

**H. William Burgess  
Attorney at Law**

2299-C Round Top Drive ▪ Honolulu, Hawaii 96822

Telephone: (808) 947-3234 ▪ Fax: (808) 947-5822

Email: [hwburgess@hawaii.rr.com](mailto:hwburgess@hawaii.rr.com)

April 5, 2009

Ms. Molly Dwyer  
Clerk of Court  
U.S. Court of Appeals  
for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1518

Re: Kuroiwa v. Lingle, No. 08-17287  
Citation of Supplemental Authority  
FRAP 28(j) and Ninth Circuit Rule 28-6

Dear Ms. Dwyer:

*Pro se* and for Kuroiwa et al. I am pleased to advise you of the following decision entered after our briefs were filed.

*Hawaii et al v. Office of Hawaiian Affairs et al*, --- S.Ct. ----, 2009 WL 814889 (U.S. Hawai'i) decided 3/31/2009.

SCOTUS reversed the Hawaii Supreme Court's 1/31/2008 judgment enjoining the State from selling any of the 1.2 million acres of the Ceded Lands Trust until the claims of native Hawaiians to those lands have been resolved.

"Pursuant to the Newlands Resolution, the Republic of Hawaii ... cede[d] ... to the United States the absolute fee and ownership of all public, Government, or Crown lands, ..." (*Id.* at 3). Reliance on "whereas" clauses was "wrong for at least three reasons," the third being that "the Apology Resolution would raise grave constitutional concerns if it purported to "cloud" Hawaii's title to its sovereign lands." (*Id.* at 8.)

Thus, the U.S. Supreme Court has now effectively ruled that the Apology

Resolution, asserting unrelinquished claims of Native Hawaiians to the 1.2 million acres of the Ceded Lands Trust, raises grave constitutional concerns because such claims would “cloud” the title that the United States held in “absolute fee” and transferred to the State in 1959.

And the high court also tells us that the canon of constitutional avoidance “is a tool for choosing between competing plausible interpretations of a statutory text.” In this appeal these Appellants challenge the same assertions in the Apology resolution and the misinterpretation of § 5(f). They urge the court to choose the alternative which “does not raise serious constitutional doubts;” i.e., to re-confirm this court’s interpretation in *Day v. Apoliona* that the 1.2 million acres are for all the people of Hawaii, not just for native Hawaiians.

Such an interpretation of a federal statute does not require the presence of the United States as a party, nor should sanctions be imposed for advocating it. See Appellants’ opening brief 35 – 37. Also, Kuroiwas’ counter-motion for sanctions should be considered on its merits and granted to stop the ongoing grave constitutional violations. See Appellants’ Opening Brief 41 – 44.

Very truly yours,

/s/ H. William Burgess  
H. William Burgess  
*Pro se* and Attorney for  
Plaintiffs–Appellants Kuroiwa, et al.

Cc: All counsel via CM/ECF system.