

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
FOURTH DIVISION
STATE OF HAWAII

RICHARD PARTAL II, KRISTINE) Civil No. 3CCV-20-000277
MARIE PARTAL AND ELLEN PARTAL,)
)
Plaintiffs,)
)
vs.)
)
DAVID Y. IGE, STATE OF HAWAII,)
MAYOR HARRY KIM, et al.,)
)
Defendants.)
)

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Wendy DeWeese, Judge
presiding, on Tuesday, September 1, 2020, conducted
via Zoom video communications.

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Transcript prepared from KURT T. FAUT, CSR #418
videodisc by: Certified Court Reporter
State of Hawaii

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11 (Appearing by telephone.)

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17 David Y. Ige, State of
18 Hawaii:

19 NICHOLAS McLEAN, ESQ.

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21 CRAIG IHA, ESQ.

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1 Tuesday, September 1, 2020

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3 THE CLERK: Civil Case Number 3CCV-20-277, Richard
4 Partal, II, et cetera, et al., versus David Y. Ige, et
5 cetera, et al., one, motion to dismiss plaintiffs' first
6 amended complaint; two, Mayor Harry Kim's motion to dismiss
7 plaintiffs' first amended complaint; three, plaintiffs'
8 cross-motion for partial summary judgment, that on May 3rd,
9 2020, Governor Ige's emergency powers had already
10 automatically terminated pursuant to Hawaii Revised Statutes
11 Chapter 127A.

12 THE COURT: Okay. Good morning. State your
13 appearance, please. Let's start with the plaintiff.

14 MR. HOCHBERG: Good morning, your Honor. My name
15 is Jim Hochberg. It's nice to meet you. I represent the
16 plaintiffs. I'm in Honolulu.

17 THE COURT: Hello.

18 MR. HOCHBERG: My co-counsel Harmeet Dhillon from
19 the Center for American Liberty is on the telephone from the
20 mainland.

21 THE COURT: Okay. And Ms. Dhillon, can you hear
22 us?

23 MR. HOCHBERG: I --

24 MS. DHILLON: Yes, I can, your Honor.

25 THE COURT: Okay. Thank you.

1 Good morning, Mr. Hochberg, Ms. Dhillon. Okay.

2 And who is on the phone for the -- for Governor
3 Ige?

4 MR. McLEAN: Good morning, your Honor. Nicholas
5 McLean, from the Department of the Attorney General, on
6 behalf of Governor Ige and the state of Hawaii.

7 THE COURT: Okay.

8 MR. McLEAN: And we also have in the room here my
9 colleagues Craig Iha, Ewan Rayner, and Max Levins.

10 THE COURT: Okay. Very well. And then on the
11 phone for Mayor Kim?

12 MR. HOROWITZ: Good morning, your Honor. This is
13 Kaena Horowitz on behalf of Mayor Kim.

14 THE COURT: Okay. And then I understand that we
15 have Ms. Dhillon, some other, at least one other member or
16 other members of your team listening in by phone.

17 Is that Ms. West?

18 MS. WEST: Yes, your Honor.

19 THE COURT: Okay.

20 MS. WEST: That is correct, your Honor.

21 THE COURT: All right.

22 MS. WEST: Christina West.

23 THE COURT: All right. Okay. Anybody else present
24 on the phone? Negative response.

25 All right. Okay. So Mr. Hochberg, what I plan to

1 do is deal with the motions to dismiss first, and then we'll
2 address the motion for partial summary judgment.

3 So Mr. McLean, anything -- well, let me first start
4 by saying I've read the motions, oppositions, and the
5 replies.

6 So Mr. McLean, anything you wish to add to the
7 argument set forth in your motion?

8 MR. McLEAN: Thank you, your Honor. If I may just
9 briefly speak to a couple of points --

10 THE COURT: Sure.

11 MR. McLEAN: -- and then speak in opposition to the
12 motion for partial summary judgment. And then, of course, if
13 your Honor has any questions, I'd be happy to address those
14 as well.

15 But I think just the very brief points that we
16 would want to emphasize are that the HRS Chapter 127A is
17 intended to give the governor broad powers and comprehensive
18 powers to respond to emergency situations.

19 Today all fifty states have an active state of
20 emergency for Covid 19 in place. Plaintiffs are asking
21 essentially for this to be the only state where that is not
22 the case.

23 And we believe that when you look at the text and
24 the purpose of the relevant statutory provision, this is the
25 127A-14(d), it becomes clear that a reasonable and practical

1 interpretation of that provision is that the government can
2 essentially renew, reissue emergency proclamations, thereby
3 establishing a new sixty-day period. And that is precisely
4 what's been done here.

5 So with that, I'm certainly happy to -- any
6 specific questions that the Court may have. And if I may,
7 I'd like to reserve a few minutes to respond to
8 Mr. Hochberg's argument.

9 THE COURT: Sure. So Mr. McLean, how do you
10 respond to the plaintiffs' argument that if you look at the
11 legislative history of Chapter 127, in the earlier drafts,
12 the bill contained language basically providing the governor
13 with unlimited powers? There was no number of days or finite
14 termination or automatic termination clause in the language
15 of the bill.

16 And that as the bill went on, it was amended. And
17 eventually the sort of unlimited powers sort of implication
18 of the bill was amended. And the legislature specifically
19 inserted a sixty-day limitation.

20 So how do you respond to that argument that there
21 was a clear intent by the legislature to, you know, in fact
22 limit the governor's powers to sixty days?

23 MR. McLEAN: Absolutely, your Honor. Thank you.

24 I think the early E-factor there is, what does the
25 sixty days do? Does the sixty days, the sixty-day provision

1 in the Section 14(d), does that provide a absolute drop-dead
2 date that applies across the board that no matter how
3 extensive the underlying emergency, no matter how long it
4 lasts, and no matter how long the -- no matter how many
5 additional emergency proclamations are issued, then, you
6 know, that's it? There could be no further emergency powers
7 whatsoever? So that, we would submit, is a very extreme way
8 of reading this particular provision.

9 A much more reasonable way that honors the
10 legislative intent, that takes the language as it exists in
11 the statute, was really not fighting the language in the
12 statute, but we submit that a much more practical way of
13 reading that is to say, well, what is the concern here?

14 Well, a key concern is that you don't want to have
15 specific provisions in an emergency proclamation become
16 stale. And so by putting the sixty-day period in, you --
17 it's essentially a sort of a deliberation-forcing or an
18 information-forcing rule that forces a periodic reevaluation
19 of the provisions of these emergency proclamations, at least
20 once every (indecipherable) days.

21 But we submit it's not a extremely restrictive
22 straightjacket of the sort that would make any kind of
23 effective emergency response, indeed any emergency response
24 by the governor at all, totally impossible.

25 THE COURT: Thank you, Mr. McLean.

1 Okay. Mr. Horowitz, anything you want -- I mean, I
2 guess, you know what, just for the record, the motions to
3 dismiss are fairly parallel and argue the same argument. So
4 just for purposes of efficiency here, I will take both of the
5 motions to dismiss at the same time.

6 So Mr. Horowitz, anything you want to add to the
7 motion and the information put forth in your pleadings?

8 MR. HOROWITZ: No, your Honor. Like you said,
9 they're very parallel, so we concur with what my colleague at
10 the attorney general's office has said.

11 THE COURT: Okay. Mr. Hochberg, anything you want
12 to say in addition to what you filed in your opposition
13 and/or in response to the comments by Mr. McLean?

14 MR. HOCHBERG: I would, your Honor. And thank you.

15 In order for the defendants' reading of the statute
16 section to be reasonable and practical, they have to change
17 the words. And that, in my mind, makes it not very
18 reasonable. And it may be practical, but that's not a legal
19 test.

20 Secondly, the words, shall automatically terminate,
21 is a pretty drop-dead phrase. And unlike the other state
22 statutes cited by the defendants in their memo in op, none of
23 those other states has automatic terminations with no
24 language inconsistent with the automatic termination.

25 If you look at the two footnotes, they all say, you

1 know, the power terminates unless the governor does
2 something. And that's on the footnote, I think, 17 and 19 in
3 their brief.

4 The other thing I would say is that, interestingly
5 enough, with their argument related to the proclamations
6 after May 3rd having been new proclamations of emergency, a
7 state of emergency, which, by the way 127A-14(d) says that
8 the state of emergency shall automatically terminate.

9 Not that a power being exercised terminates, but
10 actually the foundation for all the executive power. The
11 proclamation of the state of emergency is what automatically
12 terminates.

13 But on August 20th, Governor Ige, and this is not
14 attached to any of my filings because I didn't have it, he
15 issued a 12th proclamation. And this is a really good
16 example of how the actual text of the proclamations don't
17 support their argument that each of the later proclamations
18 are new proclamations of the state of emergency.

19 I'll just read a little bit of it. It's August
20 20th, signed by -- approved by Clare Connors, attorney
21 general, and signed by David Y. Ige, governor.

22 And what it says is, Whereas, I issued on March
23 4th, 2020, a proclamation declaring a state of emergency to
24 support ongoing state and county responses to Covid 19. And
25 then he goes on and lists the litany of the subsequent memos.

1 And then he says, Whereas, the last whereas, Covid
2 19 continues to endanger health, safety, and welfare of the
3 people in Hawaii, and a response requires the serious intent,
4 effort, and sacrifice of all people in Hawaii, or in the
5 state, to avert unmanageable strains on our health care
6 system and other catastrophic impacts on the state.

7 Now, therefore, I, David Y. Ige, governor of the
8 state of Hawaii, hereby authorize and invoke the following.
9 And then there's thirty-some pages of executive order.

10 And the point to share that in is even after the
11 case was filed, even after the motions were filed, the
12 governor's still acting like all of these relate back to the
13 March 4th initial proclamation of the state of emergency
14 which Section 14(d) says: The state of emergency shall
15 automatically terminate on the sixtieth day, which was
16 May 3rd.

17 I think the other interesting thing that I think
18 would be good for the Court to consider, in addition to our
19 pleadings is these cases, cite of Hawaii, the authorities for
20 those cases don't have any statute like Hawaii that simply
21 says the state of emergency terminates automatically on the
22 sixtieth day. They all offer some mechanism for the governor
23 to go forward, except for Illinois. And that's the Governor
24 Pritzker series of cases.

25 And what -- let me find that. So what that statute

1 actually says, and it's 20 ILC, as in cat, S as in Sam,
2 which, I'm guessing, is Illinois Code of Statutes, or
3 something, 3305, slash, 7, Emergency Powers of the Governor.

4 It says: In the event of a disaster as defined in
5 Section 4, the Governor may, by proclamation, declare that a
6 disaster exists. Upon such proclamation, the Governor shall
7 have and may exercise for a period not to exceed thirty days,
8 the following emergency powers.

9 It doesn't say that the emergency, state of
10 emergency, automatically terminated. And I think that's why
11 the Court in Illinois could infer there must be the ability
12 to deal with what the Illinois Governor's Office is dealing
13 with with Covid. But our statute is actually a statute that
14 says, because the legislature, clearly from the legislative
15 history, intended it, that the sixty-day modification -- and
16 actually the modification is a complete exclusion of the
17 legislative body and the citizens of Hawaii from
18 participating in the law-making process.

19 That sixty-day delegation was gonna require, after
20 the automatic termination of the act, state of emergency,
21 that the governor, mayors, the executive branches that were
22 exercising this chapter had to work again with the people of
23 Hawaii.

24 Because basically our system of government only
25 works with the consent of the governed. We're under a

1 lockdown again today in part because the governor and the
2 mayor of Honolulu didn't think the people of Hawaii were
3 doing their part to keep the number of Covid positive cases
4 down.

5 That's indicating a lack of consent of the
6 governed. And that's a real constitutional problem, and
7 that's why we brought the case.

8 And the final point that I would like to address is
9 to mention that the exceptional circumstances that exist
10 under the Missouri rule for the Liberty Mutual versus Jones
11 case and, locally, Kahai (phonetic) Kupuna case, the whole
12 focus of the state's argument in their motion to dismiss the
13 claims is because of the exceptional nature of the Covid
14 crisis.

15 And if there's an exceptional Covid crisis, for
16 their purposes there must also be one under the Missouri
17 rule. And coupled with the fact that Chapter 127A is not a
18 penal statute, it's a civil statute, their application of
19 Kahai Kupuna is misplaced.

20 And there's no reason to dismiss this case on the
21 basis of part of the claims by two of the plaintiffs has to
22 do with a traffic citation for breaking the quarantine --
23 anyway, which does carry some criminal penalties. But the
24 bigger question with Chapter 127A and all of these thirteen
25 proclamations by the governor is civil in nature.

1 And the other thing, if the Court has any questions
2 about these claims being brought under Chapter 661-1 with
3 respect to the attorney's fees for the private attorney
4 general aspect, I'm happy to talk about that.

5 THE COURT: So Mr. Hochberg, how do you -- so
6 basically your argument is that instead of the governor
7 acting, the legislature should have acted or should be acting
8 to address the, you know, the Covid situation and whatever
9 emergencies exist.

10 But how do you -- how would you respond to an
11 argument that, no, if the legislature had intended for it to
12 be the one to act in this situation, it hasn't done so? It's
13 had time to do so, and it hasn't done so. So what does that
14 mean?

15 MR. HOCHBERG: Your Honor, I'm sorry. If you're
16 asking me if the legislature has acted in the Covid thing,
17 they in fact did. There was a motion for a temporary
18 restraining order pending in Judge Otake's court -- the
19 hearing was July 2nd -- on a Covid constitutional
20 right-to-travel claim.

21 And while that motion was pending, the senate came
22 back in to work, took House Bill 2502 that had passed over
23 earlier in the year from the House of Representatives to the
24 Senate, gutted it, made it into a Covid travel bill, I'm
25 thinking, because the Court could have stricken the travel

1 restrictions, and the legislature wanted to make sure Hawaii
2 has legislatively created travel restrictions so there was no
3 gap.

4 On the 2nd of July, Judge Otake denied the motion
5 for temporary restraining order. The 4th of July weekend
6 happened. On the 6th of July, the senate approved the bill,
7 sent it over to the house, and the house simply rejected it.
8 There's no statement as to why they did that. Whether it was
9 because the TRO was not granted, we don't know.

10 But I think the main point is that the legislature
11 proved that in a short period of time, they can actually
12 craft legislation on this very Covid matter. And if the
13 Court thought that it was a safe thing to do in wanting to
14 enforce this automatic termination, the Court obviously could
15 give the legislature a short period of time to stopgap the
16 complete absence of any kind of orders on Covid.

17 THE COURT: Okay. Thank you, Mr. Hochberg.

18 Mr. McLean, do you want to respond, briefly?

19 MR. McLEAN: If I may, your Honor --

20 THE COURT: Yes.

21 MR. McLEAN: -- briefly.

22 I think the first point to make, there really is
23 nothing in the legislative history, as your Honor indicated,
24 that would -- that the legislature was intended to equip the
25 position of essentially micro-managing every aspect of the

1 state's response.

2 This, as we all know, is a very fast-moving
3 pandemic. It changes. Conditions on the ground can change
4 from one week to the next or one month to the next. And it's
5 simply not reasonable to imagine that a legislature could be
6 passing statute to deal with this.

7 And I think that although I certainly think there
8 are a number of aspects in the legislative history that sort
9 of survives, legislative history that my colleague recites, I
10 think that to the extent the legislature has been active,
11 it's been to increase the powers available, not to decrease
12 them and certainly not to take them back, as it were.

13 And to put itself in the position of having to not
14 just decide the broad policy matters, but every single matter
15 that's currently being done by executive order or a
16 supplementary emergency proclamation.

17 On the plaintiffs' theory, every single one of
18 those decisions, presumably, would have to be taken by the
19 legislature. And in a time of an emergency when there's
20 always some emergency situations that the legislature may not
21 be able to meet, that there -- it's simply not a reasonable
22 understanding of law, in our view.

23 And just very briefly on the Kahai Kupuna case that
24 my friend mentioned, I think the key issue there that we
25 would like to emphasize is that, you know, on I think it's on

1 a straightforward reading of this case that there are certain
2 preconditions that a plaintiff has to meet before it can be
3 entitled to the kind of use that the plaintiffs are seeking
4 in this case.

5 And one of those things is that you can't simply
6 litigate your case in the pending criminal matter. One of
7 the certainly prerequisites is that there isn't going to be a
8 pending criminal matter to decide the legal issues that are
9 being implicated. And so I think that, you know, that really
10 is a -- I think their theory is -- bar the plaintiffs' claims
11 here.

12 And so unless your Honor has any additional
13 questions, I'll have nothing further.

14 THE COURT: Mr. Horowitz, anything you want to add?

15 MR. HOROWITZ: No, your Honor. Thank you.

16 THE COURT: All right. So the Court has considered
17 the motions, the arguments contained therein, the opposition
18 to the replies.

19 You know, the plaintiffs, by way of their
20 complaint, raise, I think, an issue that's on the minds of
21 many people, not just in the state of Hawaii, but citizens
22 all across the country, which is concern around potentially
23 unlawful power grabs by the executive branch.

24 The plaintiffs' motion seeks specifically orders
25 declaring Governor Ige's 7th and 8th and 9th supplemental

1 proclamations to be facially invalid, and as applied to
2 plaintiffs, to be invalid.

3 Plaintiffs also seek an order temporarily,
4 preliminarily, and permanently enjoining and prohibiting
5 Governor Ige and Mayor Kim from issuing further emergency
6 orders, enforcing existing emergency orders, or otherwise
7 interfering with plaintiffs' constitutional rights and
8 liberties.

9 They further seek an order and a judgment declaring
10 Mayor Kim's enforcement of the unlawful orders,
11 self-unlawful, and attorney's fees and costs pursuant to the
12 private attorney general doctrine.

13 This, these motions are filed as motions to dismiss
14 pursuant to Hawaii Rules of Civil Procedure 12(b)(6).
15 Pursuant to 12(b)(6), the Court must view the complaints in
16 the light most favorable to the plaintiff and must deem the
17 factual nonconclusory allegations in the complaint to be true
18 for purposes of the motions.

19 However, a dismissal is appropriate when there is
20 an absence of law to support a claim. And that's based on, I
21 think, the case cited by both counsel, Justice versus Fuddy,
22 125 Hawaii 104.

23 One thing that both parties basically agree on,
24 that this is an issue of statutory interpretation, and that
25 the interpretation of Chapter 127A, and specifically

1 127A-14(d) is a question of law.

2 The -- I'm probably going to do a poor job of
3 summarizing you folks' eloquent arguments, but in essence,
4 defendant Ige has argued that the text of 127A-14(d) does not
5 support plaintiffs' argument that Chapter 127A contains no
6 language prohibiting supplementary or additional emergency
7 proclamations.

8 You know, the Court notes though that it also
9 contains no language expressly authorizing them either.

10 The purpose of 127A, defendants argue, is to confer
11 comprehensive powers to protect the public and save lives.
12 There's nothing limiting the number of emergency
13 proclamations, and each proclamation triggers a new sixty-day
14 period.

15 The defendants argue that the supplementary
16 emergency proclamations are distinct and particularized
17 emergency proclamations based on independent evaluations of
18 the relevant circumstances by Governor Ige, that chapter 127A
19 confers upon the governor emergency powers necessary to
20 prepare for and respond to emergencies and disasters.

21 And that based on the express language of the
22 statute, the legislature's intent is to provide for and
23 confer comprehensive powers. And that the statute shall be
24 liberally construed to effectuate those purposes.

25 The chapter further refers to emergencies of,

1 quote, unprecedented size and destructiveness and expressly
2 empowers the governor to take any and all steps necessary or
3 appropriate to carry out the purposes of Chapter 127A.

4 Lastly, the defendants argue that the statute
5 provides that the governor shall be the sole judge of the
6 existence of the circumstances giving rise to the state of
7 emergency.

8 Defendants further argue that established practice
9 demonstrates that the use of supplementary proclamations is
10 lawful under the statutes. That 127A-14(d) is not ambiguous.
11 But if it is, the state's interpretation is the better one.
12 And that the constitutional backdrop vesting in the governor
13 inherent executive powers supports defendants'
14 interpretation.

15 And lastly, plaintiffs -- defendants argue
16 plaintiffs cannot recover attorney's fees and costs on the
17 basis of sovereign immunity.

18 Defendant Kim's motion to dismiss parallels that of
19 the state of Hawaii and Governor Ige and argues that
20 plaintiffs' interpretation fails to take into consideration
21 the context of the entire statute. That the plain reading of
22 the statute demonstrate the governor is vested with broad
23 authority, comprehensive powers, that should be liberally
24 construed and is the sole judge of the existence of an
25 emergency.

1 But in the context of the entire statute, it is
2 clear that the governor is vested with authority to issue
3 separate and successive emergency proclamations. And as
4 such, Mayor Kim rightfully relied on them and/or took action
5 upon them.

6 Furthermore, defendant Kim argues that 127A
7 sub (c)17 permits Mayor Kim to take any and all steps
8 necessary or appropriate to carry out the purposes of Chapter
9 127A during an emergency period. Defendant Kim is requesting
10 a dismissal with prejudice and attorney's fees and costs,
11 labelling plaintiffs' filings as frivolous.

12 The plaintiffs' opposition, like I said,
13 characterizes the issue of one that's statutory
14 interpretation and argues that basically this case centers on
15 the question that whether as a matter of law the automatic
16 termination of the emergency orders, as stated in 127A-14(d),
17 means that Governor Ige's Covid 19 emergency proclamation and
18 orders pursuant thereto automatically terminated on the
19 sixtieth day after he issued his first Covid 19 emergency
20 proclamation on March 4th, 2020.

21 Plaintiffs argue there is no language for any
22 option for the governor to extend the state of the emergency
23 beyond the sixtieth day. But, as defendant Ige argues,
24 there's also no language prohibiting successive emergency
25 proclamations and/or requiring the legislature to act at the

1 conclusion of the sixty days.

2 Plaintiffs argue that the text of 127A-14(d)
3 supports plaintiffs' position. It argues that the Court
4 should employ the canon of statutory construction expressed
5 in *Unis Es Exclusion Alteres* (phonetic) and argues that the
6 statute should be given its plain meaning and effect. That
7 there is no justification for departure from the plain
8 meaning.

9 Moreover, the plaintiffs argue that the history and
10 purpose of 127A support plaintiffs' argument that there is an
11 automatic limit on the government's -- on the governor's
12 comprehensive powers. It argues that the extra-territorial
13 authority cited to by the defendants actually supports the
14 plaintiffs' position and that the governor's supplemental
15 emergency proclamations are unlawful.

16 Plaintiffs argue 127A is not ambiguous and supports
17 their claims. It says that time limits on the executive
18 powers is appropriate under Chapter 127A and also in light of
19 Hawaii's overall constitutional scheme.

20 Lastly, plaintiffs request attorneys -- request --
21 argue -- strike that, argue that their request for attorney's
22 fees and costs is not barred by sovereign immunity and argue
23 that their claims are not frivolous.

24 So the Court has reviewed the authorities cited by
25 both sides as well as done its own research on some of these

1 legal issues and, specifically, will start by saying that it
2 looked at the case Four Star Insurance Agency, Inc., versus
3 Hawaiian Electric Industries, 89 Hawaii 427.

4 It's a 1999 case in which the Court stated:
5 Although we obtained the intention of the legislature
6 primarily from the language of the statute itself, we have
7 rejected an approach to statutory construction which limits
8 us to the words of a statute. For when aid to construction
9 of the meaning of words as used in the statute is available,
10 there certainly can be no rule of law which forbids its use,
11 however clear the words may appear on superficial
12 examination.

13 Thus the plain language rule of statutory
14 construction does not preclude an examination of sources
15 other than the language of the statute itself, even when the
16 language appears clear and perfunctory upon clear and
17 perfunctory review.

18 Were this not the case, a Court may be unable to
19 adequately discern the underlying policy which the
20 legislature seeks to promulgate and thus would be unable to
21 determine if a literal construction would produce an absurd
22 or unjust result inconsistent with the policies of the
23 statute.

24 Furthermore, the Court may depart from the plain
25 reading of a statute where a literal interpretation would

1 lead to absurd and/or unjust results. That's Sato versus
2 Kawata, 79 Hawaii 14.

3 Furthermore, a Court may examine sources other than
4 the language of the statute itself to determine if a literal
5 construction would produce absurd or unjust results
6 inconsistent with the policies of the statute. That's Dines,
7 D-I-N-E-S, versus Pacific Insurance Company, Limited, 78
8 Hawaii 325. And that's at page 337 in the dissent.

9 Court may consider the reason and spirit of the law
10 and the cause which induced the legislature to enact it to
11 discover its true meaning, Gray versus Administrator Director
12 of the Courts, 84 Hawaii 138.

13 And lastly, the Courts must construe statutes to
14 avoid absurd results, and a rational, sensible and
15 practicable interpretation of the statute is preferred to one
16 which is unreasonable impracticable, inconsistent,
17 contradictory, and illogical. And this is the Kelii Puleole
18 case versus Wilson, 85 Hawaii 217.

19 So the Court views its obligation in construing a
20 statute as, one, to ascertain and give effect to the
21 intention of the legislature, which is to be obtained
22 primarily from the language of the statute itself. However,
23 the Court must read the statute and the statutory language in
24 the context of the entire statute and construe it in a manner
25 consistent with its purpose.

1 This Court has considered the language of the
2 statute in the context of the chapter as a whole and finds
3 that the defendants' analysis and interpretation is the
4 correct one. Defendants' statutory construction makes sense
5 and does not produce an absurd or unjust result.

6 Defendants' interpretation is consistent with the
7 reason and the spirit of the law as expressed by the language
8 of Chapter 127A as a whole.

9 So based thereon, the Court will find that the text
10 of 127A-14(d) does not support plaintiffs' argument. 127A
11 contains no language prohibiting supplementary or additional
12 emergency proclamations.

NO

13 The purpose of 127A is to confer comprehensive
14 powers to protect the public and save lives. There is
15 nothing limiting the number of emergency proclamations. Each
16 additional emergency proclamation triggers a new sixty-day
17 period. The supplementary emergency proclamations are
18 distinct and particularized emergency proclamations based on
19 independent evaluations of the relevant circumstances on the
20 ground by the governor.

21 Chapter 127A's language confers upon the governor
22 emergency powers necessary to prepare for and respond to
23 emergencies and disasters. And based on the express language
24 of the statute, it is the legislature's intent to provide for
25 and confer comprehensive powers. And that the statute shall

1 be, quote, liberally construed, end quote, to effectuate the
2 purpose of the chapter.

3 Chapter 127A further refers to emergencies of
4 unprecedented size and destructiveness and expressly empowers
5 the government to take all steps necessary or appropriate to
6 carry out the purposes of the chapter. The governor shall be
7 the sole judge of the existence of circumstances giving rise
8 to a state of emergency.

9 Court will further find that established practice
10 demonstrates that the use of supplementary proclamations is
11 lawful under the statutes. 127A-14(d) is not ambiguous. But
12 if it is, the state's interpretation is the better one. And
13 the constitutional backdrop vesting in the governor inherent
14 executive powers supports the defendants' interpretation.

15 The Court will find that based on the Court's
16 rulings, no law or facts can remedy the deficiencies in the
17 plaintiffs' first amended complaint. And the Court will
18 grant the defendants' motions to dismiss with prejudice.

19 The Court understands that plaintiffs argue that
20 the executive branch is engaged in an unlawful power grab.
21 However, the legislature has not acted in this particular
22 area, despite there being no prohibition against them doing
23 so. And despite this Court's interpretation and contrary to
24 the plaintiffs' argument, the governor's authority is not
25 without restraint.

1 To support each successive emergency proclamation,
2 the governor must identify the existence of the danger,
3 threat, or circumstances giving rise to a declaration of a
4 state of emergency. Absent his ability to do so, or when the
5 facts on the ground no longer justify such findings, the
6 governor's emergency powers will cease.

7 And the Court notes that in this action, the
8 plaintiffs have not challenged or contested the factual
9 existence and widespread severe impact of the Covid 19
10 pandemic within the state.

11 With respect to any other bases to dismiss raised
12 by the defendants, the Court does not need to reach those
13 other independent bases as the Court has already ruled based
14 on the findings it has made.

15 With respect to the attorney fee request by Mayor
16 Kim, the Court cannot find that plaintiffs' arguments are
17 frivolous. A finding of frivolous is a high bar, and the
18 Court has to find not only that they are without merit, but
19 also that there is bad faith. And the Court cannot find bad
20 faith on the part of the plaintiffs, so the Court is going to
21 deny defendant Kim's request for attorney's fees and costs.

22 In light of the Court's dismissal of plaintiffs'
23 first amended complaint with prejudice, plaintiffs' motion
24 for partial summary judgment is now moot. And so the Court
25 need not address that.

1 Mr. McLean, any questions?

2 MR. McLEAN: No, your Honor.

3 THE COURT: Mr. Horowitz, any questions?

4 MR. HOROWITZ: No, your Honor. Thank you.

5 THE COURT: Mr. Hochberg, any questions?

6 MR. HOCHBERG: No, thank you, your Honor. Thank
7 you for all the work you've put into this.

8 THE COURT: Okay. And Mr. McLean, you can prepare
9 the findings and conclusions and order of the Court, please.

10 And then Mr. Horowitz, you can do so, I guess, on
11 your motion.

12 MR. McLEAN: Thank you, your Honor.

13 THE COURT: All right. Thank you, Gentlemen.

14 UNIDENTIFIED SPEAKER: Thank you, very much.

15 UNIDENTIFIED SPEAKER: Thank you, your Honor.

16 THE COURT: Okay.

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CERTIFICATE

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STATE OF HAWAII)
) ss.
COUNTY OF HAWAII)

I, KURT FAUT, CSR 418, a Certified Court Reporter in the state of Hawaii, hereby certify that the foregoing comprises a full, true, and correct transcription of my stenographic notes taken from digital electronic media, videodisc, of the proceedings held in the above-entitled cause.

Dated this 10th day of SEPTEMBER, 2020.



KURT FAUT, CSR #418