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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

HUI KĀNĀWAI 'OIA 'I'O,) CIVIL NO.
) (Environmental Court)
Plaintiff,)
) COMPLAINT FOR DECLARATORY
v.) AND QUO WARRANTO RELIEF;
) SUMMONS
JOSH GREEN, GOVERNOR OF THE)
STATE OF HAWAI'I; COMMISSION ON)
WATER RESOURCE MANAGEMENT;)
JAMES KIMO FALCONER; VINCENT)
HINANO RODRIGUES,)
)
Defendants.)
_____)

COMPLAINT FOR DECLARATORY AND QUO WARRANTO RELIEF

INTRODUCTION

1. Plaintiff Hui Kānāwai 'Oia 'i'o (the "Hui" or "Plaintiff"), by and through their counsel, Earthjustice, hereby seek a judicial declaration that Defendants Governor Josh Green and the Commission on Water Resource Management (the "commission" or "water commission") unlawfully and invalidly circumvented the process for nominating members of the

commission. Instead of selecting a nominee for the “loea” (Hawaiian cultural expert) seat on the commission from the list provided through the legally mandated nominating committee process, Defendant Green and the commission arranged to form a new nominating committee to produce a new list of nominees from which Defendant Green would select. This redo of the nominee list nullifies the law and process for commission nominations.

2. Hawai‘i Revised Statutes (“HRS”) § 174C-7(d) mandates that the nominating committee “shall solicit applications and send to the governor the names of at least three individuals for each open position,” and that the governor “shall select from a list submitted by a nominating committee.” The nominating committee fulfilled its responsibility in sending the governor a list of four individuals for the loea commissioner position in February 2024. Yet, Defendant Green stalled on making a selection for months, then claimed that the process needed to be restarted from the beginning because two nominees had withdrawn. Defendant Green then appointed one of the purportedly withdrawn nominees, Defendant James Kimo Falconer, to a newly reconstituted nominating committee to produce a new list of nominees in October 2024, from which Defendant Green selected Defendant Vincent Hinano Rodrigues.

3. The legislature established the nominating committee process in recognition of the importance of the commission’s constitutionally mandated trustee kuleana and the need for impartiality and independence in its nomination process, and as a distinct check on the governor’s general authority to nominate appointees. The redo of the nominating committee process to produce a new list flouts the letter and purpose of these provisions and sets dangerous precedent for future abuse. The Hui thus seeks a judicial declaration that Defendant Green lacked authority and contravened the law in disregarding the original nominee list in order to repeat the process and produce a new list, and that Defendant Green’s nomination of Defendant

Rodrigues through this unlawful process is invalid. The Hui likewise seeks *quo warranto* relief against Defendant Rodrigues establishing that he has no legal right to hold the position of loea commissioner or exercise the authorities and duties of that office.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the claims for relief in this action pursuant to HRS §§ 603-2, 603-21.5, 603-21.7, 604A-2 and 632-1, and Hawai‘i Constitution article XI, §§ 1, 7, and 9.

5. Venue lies in this judicial circuit under HRS § 603-36(4) and (5) because the conduct giving rise to this action and requested relief occurred in this circuit.

PARTIES

6. Plaintiff HUI KĀNĀWAI ‘OIA‘I‘O is a community organization committed to the protection, conservation, and pono management of Hawai‘i’s wai under principles of aloha ‘āina and the public trust. The Hui’s members include Kānaka Maoli cultural practitioners from across the pae ‘āina, from Kaua‘i to Hawai‘i Island. They also include tax-paying residents and registered voters of the State of Hawai‘i.

7. The Hui’s members engage in Native Hawaiian cultural practices and lifeways, including but not limited to farming, fishing and gathering, and spiritual observance—all of which revolve around and depend upon wai. Their practices, interests, and perspectives are specifically recognized and protected under the public trust doctrine and State Water Code, HRS chapter 174C (the “Code”), including in the creation of the loea commissioner position, and are directly affected by the decisions of the water commission regarding the protection and allocation of wai in their respective communities.

8. The Hui's members also work in their communities and in government and public forums to protect and restore wai as a public trust. Among them are community leaders engaged in recovery efforts in Maui Komohana (West Maui), including the restoration of water flows, after more than a century of injustices culminated in the tragic wildfire disaster of August 2023. The Hui's members have directly engaged at the water commission and legislature and in other public forums to support water restoration initiatives, uphold public trust principles, and ensure government accountability and transparency. They have also specifically engaged in the public controversy over the nomination process for the loea commissioner position that is the subject of this legal action.

9. The interests of the Hui and its members in perpetuating their cultural practices and lifeways, advancing the public trust and water justice, and upholding the integrity of the water commission, the loea commissioner position, and the commission nominating process are directly and adversely affected by Defendants' violation of the law and process governing the nomination of the loea commissioner as discussed herein.

10. Defendant JOSH GREEN is the Governor of the State of Hawai'i. Defendant Green and/or his staff conducted the actions at issue in this case in relation to the nominating committee process for selecting the loea commissioner.

11. Defendant COMMISSION ON WATER RESOURCE MANAGEMENT is the agency that administered the nominating committee process at issue in this case.

12. Defendant JAMES KIMO FALCONER is or was a nominee for the loea position on the original list submitted by the nominating committee and was later appointed by Defendant Green as a member of a reconstituted nominating committee that sent a new list to Defendant Green.

13. Defendant VINCENT HINANO RODRIGUES acts as an interim appointee for the loa position, having been selected by Defendant Green from the new list of nominees by the reconstituted nominating committee with Defendant Falconer as a member.

LEGAL AND FACTUAL BACKGROUND

14. Article XI, section 7 of the Hawai‘i Constitution adopts the public trust doctrine as a fundamental principle of state constitutional law and mandates the establishment of the water commission. *See In re Waiāhole Ditch Combined Contested Case Hr’g*, 94 Hawai‘i 97, 130-32, 9 P.3d 409, 442-44 (2000) (“*Waiāhole*”).

15. “The constitution designates the Commission as the primary guardian of public rights under the trust.” *Waiāhole*, 94 Hawai‘i at 143, 9 P.3d at 455 (citing Haw. Const. art XI, § 7).

16. Pursuant to article XI, § 7’s constitutional mandate, the legislature enacted the Code, which establishes “a commission on water resource management consisting of seven members which shall have exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code, except as otherwise specifically provided in this chapter.” HRS § 174C-7(a).

17. “The chairperson of the board and land and natural resources shall be the chairperson of the commission. The director of health or the director’s designee shall serve as an ex officio voting member.” *Id.* § 174C-7(b).

18. “Five members shall be appointed by the governor subject to confirmation by the senate in the manner prescribed in subsection (d) [*i.e.*, HRS § 174C-7(d)]. Each member shall have substantial experience in the area of water resource management.” *Id.* § 174C-7(b).

19. The Code further provides that “at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage.” *Id.*; see 2003 Haw. Sess. Laws Act 184, § 1 at 425. This position is also known and referred to as the “loea” or cultural expert seat.

20. HRS § 174C-7(d) prescribes the manner in which the governor appoints commission members for senate confirmation. “In appointing a member to the commission, the governor shall select from a list submitted by a nominating committee.” *Id.*

21. “The nominating committee shall be composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house.” *Id.*

22. “The committee *shall* solicit applications and *send to the governor the names of at least three individuals for each open position.*” *Id.* (emphasis added).

23. This nominating committee process for water commission appointments is unique from other agency appointments where the governor directly names a nominee. It reflects the legislature’s recognition of the importance of the commission and the intent to interpose a layer of independence and impartiality in the nomination process and a check on the governor’s general authority to nominate appointees.

24. In late January and early February 2024, the nomination process for the loea commissioner began, and the nominating committee interviewed applicants to produce its list of nominees.

25. Later in February 2024, at an early stage of the 2024 legislative session, the committee sent to Defendant Green a list of four nominees: (1) Hannah Springer, (2) Lori

Buchanan, (3) Defendant Falconer, and (4) another unidentified candidate who has been reported to be Ed Makahiapo Cashman.

26. Nominee Springer is a Native Hawaiian cultural practitioner from West Hawai'i and a former trustee of Office of Hawaiian Affairs. Nominee Buchanan is a longtime community leader from Moloka'i and a former chair of the Moloka'i Planning Commission. Nominee Cashman is the director of Ka Papa Lo'i o Kānewai, a cultural and education outreach program of the Hawai'inuiākea School of Hawaiian Knowledge at the University of Hawai'i at Mānoa. It is undisputed that all these candidates meet the prescribed qualifications for the loea commissioner.

27. Defendant Falconer is a former luna for the Pioneer Mill sugar plantation in West Maui and is now in the business of running a commercial coffee farm in Kā'anapali, Maui irrigated through private diversions of stream and well water.

28. On information and belief, Defendant Green intended to select Nominee Falconer for the loea position but received significant concerns and objections through direct informal communications that dissuaded him against that selection.

29. Defendant Green, instead, decided not to send any nomination to the senate throughout the duration of the 2024 legislative session.

30. In June 2024, the sitting commissioner in the loea position, former Commissioner Neil Hannahs, reached the end of his term and left office. The legislative session also ended that month. But Defendant Green still had not selected a loea nominee from the list sent to him four months before.

31. In August 2024, Earthjustice wrote to Defendant Green and Commission Chair Dawn Chang urging the administration to fill the loea vacancy to ensure the protection of Native Hawaiian rights and interests in the commission’s decisions.

32. On August 9, 2024, Acting Commission Deputy Director Dean D. Uyeno wrote back and responded that the commission “understood that some of the finalists withdrew their applications, and a new list [was] needed.” The commission would be “requesting new nominating committee appointments,” “reconven[ing] the Nominating Committee,” and “reissu[ing] a public notice seeking nominations for the new commission member.”

33. Defendant Green had appointed Dean Okimoto and Donna Kiyosaki for the original nominating committee. For the newly reconvened nominating committee, however, Defendant Green reappointed Kiyosaki, while adding a replacement committee member—Nominee Falconer.

34. On information and belief, the Green administration asked, invited, or arranged for Defendant Falconer to withdraw from the list sent by the original nominating committee. The Green administration and Defendant Falconer also reached an understanding or arrangement that Defendant Falconer would in turn be appointed to the reconvened nominating committee.

35. On August 22, 2024, the new nominating committee restarted the selection process and publicly announced a new application period. Any previous applicants, including previous nominees, were required to reapply to be considered in the new process.

36. In September 2024, Earthjustice sent another letter to the commission, emphasizing the governor’s mandatory duty to appoint a loea commissioner from the legally compliant list sent to him by the original nominating committee.

37. Also in September 2024, more than 70 individuals and organizations sent a joint letter to Defendant Green, urging him to select from the available nominees on the original list.

38. On October 3, 2024, Will Kane, senior advisor to Defendant Green, sent a letter responding that, on the original list, “two of the four applicants withdrew their names from consideration, which left fewer than the legally required three candidates.” According to the Green administration, a redo of the selection process was thus compelled by law “to ensure that a minimum of three names would be submitted to the Governor’s office for final consideration.”

39. On October 21 and 22, 2024, in a publicly noticed open meeting, the new nominating committee met with and interviewed ten applicants. Nominees Springer and Buchanan were required to reapply and undergo another round of interviews by the new committee.

40. At the outset of the public meeting, the assigned deputy attorney general summarized the governing rules, including the state’s Sunshine Law, HRS chapter 92. He explained that if an applicant wished to be interviewed privately, the committee could vote to go into executive session under HRS § 92-5(a)(2).

41. HRS § 92-5(a)(2) allows boards or commissions to close meetings to the public “to consider the hire, evaluation, dismissal, or discipline of an officer or employee.” But that provision applies to “the hire . . . of an officer or employee”—not a volunteer commissioner who serves without compensation. *See* HRS § 174C-7(c); *see also* OIP Op. Ltr. No. 05-04 (ruling that the Kaua’i County Council could not conduct interviews of individuals appointed to county boards and commissions in executive session because appointees do not receive compensation for their services and are thus not “hires” under HRS § 92-5(a)(2)).

42. The nominating committee gave the public the opportunity to provide testimony. But the committee disclosed only some of the potential nominees' names and did not share any of their credentials, qualifications, or resumes with the public in order to inform any testimony.

43. At the outset of the committee's first meeting on October 21, 2024, members of the public, including Earthjustice, testified that discarding the original nominee list and forming a new nominating committee to create a new list had no basis in the law and set dangerous precedent. The testimony also questioned the committee's ability to conduct an impartial process with Defendant Falconer as a committee member.

44. On the list of ten applicants, two withdrew. Five of the applicants were identified by name, including Springer, Buchanan, and Cashman. Interviews for the named applicants were conducted publicly. Interviews for the remaining three unnamed applicants were conducted in executive session, closed from the public. At no time did the nominating committee inform the public of the identities of these other candidates, or explain or justify why their interviews were behind closed doors.

45. After completing the interview process, the nominating committee sent another, new list of nominees to Defendant Green. Nominees Springer and Buchanan were again on the new list, along with Defendant Rodrigues.

46. On October 29, 2024, Defendant Green issued a press release announcing his selection of Defendant Rodrigues as the loea commissioner.

47. Because Defendant Green made the nomination outside of the legislative session, Defendant Rodrigues immediately took office as an interim appointee, subject to confirmation in the next legislative session.

48. In a video interview with Hawai'i News Now posted online, Defendant Green discussed his reasons for not choosing from the original list of nominees: "first person felt not to be Hawaiian enough, though it [sic] was Hawaiian and a leader, but not the guy people wanted. So, I didn't do it. Second person got scared out of their, you know, their dress clothes [sic]. They didn't want to deal with a conflict. And the third and fourth person, great people, but they brought an ideological perspective that was going to cause chaos as I try to work through some of these problems. I don't need that. I need people who will compromise . . . compromise on restoring water to the streams and building housing, and by the way, doing agriculture."

49. HRS § 174C-7(d) mandates that the nominating committee "shall . . . send to the governor the names of at least three individuals for each open position." The original nominating committee fulfilled this legal requirement and responsibility in sending its list of at least three individuals to Defendant Green in February 2024, during the pending legislative session.

50. HRS § 174C-7(d) mandates plainly that the governor "shall select" from a list submitted by a nominating committee, without specifying a mandatory number of nominees that must be remaining at the time the governor makes a selection from the list.

51. HRS § 174C-7(d) does not empower the governor to disregard or discard a nominee list for a redo of the process to produce a new list, if a nominee list that originally meets the prescribed minimum of at least three individuals later falls below that number. Rather, the governor is required to select from the available nominees on the original list.

52. The governor cannot nullify a list provided by the nominating committee by stalling his or her decision until eventualities may lead to less than three nominees remaining on the list.

53. A nominee cannot nullify a nominating committee list by withdrawing from the list, and the governor cannot nullify a list by arranging for such a withdrawal.

54. HRS § 174C-7(d) does not allow for reconstituting a new nominating committee with new members to send a new list of nominees to the governor for the same position.

55. HRS § 174C-7(d) also does not allow for nominees to withdraw from a list and, instead, sit on a new nominating committee to decide on other candidates and fashion a new nominee list. A former, withdrawn, or rejected nominee interviewing and selecting among fellow applicants and nominees presents an inherent conflict that impairs the impartiality of the reconstituted nominating committee and process.

FIRST CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)

56. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

57. Defendant Green lacked legal authority under HRS § 174C-7(d) to disregard and discard the original list of nominees submitted by the nominating committee in February 2024 and, instead, select from a new list from a new nominating committee and process. Rather, Defendant Green was and is required by law to select from the available nominees on the original list—namely, Nominees Springer and Buchanan.

58. The redo of the nominating committee process from August to October 2024, including reconstituting a new nominating committee and producing a new nominee list, violates the letter, purpose, and spirit of HRS § 174C-7(d) and is legally invalid.

59. Defendant Green also lacked legal authority and subverted the law in inviting, allowing, or arranging for the withdrawal of Nominee Falconer from the original list and

appointing Nominee Falconer to the new nominating committee to evaluate and select other candidates for a new nominee list.

60. Because Defendant Green selected Defendant Rodrigues for the loea commissioner position through an unlawful, invalid, and tainted process, Defendant Green's selection of Defendant Rodrigues is also legally invalid, and Defendant Rodrigues has no legal right to hold the position of loea commissioner and exercise its authorities and duties.

61. Further, in the event that the senate does not confirm Defendant Rodrigues's nomination, Defendant Green should be required to select from the remaining nominees on the original (as well as the new) nominee list—i.e., Nominees Springer and Buchanan—and not be allowed to redo the nomination process yet another time.

62. An actual controversy and antagonistic claims exist between Plaintiff and Defendants concerning whether (1) the failure to select a nominee from the original list submitted by the nominating committee and the redo of the nomination process to produce a new list are unlawful; (2) the selection of Defendant Rodrigues as loea commissioner is legally invalid, and Defendant Rodrigues has no legal right to hold that office and exercise its authorities and duties.

63. Plaintiff's interests in protecting and restoring water resources, Native Hawaiian practices and rights, and the public trust; upholding the integrity of the water commission and the loea commissioner position; and ensuring legal accountability and public transparency in the commission nomination process are directly and adversely affected by Defendants' nullification, manipulation, and subversion of the law and process for nominating the loea commissioner and Defendant Rodrigues's resulting unlawful and invalid nomination.

64. The issuance of a declaratory judgment by this Court will terminate the existing controversy between Plaintiff and Defendants regarding these issues.

65. Plaintiff is therefore entitled under HRS § 632-1 to a judicial declaration that (1) the failure to select a nominee from the original nominee list and the redo of the nomination process to produce a new list are unlawful; (2) the selection of Defendant Rodrigues as loea commissioner is legally invalid, and Defendant Rodrigues has no legal right to hold that office and exercise its authorities and duties; and (3) in the event the senate does not confirm Rodrigues's nomination, Defendant Green must select from the remaining nominees on the list and may not redo the nomination process yet another time.

SECOND CLAIM FOR RELIEF
(QUO WARRANTO RELIEF – AGAINST DEFENDANT RODRIGUES)

66. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

67. Because the redo of the nomination process for the loea commissioner position is unlawful, a writ of *quo warranto* and judgment upon such writ should issue declaring that Defendant Rodrigues cannot hold the office of loea commissioner and forbidding Defendant Rodrigues to exercise the authorities and duties of that office.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

A. For declaratory judgment entered in favor of Plaintiff that:

(1) Defendant Green and the commission acted without legal authority and contrary to the letter, purpose, and spirit of the law in nullifying the original list submitted by the nominating committee and redoing the nomination process to produce a new list;

(2) Defendant Green is required by law to select from the available nominees from the original list submitted by the nominating committee;

(3) Defendant Green's selection of Defendant Rodrigues is legally invalid, and Defendant Rodrigues has no legal right to hold the position of loea commissioner and exercise its authorities and duties;

(4) In the event the senate does not confirm Rodrigues's nomination, Defendant Green must select from the remaining nominees on the list and may not redo the nomination process yet another time.

B. For a writ of *quo warranto* and judgment upon such writ declaring that Defendant Rodrigues cannot hold the office of loea commissioner and forbidding Defendant Rodrigues to exercise the authorities and duties of that office;

C. For such additional judicial determinations, orders, and relief as may be necessary to implement and effectuate the legislative purpose and intent of HRS chapter 174C and Hawai'i Constitution article XI, § 7;

D. For an award of the costs of the suit herein, including an award of reasonable attorneys' fees; and

E. For such further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiff and Defendants.

DATED: Honolulu, Hawai'i, January 27, 2025.

Respectfully submitted,

/s/ Harley M. Broyles
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HARLEY M. BROYLES
EARTHJUSTICE
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Hui Kānāwai 'Oia'i'o