

October 3, 2014

Office of Mauna Kea Management  
Attn: Stephanie Nagata, Director  
640 N. A`ohoku Place, Room 203  
Hilo HI 96760

Aloha,

We recently received a copy of the enclosed memorandum, authored by Director Stephanie Nagata and addressed to Mauna Kea Tour Operators. Based upon our review of its contents, we understand that the University of Hawai`i's Office of Mauna Kea Management (OMKM) seeks to prohibit access to the Mauna Kea Access Road on October 6 and 7, 2014 because it expects that members of the public may seek to express their political views on the deeply unpopular decision to break ground for the Thirty-Meter Telescope on Mauna Kea's summit. As you are aware, the courts are reviewing legal challenges to the TMT. The rumors that "hecklers" may express discontent with the further observatory construction on Mauna Kea's sacred summit and conservation lands does not constitute a compelling government interest which is required to justify the closure of a public roadway.

Road access restriction would violate the U.S. and State constitutional rights of its citizens and the religious freedoms afforded to Native Hawaiian cultural practitioners. The Mauna Kea Access road is a public road, paid for by public funds. OMKM has neither authority nor jurisdiction to close the Mauna Kea Access road. UH Hilo is lessee (not the landowner) of crown lands in the Conservation District. While the lease confers an easement to utilize the public road, OMKM does not enjoy exclusivity of access.

It is legally indefensible to exclude the public while allowing access to designated invitees and tour operators as indicated in the letter. OMKM's proposed road closure would violate the public's right to free speech, right to travel, public assembly, and right to religious freedom. Additionally, Native Hawaiian practitioners and others are entitled to access to the upper regions of Mauna Kea for religious and cultural practices, and they are not bound by the proposed road closure. Several of the signatories below are planning a peaceful gathering to worship and conduct ceremony. Some Kupuna may wish to access the summit lele to give ho`okupu .

We ask that the University of Hawaii respect the rights of the people of Hawai`i and reconsider the proposal to close the Mauna Kea Access road.

Signed:

Nelson Ho, Sierra Club, Chair, Moku Loa Group

Clarence Ku Ching, Huaka'i I Na 'Aina Mauna

Deborah Ward

KAHEA

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Citations :

Pleasant Grove City, Utah v. Summum, 555 U.S. 460, 469 (2009) (citations omitted). "In order to preserve this freedom, government entities are strictly limited in their ability to regulate private speech in such "traditional public fora." Summum, 555 U.S. at 469. Reasonable time, place, and manner restrictions are allowed, but any restriction based on the content of the speech must satisfy strict scrutiny, that is, the restriction must be narrowly tailored to serve a compelling government interest. Id.(citations omitted).

The "right" of the Citizen to travel upon the public roadways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but a "common right" which he has under his right to life, liberty, and the pursuit of happiness. Under the Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public roadways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with, not disturbing another's "rights," he will be protected, not only in his person, but in his safe conduct. (Emphasis added) 11 American Jurisprudence 1st., Constitutional Law, 329 at 1123.

cc:

Neil Abercrombie, Governor  
Billy Kenoi, Mayor, Hawaii County  
Chief Harry S. Kubojiri, HCPD  
Mitch Roth, Hawaii County Prosecutor  
DOCARE  
William Aila, DLNR, and BLNR members  
Kevin Moore, OCCL  
Dan Gluck, ACLU  
Kamanao Crabbe, OHA  
State Sherriff  
Donald Straney, Chancellor, UH Hilo  
David Lassiter, President, UH System  
Chair UH Board of Regents  
OMKM Chief Ranger Scotty Paiva  
OMKM Kahu Ku Mauna