

Public Trust Lands in Hawaii

ON MARCH 31, 2009, a unanimous Supreme Court of the United States rejected claims by the Office of Hawaiian Affairs (OHA) that a congressional apology stripped the state of Hawaii's sovereign authority to transfer public trust lands. The constitution of the state of Hawaii provides that "The lands granted to the State of Hawaii by Section 5(b) of the Admission Act" shall be held as a public trust for native Hawaiians and the general public.¹

The suit brought to the Supreme Court involved former § 5(b) crown lands, known as the Leiali'i parcel, located on the Hawaiian island of Maui.² Crown lands are lands that were formerly held by the Hawaiian monarchy. The Housing Finance and Development Corporation (HFDC), Hawaii's agency that deals with affordable housing in the state, sought to transfer the Leiali'i parcel from the public lands trust to be used for residential development.

Native Hawaiians and the OHA, which had been established to receive and manage funds from the use or sale of ceded lands for the benefit of native Hawaiians, sued the state of Hawaii, its governor, and the HFDC and its officials. The state trial court entered judgment in favor of the defendants.

The Supreme Court of Hawaii vacated the judgment of the trial court, finding that the Joint Resolution to Acknowledge the 100th Anniversary of the Jan. 17, 1893, Overthrow of the Kingdom of Hawaii³ (hereafter referred to as the Apology Resolution) recognized claims of native Hawaiians to lands taken from the former kingdom. The apology acknowledged a conspiracy by American financiers, sugar planters, and missionaries to overthrow the monarchy. Hawaii's Supreme Court ordered an injunction against the defendants from selling or otherwise transferring to third parties (1) the Leiali'i parcel and (2) any other ceded lands from the public lands trust until the claims of the native Hawaiians to the ceded lands have been resolved.

The U.S. Supreme Court rejected the Hawaii Supreme Court's holding that the Apology Resolution had stripped the state of its sovereign authority to transfer public trust lands.⁴ The U.S. Supreme Court

held that the Hawaii Supreme Court had committed error by reading the preamble to the Apology Resolution as legally binding. The 37 "whereas" clauses detailing the "illegal overthrow of the Kingdom of Hawaii" did not create a retroactive cloud on the title to property that Congress had granted to the state upon its admission to the union in 1959.

The U.S. Supreme Court also held that neither of the two substantive provisions in the Apology Resolution clouded the state's ownership of the public lands at issue. The first provision, which apologized to native Hawaiians for the overthrow of the monarchy and expressed Congress' commitment to acknowledge the ramifications of the action, was found to be conciliatory or precatory and did not create any substantive rights.

The second provision provided the following: "Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States." The Hawaii Supreme Court had construed this provision to be a recognition and preservation of claims against the state. Disagreeing with the Hawaii Supreme Court, the U.S. Supreme Court stated, "we know of no justification for turning an express disclaimer of claims against one sovereign into an affirmative recognition of claims against another."

The case was remanded to the Hawaii Supreme Court "for further proceedings not inconsistent with this opinion." During oral argument, Justice Scalia and Chief Justice Roberts provided the following guidance:

JUSTICE SCALIA: As I read the Federal law, it extinguished all property rights in these lands; the lands were transferred to the Federal Government; and the Federal Government transferred them in absolute fee without any encumbrances to the State of Hawaii. Now, if you are telling me the Hawaii Supreme Court is now finding as a matter of State law that there is a property interest on the part of the Native Hawaiians—I don't care what you call it, equitable or whatever—it seems to me that is in flat contradiction of Federal law, and probably is an issue that we ought to address in this opinion.

CHIEF JUSTICE ROBERTS: And if the Hawaiian Supreme Court wants to create, under State law, a particular type of fiduciary obligation grounded on the status of the land prior to admission,

then it has to run—under the Supremacy Clause, it has to be consistent with the Federal provisions.

Both sides have claimed victory. The state of Hawaii applauded the decision, stating that “[t]he State of Hawaii is very pleased that today, the United States Supreme Court, in a unanimous 9-0 ruling, reversed the decision of the Hawaii Supreme Court in the ceded lands case.” In its news release, OHA stated, “We are pleased with the U.S. Supreme Court’s decision to remand the case to the Hawai i Supreme Court, as we had suggested in our brief and at oral argument. We consider the Court’s decision to be a favorable one. While we would have preferred an outright dismissal of the petition, the result in this case is workable.” **TFL**

Julie China is a member of The Federal Lawyer’s editorial board.

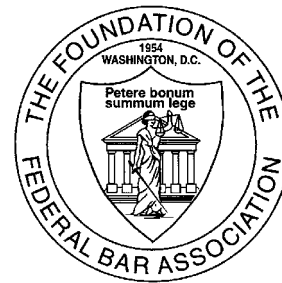
Endnotes

¹Haw. Const. art. XII, § 4.

²*Office of Hawaiian Affairs v. Housing and Community Development Corp. of Hawaii*, 117 Haw. 174, 177 P.3d 884 (2008).

³Pub.L. 103-150, 107 Stat. 1510 (1993).

⁴*Hawaii v. Office of Hawaiian Affairs*, 129 S. Ct. 1436 (2009).



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