



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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**HAWAII'S ATTORNEY GENERAL REPRESENTS THE STATE IN UNITED STATES
SUPREME COURT**

HONOLULU – Hawaii's Attorney General Mark Bennett argued today before the United States Supreme Court in Lingle v. Chevron USA Inc. The Supreme Court is reviewing a decision by the lower federal courts invalidating a Hawaii law that limits the amount of rent that oil companies can charge dealers who lease gas stations. The Supreme Court will decide whether courts may review the wisdom of state economic legislation under the Just Compensation Clause of the Fifth Amendment.

Following today's argument, Attorney General Bennett said, "It was a privilege and an honor to represent the people of the State of Hawaii before our nation's highest court in this case, which presents issues that go to the heart of representative democracy. We all now await the high Court's decision."

Attorney General Bennett also stated: "This case raises questions of profound importance concerning the appropriate relationship between the courts and elected representatives of the people. Although the case focuses on a particular rent control law, the more fundamental issue is whether the federal courts may freely second-guess the wisdom of state economic legislation."

Background

Act 257 was enacted by the Hawaii legislature in 1997 to address concerns regarding the high economic concentration in the wholesale market for oil products and gasoline in the State, which is served by only two refiners. To ensure that retail prices for gasoline continue to be set by the many independent gas station operators in the State, Act 257 contains several provisions intended to prevent oil companies and jobbers from converting existing leased stations to company-operated stations. One provision, designed to prevent the oil companies from increasing rents to drive independent dealers out of business, caps the total rent that oil companies and jobbers may charge their dealers.

Chevron USA, Inc., the largest refiner and marketer of gasoline in Hawaii, sued the Governor and Attorney General of Hawaii in federal court, claiming that this restriction on rents constituted a taking of Chevron's property in violation of the Fifth Amendment to the United States Constitution. Chevron did not seek compensation for the alleged taking, and stipulated that it was receiving a return on its gas stations under Act 257 that "satisfies any Constitutional standards." Chevron nonetheless argued that, as a matter of economic theory, the rent cap in Act 257 would not accomplish its goals, and therefore did not "substantially advance a legitimate state interest." Refusing to give deference to the judgment of the Hawaii legislature regarding the need for and effectiveness of the rent law, the federal district court held a one-day trial at which expert economists debated whether Act 257 would achieve its goal of protecting consumers from high gasoline prices. In April 2002, the district court agreed with Chevron's economist that the law would be ineffective and declared the law unconstitutional.

The Court of Appeals for the Ninth Circuit affirmed the district court's judgment on April 1, 2004. Chevron USA, Inc. v. Lingle, 363 F.3d 846 (9th Cir. 2004). The Court of Appeals rejected the State's position that the Just Compensation Clause of the Fifth Amendment does not authorize federal courts to review the wisdom of state legislation.

On July 30, 2004, the State petitioned the United States Supreme Court for a writ of certiorari, arguing that the intrusive review conducted by the federal courts of state legislation in this case threatens principles of democratic government and federalism. The Supreme Court granted the State's petition on October 12, 2004.

Issues to be decided by the Supreme Court

Hawaii is asking the Court to determine two closely related issues of constitutional law:

(1) Whether these types of challenges to a law's wisdom or legitimacy properly lie under the Just Compensation Clause of the Fifth Amendment, and

(2) If so, whether courts should give deference to the judgment of the state legislature concerning the need for and efficacy of a challenged law.

Attorney General Bennett stated: "Each of these issues goes directly to the proper balance between the judiciary and institutions of democratic governance in our nation. It has long been accepted as a bedrock principle that the courts should not substitute their judgment regarding the wisdom of democratically-elected legislators."

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