



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 1035, RELATING TO APPELLATE JURISDICTION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 3, 2009 **TIME:** 2:00 PM

LOCATION: State Capitol, Room 325
Deliver to: Committee Clerk, Room 302, 1 Copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Girard D. Lau, First Deputy Solicitor General

Chair Karamatsu and Members of the Committee:

The Attorney General strongly supports this bill. The bill adds a new section to chapter 641, Hawaii Revised Statutes, to authorize immediate appeals from certain orders regarding preliminary injunctions, and from denials of sovereign, absolute, or qualified immunity.

Currently, there is no statutory provision authorizing immediate appeals from orders granting or refusing preliminary injunctions. As a consequence, erroneous rulings of lower courts granting or refusing preliminary injunctions may not be immediately reviewable and may cause substantial, often irreparable, injury by the time the orders become final decisions that are reviewable on appeal. The new statute would allow circuit or land court orders granting or denying preliminary injunctions to be subject to immediate appellate jurisdiction, allowing aggrieved parties to seek a stay pending appeal, or other relief. This change would make state court practice consistent with current federal court practice allowing immediate appeals from preliminary orders granting or refusing injunctions. See 28 U.S.C. § 1292(a)(1).

Separately, the State of Hawaii and its officials are protected by the doctrines of sovereign, absolute, and qualified immunity, in

part to ensure that qualified individuals are not deterred from serving in Hawaii government positions. The burdens of being subject to a lawsuit can be substantial, including not only the possibly crushing monetary liability, but the tremendous burdens, time, and expenses of the litigation itself, including discovery and trial, and the fear of the unknown, yet potentially devastating, result. Accordingly, it is important that claims of immunity are decided not only correctly, but also quickly, because forcing state officials to wait until the litigation is over to appeal erroneous denials of claims of immunity irreparably subjects them to the tremendous burdens of the litigation itself. This bill would ensure that denials of motions seeking dismissal or judgment for the defendants on grounds of sovereign, absolute, or qualified immunity would be immediately appealable. This change would make the practice in Hawaii state courts consistent with the practice that already exists in the federal courts. The federal courts have long provided for immediate appeals from denials of sovereign immunity, see Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 147 (1993), and denials of absolute and qualified immunity, see Mitchell v. Forsyth, 472 U.S. 511, 525-30 (1985).

In short, both parts of this bill would make state court practice consistent with existing federal court practice.

The immediate appealability of preliminary injunction rulings protects the public as well as private citizens or entities from the harmful and often irreparable effects of such rulings when they are erroneous.

Allowing immediate appeals of immunity denials would encourage government service, and, by protecting the State and its officials from the needless, but heavy, financial burdens of litigation that should have been terminated at an earlier stage, would save the public substantial taxpayer dollars.

For these reasons, we respectfully urge that this measure be passed.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Judiciary
The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair

Tuesday, March 3, 2009, 2:00 p.m.
State Capitol, Conference Room 325

by
James Branham
Court Staff Attorney
Supreme Court

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1035, Relating to Appeals

Purpose: Authorizes immediate appeals from certain court orders regarding injunctions and denials of sovereign, absolute, or qualified immunity.

Judiciary's Position:

The Judiciary opposes House Bill No. 1035. Currently, appeals from non-final orders are allowed only upon certification by the trial court that an interlocutory appeal will more speedily terminate the litigation. The requirement that a party convince the trial court that an interlocutory appeal will more speedily terminate the litigation is necessary to avoid clogging the appellate courts with untimely appeals. The Family Court of the First Circuit, for example, estimates that injunctive relief is sought in 50 percent of those divorce cases which are not on the uncontested calendar, 20 percent of the paternity cases, virtually 100 percent of the child protective and adult abuse case, and 20 percent of other non-juvenile family court cases. Requiring that a party seek a judge's certification inhibits a party's temptation to use an interlocutory appeal as a weapon for increasing an opponent's cost of litigation or using an interlocutory appeal to delay final resolution of the litigation. A statutory right to appeal from interlocutory orders without judicial oversight, as would be allowed by House Bill No. 1035,



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would tempt some litigants to seek injunctive relief or claim immunity as a way of increasing costs to an opponent and delaying resolution of the case.

Thank you for allowing the Judiciary to provide testimony on House Bill No. 1035.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS OF HAWAII IN OPPOSITION TO H.B. NO. 1035

March 3, 2009

To: Chairman Jon Riki Karamatsu and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. No. 1035.

The purpose of this bill is to authorize immediate appeals from certain orders regarding injunctions and from denials of sovereign, absolute, or qualified immunity.

This measure as written would result in piecemeal litigation in many cases. Currently, the court can weigh the facts of the situation, case by case, and make a determination as to whether an interlocutory appeal should be allowed. HAJ feels that this is the more efficient and fair way to allow an appeal rather than give a party an automatic immediate appeal as a matter of right in the situations mentioned in this bill. We feel that there could be many instances whereby “frivolous” appeals could result.

HAJ opposes this bill and request that it not pass out of this committee. Thank you for the opportunity to testify.