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BREACH OF TRUST

Hawaii Supreme Court justices unanimously fault the state for mismanaging the Hawaiian land trust

The ruling paves the way for plaintiffs who have waited years for homesteads to receive damages

By Rob Perez
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The Hawaii Supreme Court issued a stinging rebuke Tuesday to the state for what the justices unanimously called wrongful conduct that has resulted in the state's failure to re-

duce a growing wait list of Native Hawaiians seeking homesteads. In a 5-0 written decision, the justices allowed a 1999 class-action lawsuit to proceed to the next stage in calculating actual damages suffered by plaintiffs who have languished for years or even decades waiting for residential,

ranching or farming leases on a 203,000-acre land trust. A lower court in 2009 had ruled in favor of the roughly 2,700 mostly elderly plaintiffs, finding the state liable for damages for breaches of the land trust. But the case has dragged through the court process in the years since.

No damages have been paid, and close to 400 of the original plaintiffs have died. Both sides appealed to the high court various issues from a 2018 judgment. Had the justices ruled in the state's favor, finding no breaches, the case would have ended.

Instead, the court ruled largely in the plaintiffs' favor, and several called the ruling a major win in what has been a long, tedious litigation process. "I'm ecstatic," said Leona Kalima, lead plaintiff in the case

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Survey shows isle residents cautious about reopening

By Timothy Hurley
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As Hawaii slowly opens its economy in the face of the coronavirus pandemic, most residents continue to be cautious about experiencing the services and activities available to them. A statewide survey by SMS Research & Marketing Service Inc. released Tuesday found a plurality of respondents — 46% — having visited shopping centers; a much more wait-and-see attitude was expressed toward other services and activities such as hair salons, sit-down restaurants and gyms.

Also on Tuesday, Hawaii had 18 new coronavirus cases, bringing the statewide number of infections since the start of the outbreak to 917; and two Oahu men who recently returned from out-of-state trips were arrested for allegedly violat-



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A statewide survey shows that a plurality of people 18 to 34 years of age said they visited shopping centers and the beach. Beachgoers maintained proper social distancing Monday at Ala Moana District Park.

ing Hawaii's mandatory 14-day quarantine, officials said. The SMS survey, taken June 11-17, showed that younger people appear to be less cautious overall. A greater number of peo-

ple 18 to 34 years of age said they visited shopping centers and the beach, the survey found, while those in that age group indicated a stronger desire to

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Country at risk
Infectious disease expert warns of dramatic increase in daily COVID-19 cases. A4

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THE CASES

COVID-19-POSITIVE CASES
As of June 30 at noon
New cases: 18

COUNTY	NEW CASES
Honolulu	15
Hawaii	0
Maui	1
Kauai	1
Pending*	1
Out-of-state	0
Hawaii resident**	
TOTAL***	917
Deaths	18
Hospitalization	113
Released from isolation****	736
Active cases *****	163

* Pending identification of county
** Hawaii residents diagnosed out of state
*** As a result of updated information, one Honolulu case was removed from the count.
**** Includes infection cases that now meet the isolation release criteria
***** Active cases are those still requiring isolation.
Source: State Department of Health

INSIDE



Toast to summer with refreshing cocktails that pair perfectly with barbecue

CRAVE

A proposed ban on large-capacity rifle magazines advances at the state Legislature

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“I think it’s monumental for Native Hawaiians. We got such a great victory, one that will result in something that is payable.”

Leona Kalima
Lead plaintiff in the case against the state



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LAND TRUST

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known as Kalima v. State. “I think it’s monumental for Native Hawaiians. We got such a great victory, one that will result in something that is payable.”

Raynette Ah Chong, another plaintiff, echoed Kalima’s elation but said she expects the state to continue litigating the case.

“Every time we go two steps forward, they appeal,” Ah Chong said. “It’s been a long trek. I don’t know if this is the beginning of the end. Is it?”

A spokesman for the Attorney General’s Office declined comment, saying the state still was reviewing the decision.

The Hawaiian Homes land trust was created nearly 100 years ago by the federal government to rehabilitate a then-dying race, and the state took over management in 1959 upon statehood.

Those at least 50% Hawaiian are considered trust beneficiaries and are eligible to apply for 99-year leases at \$1 per year. About 10,000

leases are in place today.

The justices did not spare the state criticism on how it has managed the trust, which is overseen by the Department of Hawaiian Home Lands.

Chief Justice Mark Recktenwald and four associate justices opened their 57-page decision recalling a 1990 observation from then-state Sen. Michael Crozier, who noted that “the length of the list and the length of the wait make the vast majority of Native Hawaiian people despair of ever receiving an award of land.”

The wait list since then has grown by thousands and now tops more than 28,000 applicants.

“In the thirty years since Sen. Crozier’s statement,” the justices wrote, “the state of Hawaii has done little to address the ever lengthening waitlist for lease awards of Hawaiian home lands.”

The lawsuit was filed in 1999 by 2,700 beneficiaries who alleged breach of trust claims occurring from statehood until 1988.

Tuesday’s ruling settled several key issues.

The justices upheld a lower court decision selecting a model for determining how to calculate damages through an administrative process, essentially precluding the need to hold 2,700 minitrials.

“It is clear to us that the state, by mismanaging the trust, failing to keep adequate records and continuing to litigate this case for decades, is responsible for creating a situation in which it will be difficult to accurately assess damages,” the justices wrote.

The justices also eliminated what would have been a six-year grace period before damages for those on the wait list started to accrue, handing plaintiffs another key win.

Both sides had appealed the lower court’s adoption of the six-year grace period, but the justices found no logical reason to keep that threshold in place.

Attorney Carl Varady, who along with Tom Grande has represented the plaintiffs since the beginning, called Tuesday’s decision “a monumental testament to justice as a general matter and fairness for Native Hawaiians in this process.”

He noted that the high court rejected the state’s position that the damages stopped accumulating when a beneficiary deferred pursuing a lease award because of poverty or the inability to qualify for a mortgage.

“We are gratified that the court rejected the idea that Native Hawaiian poverty is a defense for DHHL to avoid its ongoing breaches of trust since statehood,” Varady said.

Grande said the decision not only highlights the state’s failure to fulfill its trust obligations, but underscores that the state’s decades of litigation have caused further damage to the plaintiffs.

“What’s imperative now is that we expeditiously start the claims process and get these claims paid that have been frankly outstanding for 20 years,” Grande said.

The state had argued that the beneficiaries must prove the extent to which they suffered damages, including how much they spent out of pocket to rent alternative land or housing.

But the justices said establishing such proof would be prohibitively difficult for beneficiaries “who are not at fault for the time that has passed or the state’s failure to administer the trust.”

The justices rejected the plaintiffs’ argument that damages should be adjusted for inflation, saying that would result in amounts that exceed actual damages and run afoul of the law.

The justices also found that the federal and state governments mismanaged the trust by misappropriating land for nonbeneficiary use, failing to restore the lands or compensate the trust and failing to keep adequate records.

“Rather than placing beneficiaries on homestead lots, the state placed beneficiaries on a long waitlist,” the justices wrote.





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