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STATE SUED FOR REFUSING TO DISCLOSE INFORMATION ON FIELD TESTS OF GENETICALLY ENGINEERED CROPS IN HAWAII

The Center for Food Safety (CFS), a national nonprofit organization, represented by Earthjustice, filed a lawsuit today in the Circuit Court of the State of Hawai'i, First Circuit, seeking to compel the Department of Agriculture of the State of Hawai'i (DOA), to provide, pursuant to state open records laws, public access to state records regarding ongoing field tests in Hawai'i of plants genetically engineered to produce a wide range of industrial chemicals or drugs, including contraceptives, hormones, vaccines, and other potent, biologically active substances. Because these methods, also known as "biopharming," often use food crops consumed by humans and are conducted in the open air, they raise public concerns about potential harmful exposure to humans and the environment. DOA, however, has denied all access to any of the requested records.

"The shroud of secrecy surrounding biopharming is unacceptable," said Joseph Mendelson, CFS's legal director. "The public has the right to know about these potentially harmful substances being grown in our backyard. The state has become a willful accomplice in depriving the people of Hawai'i of this right."

DOA cooperates with the United States Department of Agriculture (USDA) in overseeing field tests of all genetically engineered crops in Hawai'i, including those related to biopharming, and exchanges with USDA documents containing important information about what kind of substances are being produced, how and where these substances are being released, and what the responsible authorities are doing to control them. The two agencies, however, have kept a tight grip on this information. For example, USDA's website indicates that two biopharm field tests were permitted in Hawai'i in 2002: a .5-acre field test of a variety of sugar cane that received a gene from a "man," and a 20.8-acre field test of a variety of corn, whose gene donor is concealed as "confidential business information." No other information is provided anywhere regarding, for example, the substances produced by the crops, or even the location of the tests, beyond their existence somewhere in the state.

"The law requires state agencies like DOA to grant the public wide access to its records," said Earthjustice attorney Isaac Moriwake. "DOA does not have a leg to stand on in withholding from the public information that will undoubtedly reveal the state's negligence in failing to oversee these field trials."

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The state public records law, entitled the Uniform Information Practices Act (or UIPA), Haw. Rev. Stat. ch. 92F, requires state agencies to make all government records, with few narrow exceptions, available to the public for inspection and copying. CFS requested under UIPA access to all DOA documents relating to ongoing biopharm field tests in Hawai'i, but DOA refused, claiming that: (1) disclosure would "frustrate a legitimate government function" because DOA would no longer receive documents from USDA, and (2) the documents are "protected from disclosure" under federal open records laws because they contain "confidential business information."

"DOA's reasoning is transparent," said Earthjustice attorney Isaac Moriwake. He pointed out that USDA's own regulations require it to furnish documents to DOA and that the federal laws expressly apply only to federal agencies and do not affect DOA's own, independent duties of disclosure under state law. If DOA felt it could not disclose certain information, he added, it is required under UIPA to redact the information before issuing the documents, rather than denying all access.

UIPA allows citizens denied access to sue to compel compliance, mandating that such cases "shall take precedence on the [court's] docket over all cases," and providing for reimbursement of litigation expenses to citizens vindicated in court. Mendelson made clear CFS's resolve to enforce the statute: "In the case of genetically engineered crops, and biopharming in particular, what we don't know can cause serious harm. The state must be held to basic standards of public accountability and cannot be allowed to go to such lengths to keep the public completely in the dark."

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The Center for Food Safety is a nonprofit, public-interest organization based in Washington D.C., with members nationwide, including Hawai'i. It is dedicated to addressing, through legal and grassroots campaigns, the impacts of our current industrial food production system on human health, animal welfare, and the environment. Its website is www.centerforfoodsafety.org.

Earthjustice is a nonprofit, public-interest, environmental law firm. The Hawai'i regional office opened in Honolulu in 1988 as the Sierra Club Legal Defense Fund, and has represented dozens of environmental, native Hawaiian, and community organizations. Earthjustice is the only non-profit environmental law firm in Hawai'i and the Mid-Pacific, and does not charge clients for its services.