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April 7, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Karl Rhoads, Vice Chair  
and Members of the Committee on Judiciary  
State House of Representatives  
Twenty-Sixth Legislature  
State Capitol  
Honolulu, Hawaii 96813

## LATE TESTIMONY

Dear Chair Keith-Agaran, Vice Chair Rhoads and Committee Members:

Re: House Concurrent Resolution 275 and House Resolution 242,  
Urging the City and County of Honolulu to Provide Immunity  
from Liability for Neighborhood Board Members Acting in their  
Official Capacity or to Ensure that Neighborhood Board Members  
will be Defended.

The City and County of Honolulu's Department of the Corporation Counsel ("COR") opposes House Concurrent Resolution ("HCR") 275 and House Resolution ("HR") 242, which urges the City and County of Honolulu (the "City") to provide immunity from liability for neighborhood board members acting in their official capacity or to ensure that neighborhood board members will be defended.

The neighborhood boards are thirty-three (33) unique entities. While funding for the neighborhood boards is provided by the City and the elections are funded by the City and provided for by the City Charter ("Charter"), the neighborhood board members consistent with their unique function, are not City officials or employees. The board members are elected to their position by their neighborhood constituents and their obligation is to voice the positions of their constituents which may be adverse to the City; their duties of loyalties are to their constituents and not to the City. This is a creation unlike any other entity established by the Charter.

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By our Charter, the board members are not officers nor employees of the City. The City Charter only authorizes the Department of the Corporation Counsel to "serve as the chief legal adviser and legal representative of all agencies, the council and all officers and employees in matters relating to their official powers and duties," and does not provide for representation of non-employees and non-officers, like neighborhood board members (RCH Section 5-203; emphasis added).

Neighborhood boards are advisory boards — they have no policy-making or disciplinary powers, nor do they have authority to speak on behalf of the City or to incur liability on behalf of the City. As such, they are relatively unlikely to be subject to any type of lawsuit, as long as they are performing their intended and solely advisory function. If board members act for their own personal benefit or for reasons unrelated to their duties as board members, and exceed the scope of their role, they do so individually, and the City taxpayer should not be required to pay for defense or indemnity in such instances.

Neighborhood boards were intended to be an independent advisory body because they represent the community and not the City — which is a critical difference. We are also unaware of the need for this legislation, since during my 6 years as Corporation Counsel, I have never been presented with any requests for City representation of individual board members involved in litigation.

We appreciate the opportunity to come before you to submit our written testimony on this Bill.

Very truly yours,

  
CARRIE K. S. OKINAGA  
Corporation Counsel

CKSO:by