



DEPARTMENT OF THE ATTORNEY GENERAL

DAVID Y. IGE
GOVERNOR

CLARE E. CONNORS
ATTORNEY GENERAL

For Immediate Release
April 12, 2021

News Release 2021-25

Hawaii Attorney General Joins Coalition of 19 Attorneys General in Pushing Back Tyson Foods' Attempt to Sidestep State Court Review of Waterloo Facility COVID-19 Outbreak

HONOLULU – Hawaii Attorney General Clare E. Connors today joined a multistate coalition of 19 attorneys general, led by California, Delaware, Maryland, and Minnesota, in an amicus brief pushing back on Tyson Foods' efforts to circumvent state court review of its handling of a COVID-19 outbreak at one of its pork-processing facilities in Waterloo, Iowa. The outbreak at the facility reportedly infected more than one-third of the company's workers. In an amicus brief supporting the families of deceased employees who are suing the company over the outbreak, the coalition urges the appellate court to affirm the district court's decision to have the cases heard in state court.

"Tyson's attempt to restrict a state's ability to protect its residents by bypassing the state's court system should be soundly rejected," said Attorney General Connors. "The state courts' authority to address state law claims is greatly diminished by Tyson's untenable interpretation of the federal officer removal statute."

In *Buljic v. Tyson Foods*, Tyson Foods incorrectly asserts that it is exempt from state court review because it was acting on behalf of the federal government. However, the company's claim is fundamentally flawed and ignores "strict guidance and control" requirements set forth in the law to establish such a claim. Under Tyson Foods' legal theory, an enormous number of companies could potentially avoid state court jurisdiction for COVID-related violations. For instance, should Tyson Foods succeed, an estimated 2.1 million farms, 935,000 restaurants, and more than 200,000 registered food manufacturing, processing, and storage facilities would suddenly face an extremely low bar for moving state law cases to federal courts. Taken to its logical conclusion, Tyson Foods' interpretation of the law could allow any private industry actor to argue that it has been acting under federal direction since the pandemic began if it operates in a critical infrastructure sector and has been mentioned by or communicated with federal officials in connection with COVID-19. Ultimately, the argument put forward by Tyson Foods threatens the ability of states to carry out one of their core missions: protecting the health and safety of their residents and workers.

Although the entire American workforce has been affected by the COVID-19 pandemic in some way, the health and safety risks have been particularly acute for frontline workers employed in the meatpacking and processing industry. Within the first six months of the pandemic, more than 16,000 meat and poultry processing facility workers across 23 states were infected with COVID-19, and 86 died. Outbreaks at meatpacking and processing plants have also contributed to the spread of COVID-19 within the surrounding communities, with employees exposed in the workplace bringing the disease home to their families and loved ones.

In the amicus brief, the coalition pushes back on Tyson Foods' assertions and argues, among other things, that:

- The federal officer removal statute is limited to cases where a state-law claim would interfere with the actions of the federal government;
- Contrary to its purpose, Tyson Foods' interpretation of the federal officer removal statute could allow removal of state-law claims by a broad array of private entities acting without genuine federal direction; and
- Tyson Foods' assertion that it has colorable federal defenses under the Defense Production Act and the Federal Meat Inspection Act would impair states' ability to protect workers and public health.

In filing the amicus brief, Attorney General Connors joins the attorneys general of California, Delaware, Maryland, Minnesota, Colorado, Connecticut, Illinois, Maine, Michigan, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin, and the District of Columbia.

A copy of the brief can be found [here](#).

####

For more information, contact:

Gary H. Yamashiroya
Special Assistant to the Attorney General
(808) 586-1284
Email: ATG.PIO@hawaii.gov
Web: <http://ag.hawaii.gov>
Twitter: @ATGHlGov