

SUPREME COURT OF HAWAI‘I

Hanabusa v. Lingle

119 Hawai‘i 341, 198 P.3d 604 (2008) · No. No. 29391 · Decided December 15, 2008

SUMMARY

The Supreme Court of Hawai‘i considered a petition for a writ of mandamus seeking to compel the governor to nominate University of Hawai‘i Board of Regents candidates from a list presented by the Candidate Advisory Council. The court held that the petitioners, state senators, had standing because the governor’s conduct allegedly impaired their constitutional advice-and-consent role. It further held that the terms of six regents expired on June 30, 2008 under Act 56 and directed the governor to nominate replacement candidates.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Moon, C.J.; Levinson, J.; Nakayama, J.; Acoba, J.; Duffy, J.
JURISDICTION	Hawaii
DECIDED	December 15, 2008
DOCKET	No. 29391
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding seeking a writ of mandamus compelling the governor to nominate six candidates to the University of Hawai‘i Board of Regents from the Candidate Advisory Council's list.
STANDARD OF REVIEW	Mandamus is an extraordinary remedy available only upon a clear and indisputable right to relief, a ministerial duty plainly prescribed as free from doubt, and the absence of an adequate alternative remedy.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Colleen Hanabusa, individually and in her capacity as Senate President, Norman Sakamoto, individually and in his capacity as Chair of the Senate Committee on Education v. Linda Lingle, Governor, State of Hawai‘i

TOPICS

- administrative law
- statutory interpretation
- remedies
- constitutional law

PRACTICE AREAS

constitutional law

administrative law

remedies

statutory interpretation

QUESTIONS PRESENTED

1. Whether the petitioners, as state senators with constitutional advice-and-consent responsibilities, had standing to seek mandamus relief.
2. Whether Act 56 caused the terms of the six identified Board of Regents members to expire on June 30, 2008.
3. Whether the statutory holdover provision authorized those six regents to continue serving after their terms expired.
4. Whether the governor's duty to nominate and appoint replacement regents was a nondiscretionary duty subject to a reasonable-time standard and enforceable by mandamus.

HOLDINGS

1. The petitioners had standing because the alleged usurpation of their constitutionally vested right and duty to advise and consent to Board of Regents appointments constituted a sufficiently personal and legally cognizable injury in fact.
2. The terms of Byron Bender, Michael Dahilig, Ramon de la Pena, Marlene Hapai, Catherine Lagareta, and Jane Tatibouet expired on June 30, 2008 under Act 56, sections 1 and 5.
3. The governor's application of HRS § 304A-104(a)'s holdover provision to the six regents contravened Act 56, sections 1 and 5 and was contrary to the modified constitutional appointment process.
4. The governor's constitutional and statutory duty to nominate and appoint Board of Regents members is nondiscretionary and subject to a reasonable-time standard; it may be compelled by mandamus when unreasonably postponed.

KEY QUOTATIONS

"We hold that respondent's application of the holdover provision of HRS § 304A-104(a) to regent de la Pena and to regents Bender, Dahilig, Hapai, Lagareta, and Tatibouet contravenes Act 56, Sections 1 and 5." (at 613)

"The governor's duty to act is enforceable by mandamus when the duty is "postponed unreasonably" and not performed after the passage of an "unreasonable period of time."" (at 614)

"Under the totality of the circumstances, the passage, to date, of nearly ten months since respondent was presented with the regent candidate list is an unreasonable period of time for respondent to perform her constitutional and statutory duty of nominating and appointing the six remaining regents." (at 615)

FACTUAL BACKGROUND

The Hawai'i Constitution and Act 56 established a modified process requiring the governor to select University of Hawai'i Board of Regents nominees from qualified candidates screened and presented by a Candidate

Advisory Council. The council presented the governor with a list of candidates on February 21, 2008, but six existing regents whose terms expired on June 30, 2008 continued serving pursuant to holdover agreements. The governor did not nominate replacements for those six seats within nearly ten months after receiving the candidate list, prompting two state senators to seek mandamus relief.

PROCEDURAL HISTORY

Petitioners, two state senators, filed an original mandamus petition in the Supreme Court of Hawai‘i after the governor permitted six Board of Regents members to continue serving after their terms expired. The court heard oral argument on December 4, 2008, issued an order granting the writ that day, and directed the governor to nominate six replacement candidates within thirty days. The published opinion explained the basis for that order.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The governor was directed to nominate, within thirty days, six Board of Regents candidates from the qualified candidate list presented by the Candidate Advisory Council on February 21, 2008.

CASES CITED

- Kema v. Gaddis, 91 Hawai‘i 200, 982 P.2d 334 (1999)
- In re Disciplinary Board of the Hawai‘i Supreme Court, 91 Hawai‘i 363, 984 P.2d 688 (1999)
- Salling v. Moon, 76 Hawai‘i 273, 874 P.2d 1098 (1994)
- Mottl v. Miyahira, 95 Hawai‘i 381, 23 P.3d 716 (2001)
- Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai‘i 64, 881 P.2d 1210 (1994)
- In re Application of Matson Navigation Co. v. Federal Deposit Insurance Corp., 81 Hawai‘i 270, 916 P.2d 680 (1996)
- Bush v. Watson, 81 Hawai‘i 474, 918 P.2d 1130 (1996)
- Life of the Land v. Land Use Commission of State of Hawai‘i, 63 Haw. 166, 623 P.2d 431 (1981)
- Doyle v. Oklahoma Bar Association, 998 F.2d 1559 (10th Cir. 1993)
- Akinaka v. Disciplinary Board of the Hawai‘i Supreme Court, 91 Hawai‘i 51, 979 P.2d 1077 (1999)
- Dennis v. Luis, 741 F.2d 628 (3d Cir. 1984)
- Riegle v. Federal Open Market Committee, 656 F.2d 873 (D.C. Cir. 1981)
- Capua v. Weyerhaeuser Co., 117 Hawai‘i 439, 184 P.3d 191 (2008)
- Brotherton v. Moore, 159 W. Va. 934, 230 S.E.2d 638 (1976)
- Trumka v. Moore, 180 W. Va. 284, 376 S.E.2d 178 (1988)
- Morganelli v. Casey, 166 Pa. Cmwlth. 574, 646 A.2d 744 (1994)
- Life of the Land v. Burns, 59 Haw. 244, 580 P.2d 405 (1978)
- Fukida v. Hon/Hawai‘i Service and Repair, 97 Hawai‘i 38, 33 P.3d 204 (2001)

