L. FINES, CSR NO. 124

FLORENCIA L. FINES, CSR NO. 124
Official Court Reporter
First Circuit Court
State of Hawaii