

WESTERN STATES LEGAL FOUNDATION

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VIA ELECTRONIC FILING

Clerk of the Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *The Republic of the Marshall Islands v. The United States of America, et al.* **No. 15-15636**

Letter *Amicus Curiae* by the Western States Legal Foundation, Jacqueline Cabasso, Mayors for Peace Northern American Coordinator, Mark Stodola, Mayor of Little Rock, Arkansas, Mayor Mark Kleinschmidt of Chapel Hill, North Carolina, Mayor Adelle Brede of Rochester, Minnesota, Mayor Kitty Piercy of Eugene, Oregon, Mayor Laurel Lunt Prussing of Urbana, Illinois, and Mayor Denny Doyle of Beaverton, Oregon in Support of Appellant Republic of Marshall Islands and of reversal

Dear Clerk:

In accordance with the Ninth Circuit Advisory Committee Note to Rule 29-1 of the Federal Rules of Appellate Procedure, we respectfully submit this letter as *amicus curiae* in support of the Plaintiffs-Appellants in the above-referenced case. This *amicus* letter is being submitted on behalf of the above listed amici. Western States

Legal Foundation is a nonprofit 501(c)(3) organization that works for nuclear disarmament, peace and a sustainable environment. Jacqueline Cabasso, Executive Director of the Western States Legal Foundation is an Executive Advisor to the Hiroshima Peace Culture Foundation, and serves as Mayors for Peace North American Coordinator. Mark Stodola is the Mayor of Little Rock, Arkansas, a member of Mayors for Peace and a member of the United States Conference of Mayors. Mark Kleinschmidt is the Mayor of Chapel Hill, North Carolina, a member of Mayors for Peace and a member of the United States Conference of Mayors. Ardelle Brede is the Mayor of Rochester, Minnesota, a member of Mayors for Peace and a member of the United States Conference of Mayors. Kitty Piercy is the Mayor of Eugene, Oregon, a member of Mayors for Peace and a member of the United States Conference of Mayors. Laurel Lunt Prussing is the Mayor of Urbana, Illinois, a member, Mayors for Peace and a member of the United States Conference of Mayors. Denny Doyle is the Mayor of Beaverton, Oregon, a member, Mayors for Peace and a member of the United States Conference of Mayors.

Respondents' counsel has consented to the submission of this amicus letter brief.

Mayors for Peace is an international organization, founded in 1982 at the Second Special Session on Disarmament held at United Nations Headquarters in New York when the mayor of Hiroshima announced the Program to Promote the Solidarity of Cities toward the Total Abolition of Nuclear Weapons, a plan to build transnational solidarity among cities to facilitate collective efforts toward the elimination of nuclear weapons. The mayors of Hiroshima and Nagasaki issued a joint call to cities everywhere to support this program. Mayors for Peace was registered as a NGO (nongovernmental organization) in Special Consultative Status with the United Nations Economic and Social Council in 1991.

Mayors for Peace aims through its 2020 Vision Campaign to achieve the global elimination of nuclear weapons by 2020. Since the launch of the 2020 Vision Campaign in 2003, Mayors for Peace membership has grown by more than ten-fold, as of July 1, 2015 counting 6,733 cities in 160 countries and regions including 204 U.S. members, representing in total some one billion people or one-seventh of the world's population.¹

Since 2004 Mayors for Peace has worked in cooperation with the United States Conference of Mayors (USCM), the non-partisan association of U.S. cities with populations of 30,000 or more. In 2004, 2006 and each year since, the USCM has unanimously adopted resolutions introduced by U.S. members of Mayors for Peace

calling on governments of nuclear-armed states not to target cities, and for constructive, good faith U.S. leadership in implementation of Article VI of the Nuclear Nonproliferation Treaty, the disarmament obligation. The policy positions adopted at the annual meetings collectively represent the views of the nation's mayors and are distributed to the President of the United States and Congress.²

In its June 2014 resolution, entitled, *Calling for Constructive Good Faith U.S. Participation in International Nuclear Disarmament Forums*, the USCM found that

“... Article VI of the Nuclear Nonproliferation Treaty (NPT), which entered into force in 1970, and is part of the supreme law of the land pursuant to Article VI of the U.S. Constitution, states: ‘Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament’; and

... in 1996, the International Court of Justice (ICJ), the judicial branch of the United Nations (UN) and the highest court in the world on questions of international law, issued an authoritative interpretation of Article VI, unanimously concluding: ‘There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control’; and

... forty-four years after the NPT entered into force, an estimated 16,400 nuclear weapons, most held by the U.S. and Russia, pose an intolerable threat to humanity, and *there are no disarmament negotiations on the horizon* [emphasis added]; and

... the U.S. and the eight other nuclear weapon possessing states are investing an estimated \$100 billion annually to maintain and modernize their nuclear arsenals while actively planning to deploy nuclear weapons for the foreseeable future; and

... the U.S.- Russian conflict over the Ukraine may lead to a new era of confrontation between nuclear-armed powers, and nuclear tensions in the Middle East, Southeast Asia and on the Korean peninsula remind us that the potential for nuclear war is ever present;” and resolved

... that the U.S. Conference of Mayors calls on the U.S. to demonstrate a good faith commitment to its disarmament obligation under Article VI of the NPT by commencing a process to negotiate the global elimination of nuclear weapons within a timebound framework, under strict and effective international control, at the May 2015 NPT Review Conference, and to press the other nuclear weapon states to do likewise.”

In its 2014 resolution the USCM also recognized that

“...the people of the Republic of the Marshall Islands (RMI) continue to suffer from the health and environmental impacts of 67 above-ground nuclear weapons test explosions conducted by the U.S. in their islands between 1946 and 1958, the equivalent of 1.6 Hiroshima-sized bombs detonated daily for 12 years; and

... the RMI on April 24, 2014 filed landmark cases in the ICJ against the U.S. and the eight other nuclear-armed nations claiming that they have failed to comply with their obligations, under the NPT and customary international law, to pursue negotiations for the worldwide elimination of nuclear weapons, and filed a companion case in U.S. Federal District Court;” and resolved

“... that the U.S. Conference of Mayors commends the Republic of the Marshall Islands for calling to the world’s attention the failure of the nine nuclear-armed states to comply with their international obligations to pursue negotiations for the worldwide elimination of nuclear weapons, and calls on the U.S. to respond constructively and in good faith to the lawsuits brought by the RMI;”³

In our respectful view, the District Court erred in finding that the RMI lacks standing in part on the ground that a “generalized and speculative fear of the possibility of future use of nuclear weapons does not constitute a concrete harm”. Order Granting Motion to Dismiss at 4. In annual resolutions adopted by the USCM since 2004, mayors have emphasized the devastation that a nuclear attack, or just one nuclear explosion, would cause to a city and underlined the risk arising from the existence of nuclear weapons. Thus the 2004 resolution, entitled *Support for the Commencement of Negotiations on the Elimination of Nuclear Weapons*, found that

“...as long as nuclear weapons exist, cities around the world will be vulnerable to instantaneous devastation on a scale exceeding even that experienced by Hiroshima and Nagasaki in 1945; and

...a nuclear war would devastate many cities, an accidental missile launch would devastate several cities, and use of a nuclear weapon by terrorists would devastate a city; and

...any nuclear attack would obliterate City Hall and all emergency response mechanisms rendering any city ‘planning’ for such a disaster utterly futile.”

The 2004 resolution concluded that

“... the world’s foremost line of defense against nuclear dangers is the Nuclear Nonproliferation Treaty (NPT) which is currently in its seventh review cycle, with all parties to the treaty scheduled to meet next May to ensure that the treaty is being fully implemented;” and resolved

“... the U.S. Conference of Mayors calls upon the U.S. President to support a decision by the 2005 NPT Review Conference to commence negotiations on the prohibition and elimination of nuclear weapons and nuclear-weapon-related materials,”⁴

The resolutions reflect not a “generalized and speculative fear” but rather a sober assessment that nuclear weapons pose real, substantial, and ongoing risks of extraordinary harm arising out of the failure to commence, and then to conduct and conclude nuclear disarmament negotiations.

In its 2009 resolution, entitled *Affirming the Role of cities in Achievement of a Peaceful World Free of Nuclear Weapons by 2020*, the USCM warned that

“... The United States Conference of Mayors 2004 resolution unanimously calling on the 2005 Review Conference of the Nuclear Non-Proliferation Treaty(NPT) to commence negotiation on the elimination of nuclear weapons was not heeded; and

... on April 5, 2009 in Prague, President Barack Obama stated, ‘One nuclear weapon exploded in one city -- be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague -- could kill hundreds of thousands of people. And no matter where it happens, there is no end to

what the consequences might be -- for our global safety, our security, our society, our economy, to our ultimate survival';" and resolved

"... that The U.S. Conference of Mayors . . . calls on President Obama to announce at the 2010 Nuclear Non-Proliferation Treaty Review Conference the initiation of good faith multilateral negotiations on an international agreement to abolish nuclear weapons by the year 2020."⁵

In its June 2015 resolution, entitled, *Calling for Effective Implementation of the Nuclear Non-Proliferation Treaty Disarmament Obligation Redirection of Nuclear Weapons Spending to Meet the Needs of Cities*, the USCM found that

"... August 6 and 9, 2015 will mark the 70th anniversaries of the United States atomic bombings of Hiroshima and Nagasaki; and

... in January 2015 The Bulletin of the Atomic Scientists moved the hands of its Doomsday Clock to three minutes to midnight citing the 'extraordinary and undeniable threats to the continued existence of humanity' posed by 'unchecked climate change, global nuclear weapons modernizations, and outsized nuclear arsenals,' and failure of world leaders to act; and

... according to the Congressional Budget Office, over the next decade the U.S. plans to spend \$348 billion to maintain and modernize its nuclear forces; and

... at the conclusion of the 2010 Nuclear Non-Proliferation Treaty Review Conference, the U.S. and the other nuclear-weapon states reaffirmed their 'unequivocal undertaking . . . to accomplish the total elimination of their nuclear arsenals' pursuant to Article VI of the Treaty; and

... Mayors for Peace continues to aim for the global elimination of nuclear weapons by 2020, and its membership has grown to 6,706 cities in 160 countries, with 204 U.S. cities;" and resolved

"... that the U.S. Conference of Mayors reaffirms its call on the U.S. government to support commencement of a process to negotiate the global prohibition and elimination of nuclear weapons, . . ."⁶

The last point is the thrust of the relief that the Republic of the Marshall Islands is seeking, and we support its appeal.

Links to Mayors for Peace resolutions unanimously adopted by the USCM in 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015 are available at <http://lcnp.org/mfp/resolutions.html>

Respectfully submitted:

Western States Legal Foundation, by:



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1985)

Notes

¹ Mayors for Peace, About Us: <http://www.mayorsforpeace.org/english/outlines/index.html>

² About the U.S. Conference of Mayors, Organization Overview: <http://usmayors.org/about/overview.asp>

³ The United States Conference of Mayors 82nd Annual Meeting June 20 – 23 in Dallas, TX, 2014 Adopted Resolutions, *Calling for Constructive Good Faith U.S. Participation in International Nuclear Disarmament Forums* http://www.usmayors.org/resolutions/82nd_Conference/international08.asp

⁴ Adopted Resolutions, 72nd Annual Conference of Mayors Boston, MA, June 25 – 29, 2004, *Support for the Commencement of Negotiations on the Elimination of Nuclear Weapons*, p. 124 <http://www.usmayors.org/72ndAnnualMeeting/AdoptedResolutions04.pdf>

⁵ U.S. Conference of Mayors, Providence, 77th Annual Meeting June 12 – 16, 2009, David N. Cicilline, Mayor, *Affirming the Role of cities in Achievement of a Peaceful World Free of Nuclear Weapons by 2020* http://www.usmayors.org/resolutions/77th_conference/international05.asp

⁶ United States Conference of Mayors 83rd Annual Meeting June 19 – 22 in San Francisco, CA, 2015 Adopted Resolution, *Calling for Effective Implementation of the Nuclear Non-Proliferation Treaty Disarmament Obligation Redirection of Nuclear Weapons Spending to Meet the Needs of Cities* <http://www.usmayors.org/83rdAnnualMeeting/displayresolution.asp?resid=83aReso202>