



SB1495
RELATING TO ACTIONS FOR QUIET TITLE
Senate Committee on Judiciary

February 26, 2019

9:00 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1495, which seeks to address legal processes that have long been exploited to forcibly sever Native Hawaiian families' connections to their ancestral lands.

Kuleana land parcels (kuleana), many of which have been passed down from original awardees through multiple generations of heirs, often represent the last vestige of the legal recognition originally granted to Native Hawaiian families' traditional tenure of ancestral lands. Today, maintaining a connection to family kuleana continues to be critical for many Native Hawaiians to maintain a connection to their ancestors and ancestral lands, as well as to uphold the traditional practices, lifestyles, and values that derive from their cultural and family heritage.

Unfortunately, legal mechanisms, such as quiet title and adverse possession, have often been used to forcibly sever the connection between Native Hawaiian families and their kuleana. Prior to the overthrow of the Hawaiian Kingdom government, quiet title actions were a beneficial legal tool for Native Hawaiian kuleana awardees to stave-off adverse possession claims made by encroaching large agricultural landowners. However, beginning in the Territorial era, changes to the quiet title process resulted in the use of quiet title actions to dispossess Native Hawaiian families of their kuleana. The current framework of quiet title action continues to leave kuleana vulnerable to dispossession, including through the use of complex and cost-prohibitive legal processes that effectively foreclose quiet title defendants, i.e. kuleana owners, from challenging quiet title actions and adverse possession claims.

SB1495 seeks to address the various means by which the current quiet title framework has been exploited, to unfairly sever Native Hawaiians from lands held in their family for generations; furthermore, this measure attempts to better ensure that families are able to maintain traditional and cultural access to their kuleana parcels, notwithstanding the filing of a quiet title action against them.

Therefore, OHA urges the Committee to **PASS** SB1495. Mahalo for the opportunity to testify on this measure.

SB-1495

Submitted on: 2/22/2019 12:45:58 AM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	Testifying for We Are One, Inc. - www.WeAreOne.cc - WAO	Support	No

Comments:

[#KeepHawaiiLandsinHawaiianHands](#) [#KuleanaLands](#)



BEFORE THE SENATE JUCIDIARY COMMITTEE
February 22, 2019

Senate Bill 1495
Relating to Actions for Quiet Title; Kuleana Land; Mediation

Aloha Chair Rhoads, Vice Chair Wakai, and members of the Committee,

KPAC submits the following testimony in **STRONG SUPPORT** of Senate Bill 1495 which provides that where a quiet title action involves kuleana land, any defendant may request mandatory mediation to attempt to resolve the dispute and request consolidation into a single action. However, we do have a suggested amendment to strengthen this bill so that it may better fulfill the original intent which is to provide additional protections to traditional Kuleana land owners.

Kuleana lands were granted to Kanaka Maoli tenant farmers between 1850 and 1855 and include gathering, access, and agricultural rights as well as the right to build a dwelling. Only 8,205 Kanaka Maoli received Kuleana lands that account for less than 1 percent of Hawaiian Kingdom lands. Many of these awards were adversely possessed by corporations like sugar and pineapple plantations but a precious few are still in the same families today keeping their ancestral tie to their lands. The Kanaka Maoli peoples own some of the worst socio economic, health and education statistics in the state. For example, we make up almost 40% of the houseless population. Therefore, it is imperative that the State of Hawai'i help Kanaka Maoli stay on their ancestral lands. As people of the land, the well-being of Kanaka Maoli is intrinsically tied to the 'āina.

SB1495 helps keep Kanaka Maoli families on their lands by alleviating the economic stress of defending themselves against Quiet actions. Having paid fees and taxes for these lands for 170 years many of these families don't have the economic means of hiring attorneys for costly court cases to defend their lands. KPAC supports the mandatory provisions in this measure for the following reasons:

1. Providing mandatory mediation helps to narrow down issues in dispute lowering costs of litigation especially for parties without attorneys. The sheer number of family members that are usually involved makes this avenue a better route rather than going directly to court.
2. Consolidating separate quiet title actions into one for the same kuleana land award will keep costs down for the defendants and prevent the Plaintiff from saying one thing in one case and another in another case.
3. Language that states that the Plaintiffs shall bear the cost of mediation or other court fees. There should be no situation where the defendants should have to bear the cost of mediation in order for someone trying to quiet title or "legally steal" their lands.

KPAC respectfully request that the Judiciary Committee strengthens this measure even more with the following amendment: On page 1 line 6 after Kuleana Lands please add "due to their special status under Kingdom law and the state constitution"

Respectfully submitted,

M. Healani Sonoda-Pale
Chair, KPAC

SB-1495

Submitted on: 2/25/2019 8:06:44 AM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Testifying for Democratic Party of Hawaii, Hawaiian Affairs Caucu	Support	No

Comments:

The Hawaiian Affairs Caucus of the Democratic Party of Hawaii continues to support SB1495 with amendments

1. On page 1 line 6 after Kuleana Lands please add "due to their special status under Kingdom law and the state constitution".

2. Add this wording to section (f) as number (4) "The plaintiff shall not seek and shall not be awarded the extinguishment or alienation of the defendant's access to or through the land for native Hawaiian cultural and traditional practices or present or historic access to other nearby parcels."

SB-1495

Submitted on: 2/25/2019 8:57:40 AM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



February 25, 2019

SUBMITTED VIA CAPITOL WEBSITE



Hawaii State Capitol
Honolulu, Hawaii 96813

Re: SB 1495

To Whom It May Concern:

My name is Michael W. Gibson. I am an attorney. I have been licensed to practice law in Hawaii for more than 40 years. I am a litigator primarily handling real estate disputes. Quiet Title and Partition cases are a majority of the type of cases I handle. I have been in at least 50 such cases in the last 40 years.

I have several comments concerning SB 1495. My first comment is that the bill requires the Court to order mandatory mediation upon the request for any defendant at the time the action is brought. Usually there are defendants who are difficult to join in the case for several months after the case is commenced. Unless all the parties participate in the mediation, it is a waste of time and possibly money.

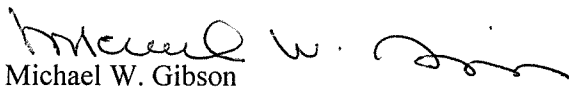
The next concern I have with SB 1495 is that it states that upon the request of Defendants in separate quiet title/partition actions the court shall consolidate the separate action into a single action. This would require cases with different defendants, different chains of paper title, different genealogies and at different stages in the judicial process would have to be consolidated.

Finally, and most significantly, the legislature in 2016 passed HRS § 668A which became effective January 1, 2017. The law is called the Heirs Property Law. It was sponsored by the Committee on Uniform Laws. It was finally passed after years of being submitted to a committee made up of interested parties including the Legislature, title companies, the Native Hawaiian Legal Corporation and myself and landowner representatives. The law was intended to address the concerns of SB 1495. I urge you to see how HRS § 668A works for a couple years before amending it.

In summary, I think SB 1495 is flawed because it mixes up Quiet Title and Partition. SB 1495 seems to be an attempt to fix partition cases but it clearly deals with HRS § 669 which is the Quiet Title statute. Finally, and most importantly, I urge the legislature to see how HRS § 668A works before enacting new legislation like SB 1495.

Very truly yours,

ASHFORD & WRISTON
A LIMITED LIABILITY LAW PARTNERSHIP LLP

By 
Michael W. Gibson

MWG:shp

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SB-1495

Submitted on: 2/21/2019 6:20:13 PM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

As a native Hawaiian and Hawai'i landowner, I support SB1495.

SB-1495

Submitted on: 2/22/2019 7:33:01 AM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments:

Strongly Support.

SB-1495

Submitted on: 2/23/2019 6:25:56 PM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mapuana Lukela	Individual	Support	No

Comments:

I am in full support of SB1495, I agree to the bills intent to provide an avenue where the kuleana land owners can address their concerns through mediation.

SB-1495

Submitted on: 2/24/2019 8:10:22 AM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Murphy	Individual	Support	No

Comments:

SB-1495

Submitted on: 2/24/2019 8:11:18 AM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Whispering Wind	Individual	Support	No

Comments:

SB-1495

Submitted on: 2/25/2019 9:08:42 AM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
M. Llanes	Individual	Support	No

Comments:

Because of the great potential for a very uneven playing field, I support SB1495 requiring mediation in quiet title land issues. This will prevent individuals or corporations like Mr. Zuckerberg from pushing rightful owners off their kuleana lands now and in the future.

Mahalo for your consideration.

MeleLani Llanes

Makakilo, O'ahu

LATE

The reason the Rapozo family holdouts continue the resistance and the reasons I, on behalf of the extended Rapozo family, provide this testimony is to take a principled stance against what is being done against the legacy of kuleana lands in this case, what is being done against the role and importance of Hawaii's traditional extended families and what is being done to the reasonable use of and even-handed reliance on law and the cultural and civic underpinnings that make law meaningful. Shall I be clear: the Rapozo family has simply not been afforded meaningful protection of law given the factual reality of the situation of the kuleana quit title action over the Rapozo kuleana at Pila'a, Kauai.

I and my hold Rapozo cousins wish to take a stance not just for the Rapozo family but for all of Hawaii's traditional extended families. The extended family includes, of course, the branches of the family that are Kanaka Maoli and they provide a cultural anchor for us all. But it includes all the ethnic groups that law rightful claim to the cultural legacy of Hawaii and collective cultural anchor they all provide.

The latter point is of great concern because part of the larger abuses concerning quiet title and kuleana lands is that the practical aspects of behaviour concerning kuleana land are often not just culturally insulting but simply abusive both in light of Hawaii being a state of the United States and in light of civic society of Hawaii today being a descendant of the culturally legacy of the Kingdom of Hawaii. In Hawaii, there is often a degree of cultural appreciation and civic restraint that underlies the construction of law and its application in day-to-day day life. Sadly for a range of reasons, there seems to have been a historical tolerance going back to Hawaii's darkest days concerning kuleana lands. Restraint often exercised as a matter of civic and cultural courtesy by some though not all traditional large land holders. Parker Ranch is, for example, noteworthy in seeking to be sensitive, fair and cultural savvy in dealing with kuleana lands. Others have not been. But of bigger concern to me and the extended and modernity has in many way eroded the cultural and civic restraints of civic society of traditional society. and appreciation and the intervention of law enforcement to ensure that existing statues and any revised statutes protect the interests of owners of kuleana laws.

SB-1495

Submitted on: 2/25/2019 12:51:44 PM

Testimony for JDC on 2/26/2019 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie K Akana	Individual	Support	No

Comments:

I am writing to support SB1495. It allows a defendant the right to request mediation in court to address issues with any quiet title action that involves Kuleana Lands. This will help protect the interests of the people of Hawai'i.

How exactly does the state benefit by allowing outside entities to purchase such lands and force Kanaka families into a houseless and landless situation? This in turn puts an entire family unit into financial disparity requiring aid from the state further burdening state welfare agencies. Because of this loss of land and home families have also lost their financial stability as they farmed the land for income and household food. There are no provisions to ensure the protection of Kuleana land. This bill can provide some mechanisms to guarantee that the interests of the people of Hawai'i are considered. Land plots need to be adequately surveyed and recorded as it was not properly done originally in 1890s. There is documentation that admitted the surveyors were untrained and the job was inaccurate! Therefore, the land was NEVER properly zoned from past to present. This must first be addressed before any more Kuleana lands are sold via quiet title. It is imperative particularly now that we know the State has a duty to ensure that Kuleana lands are to remain with the Kanaka families they were originally granted to in perpetuity. For much too long the state has turned a blind eye to this land grab travesty under quiet title legal loop holes. If this happened to your parents who you not fight for justice? Not honoring this agreement dishonors all justice you hold dear. Hawaiians are the beneficiaries of these lands and no corporate entities with bottomless pockets should have the legal ability to force Kanaka families off their rightfully issues Kuleana lands. Please pass SB1495.

Mahalo Laurie Akana

LATE

SB-1495

Submitted on: 2/25/2019 2:37:12 PM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Keeaumoku Kapu	Individual	Support	No

Comments:

Aloha mai ke aupuni o Hawaii.

O wau o Ke'eaumoku Kapu and i am a kuleana who have over 21 years of first hand experience to know what it is like to deal with the hardship and trials being subjected to a cross examining process which is so heart wrenching to a point in ones life in finding myself being strung out and prayed upon by people i know nothing about as they endulge into my life trying to discredit every once of energy i have in me while they try to prove i am not the person i claim to be.

I am subjected by a troubled process, many times loosing sleep, unhealthy not eating right, having little association with my wife and worst of all my children and grand children all because of someones greed for our kuleana whereas they already own over 5.000 acres which is not enough. they want my less then 4 acres and are willing to incriminate me and my whole ohana to get it at what ever the cost to a point of leaving us homeless. Would this mediation assure we not get cast out into the homeless population as of many Hawaiians are today?

SB 1495 i feel is a small step forward in addressing the core problem we kuleana face but then it is better then what is pending within the law today, in fact any change in the rules is a plus for we kuleana and other kuleana throughout this state of Hawaii truly need a process that will assist us and not sever our relation with our ties to our place of our begginging. A place that is rooted with stories of our past and the memories that we are starting to forget. I plee and urge this body to support SB 1495 so it will help our ohana start to pick up the pieces of our lives again and help us gain a better stance for our future generations tomorrow. Mahalo.

Ke'eaumoku Kapu