



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

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News Release 2008-18

**STATE ASKS U.S. SUPREME COURT TO OVERTURN DECISION
RESTRICTING SALE OF CEDED LAND**

HONOLULU – State Attorney General Mark Bennett announced today that the State has asked the United States Supreme Court to review and overturn a Hawai'i Supreme Court decision which held that the State cannot sell or transfer ceded lands.

The State's Petition for a Writ of Certiorari, which was filed today, asks the nation's highest court to reverse a January 31, 2008, Hawai'i Supreme Court ruling that the Congressional Apology Resolution prohibits the State from selling, exchanging, or transferring any of the more than 1.2 million acres of ceded land owned by the State until a political settlement with Native Hawaiians about the status of the ceded lands is reached.

The primary issue presented to the U.S. Supreme Court is whether the symbolic resolution passed by Congress in 1993 to acknowledge the 100th anniversary of the overthrow of the Kingdom of Hawai'i, and to apologize for the United States's role, strips the State of its sovereign authority to sell, exchange, or transfer ceded land.

The petition notes that the Apology Resolution did not bar the State from selling ceded land, and the petition states that, "nothing in the Apology Resolution explicitly or implicitly impairs Hawai'i's sovereign right to control or alienate any of the lands it owns."

"I believe that the decision of the Hawai'i Supreme Court is based on a wholly incorrect reading of the legal effect of the Apology Resolution, and strips the State of its basic sovereign right to control and manage the lands it owns," said Attorney General Mark Bennett. "It is my hope that the U.S. Supreme Court will agree to hear this important case."

The State's petition provides three basic reasons why the U.S. Supreme Court should hear the case:

First, the Hawai'i Supreme Court decision has an enormous impact on Hawai'i by barring the State from prudently managing, for the benefit of all Hawai'i citizens, the ceded lands, which comprise approximately 29 percent of the State's total land area and almost all of the State-owned lands.

Second, the decision raises serious constitutional concerns because, in the Admission Act, the United States transferred full title to the ceded lands to the State of Hawai'i, and allowed for the sale or other disposition of the lands. The Admission Act stated that the ceded lands, "together with the proceeds from the sale or other disposition of [these] lands and the income therefrom," must be used by the State for one or more of five purposes: for the support of public schools and other public education institutions; for the betterment of conditions of native Hawaiians; for the development of farm and home ownership; for public improvements; and for public use of the lands.

Third, by basing its decision primarily on federal law, the Hawai'i Supreme Court improperly excluded any state-level change. The State contends that whether or not to sell ceded land is a policy decision that should be made by the executive and legislative branches of the government of the State of Hawai'i, not by Congress.

The petition notes that Hawai'i statutory law fully authorizes the sale or transfer of ceded land, as long as the proceeds of a sale, or any land acquired through an exchange, are used for the same five purposes as permitted under the Admissions Act.

Bennett anticipates the U.S. Supreme Court will decide in October 2008 if it will hear the State's appeal, and if it decides to hear the case, it will likely make a decision by June 2009.

News Release 2008-18

State Asks U.S. Supreme Court To Overturn Decision Restricting Sale Of Ceded Land
Page 3

The State's petition is available on the Attorney General's website at: www.hawaii.gov/ag.

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