

The Hon. Mark J. Bennett
Attorney General of Hawai'i
425 Queen Street
Honolulu, Hawai'i 96813

July 15, 2008

Dear Attorney General Bennett:

We write to follow up on our past communications regarding random drug testing of Hawai'i's teachers. Through this letter, we hope to reach agreement on a briefing schedule for our planned constitutional challenge to the drug-testing program. We propose a schedule below that would avoid stress on the Court and the parties and that would afford the Court slightly more time to consider the merits of this important case.

Based on media reports from the past few weeks, it appears the State will proceed with some form of random drug testing of Hawai'i's educators. As we have been stating for more than a year, we urge the State not to implement any type of suspicionless drug testing program: random drug testing of teachers is unconstitutional, ineffective, and insulting to the members of Bargaining Unit 5 ("BU 5").

Nevertheless, given our understanding that the State is planning to randomly drug test BU 5 members in the near future, we would like to discuss a briefing schedule for our planned litigation. As we stated in our March 10, 2008 letter (to which we have not received a response), we would prefer to litigate this in a manner that is most respectful of the Court's and the parties' time and that permits a fully considered decision on this important constitutional matter. To those ends, we propose an arrangement that would allow our anticipated claims to be resolved in the first instance through a preliminary injunction, rather than a temporary restraining order.

We understand your position to be that this case will not be ripe until the State and HSTA have negotiated the protocols and procedures for the drug testing program. We disagree, but we wish to avoid unnecessary litigation on the issue of ripeness. Therefore, we ask for your agreement that, once the testing protocols have been negotiated (and once it becomes evident that the program will be funded from one source

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or another), the State will postpone drug testing of teachers until the Court has adequate time to receive briefs and rule on our motion for a preliminary injunction.¹

If this is not acceptable to the State, we would be forced to file for a temporary restraining order, which would impose a burden on the Court and the parties. Such expedited review would also have the unfortunate effect of needlessly causing the Court to rule quickly on an issue of great concern – needless in the sense that the Court could have more time to evaluate our constitutional claims if the State would agree to suspend implementation of the drug-testing program until the Court rules on our motion for a preliminary injunction.

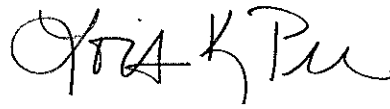
We are, of course, willing to discuss other options for achieving these goals. Accordingly, please contact either of us at your earliest convenience to discuss our proposal or any other scheduling ideas.

Thank you in advance for your time and attention to this matter. We look forward to hearing from you soon.

Sincerely,



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¹ If your position has changed and you believe, as we do, that the case is ripe now, please let us know as soon as possible so that we may proceed accordingly.