

HAWAII V OFFICE OF HAWAIIAN AFFAIRS

Supreme Court of the United States of America (Alito J for a unanimous Court)

31 March 2009

556 US ___ (2009)

United States of America – land rights – Hawaii – Apology Resolution by the United States Congress for overthrowing the Hawaiian monarchy – sovereign title to land – public trust for land and proceeds from land – native Hawaiian people’s land claims– Leiali’i parcel – construction of ‘whereas’ clauses – whether in light of the Apology Resolution any transfer of ceded lands would amount to a breach of trust

Facts:

Hawaii was annexed to the United States following the overthrow of the Hawaiian monarchy in 1893. Following the ‘Newlands Resolution’, Hawaii ceded to the United States all rights of sovereignty and the ‘absolute fee’ and ownership of all public, government and Crown lands, and all public property. The *Organic Act of 1900*, ch 339, 31 Stat 141 (1900) later established a government for Hawaii and declared that Crown land was the property of the Hawaiian Government, ‘free and clear from any trust ... and from all claim of any nature’. In 1959, the *Admission Act of 1959*, Pub L No 86-3, 73 Stat 4 (1959) granted the title to all public lands in Hawaii to the State of Hawaii. The land was to be held as a public trust to promote public purposes including bettering conditions of Native Hawaiians. The present case regarded a tract of land on Maui, the ‘Leiali’i parcel’, which had been held by the State since 1959 as part of the public trust.

In 1993 the United States Congress enacted an Apology Resolution, the first substantive provision of which acknowledged the illegal overthrow of the Kingdom of Hawaii, expressed deep regret to the Native Hawaiian people, and supported reconciliation. The Apology Resolution further acknowledged, in its preambular ‘whereas’ clauses, that Indigenous Hawaiian people never directly relinquished their claims over their national lands. The second substantive provision of the Resolution provided a disclaimer that the Resolution was not to ‘serve as a settlement of any claims against the United States’.

Hawaiian State law authorised the State to use or sell the ceded lands, provided that the proceeds be held in trust for the benefit of the citizens of Hawaii. Hawaii’s affordable housing agency, the Housing Finance and Development Corporation (‘HFDC’), received approval to detach the Leiali’i parcel from the trust and develop it. HFDC agreed to compensate the Office of Hawaiian Affairs (‘OHA’), as was required, but refused OHA’s further demand to include a disclaimer preserving any native Hawaiian land claims to ownership of lands transferred from public trust for redevelopment.

In relying on the Apology, OHA sought to enjoin the defendants from sale or transfer of the parcel and any other ceded lands until final determination of native Hawaiians’ claims. Following the State trial court’s finding against OHA, the Supreme Court of Hawaii, in relying on a plain reading of the Apology Resolution, vacated the finding and granted the injunction, despite the fact that State law and the *Admissions Act* gave the State the power to sell ceded land. There were two main issues raised on appeal that the Supreme Court had to determine. Firstly, it had to be decided whether the Court had jurisdiction to hear the appeal. Secondly, if the Court was found to have jurisdiction, the Court had to determine whether the Apology Resolution passed by Congress had stripped the State of Hawaii of its authority to alienate its sovereign territory.

Held, per curiam, reversing and remitting the decision:

533 US 262 (2001) considered; *Clark v Martinez*, 543 US 371 (2005) cited.

1. The decision of the State Supreme Court rested upon federal law, with the consequence that the US Supreme Court has jurisdiction to hear the appeal: 6–7; *Michigan v Long*, 463 US 1032 (1983) followed.
2. The Apology Resolution did not strip Hawaii of its sovereign authority to alienate the lands which the United States held in absolute fee and granted to the State upon its admission into the Union. The conciliatory and precatory language found in the first substantive provision of the Apology Resolution is not the kind that Congress uses to create substantive rights, especially those enforceable against the co-sovereign States: 7–8; *Permanent Mission of India to United Nations v City of New York*, 551 US 193 (2007) followed, *Pennhurst State School and Hospital v Halderman*, 451 US 1 (1981) cited.
3. The disclaimer provision of the Apology Resolution, in stating that the Apology Resolution was not intended to serve as a settlement of any claims against the United States, did not then amount to a congressional recognition of claims against Hawaii, even if this would make the disclaimer provision irrelevant: 9; *Louisville & Nashville R Co v Mottley*, 219 US 467 (1911) distinguished, *Pacific Bell Telephone Co v linkLine Communications Inc*, 555 US ____ (2009) cited.
4. The preambular ‘whereas’ clauses that preface the Apology Resolution do not amount to a recognition by Congress that the native Hawaiian people have unrelinquished claims over the ceded lands, and this is for at least three reasons. First, the language indicates that such clauses were not designed to have operative effect and should not bear the weight the lower court put on them. Second, the Resolution reveals no indication that Congress intended to amend or repeal Hawaii’s rights and obligations under the *Admission Act*, nor is there evidence of an intention to ‘cloud’ the title transferred by the United States to Hawaii in 1959. Third, it would raise constitutional concerns if after statehood Congress could alter Hawaii’s title to its sovereign lands: 10–12; *District of Columbia v Heller*, 554 US ____ (2008) followed, *Yazoo & Mississippi Valley R Co v Thomas*, 132 US 174 (1889) cited; *National Association of Home Builders v Defenders of Wildlife*, 551 US 664 (2007) cited; *Idaho v United States*,