

MAR 11 2022

SENATE CONCURRENT RESOLUTION

URGING THE GOVERNOR TO COMPLY WITH THE HAWAII SUPREME COURT
RULING IN KALIMA V. STATE OF HAWAII AND STOP OPPOSING THE
PAYMENT OF DAMAGES TO BENEFICIARIES HARMED BY THE STATE'S
BREACH OF TRUST.

1 WHEREAS, the Hawaiian Home Lands Trust Individual Claims
2 Review Panel (Panel) was established in 1991 pursuant to chapter
3 674, Hawaii Revised Statutes, to provide native Hawaiian
4 beneficiaries of the Hawaii Home Lands Program to pursue their
5 claims for breach of trust through administrative and judicial
6 venues; and
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8 WHEREAS, the Panel did not complete its work by 1999 and
9 the legislative action to extend the Panel's work was vetoed by
10 the Governor that same year, leaving over four thousand claims
11 by 2,721 claimants in limbo; and
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13 WHEREAS, in 1999, a lawsuit brought by beneficiaries of the
14 Hawaiian Home Lands Trust was filed in the First Circuit Court,
15 titled *Kalima v. State of Hawaii*, which was affirmed by the
16 First Circuit Court as a class action case in 2000 and that
17 order was appealed by the State in 2001; and
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19 WHEREAS, the Hawaii Supreme Court in *Kalima v. State of*
20 *Hawaii* ruled in 2006 that claimants have a right to sue for
21 monetary damages in circuit court for breaches of trust that
22 occurred between 1959 through 1998; and
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24 WHEREAS, in 2007, the claimants' motion for certification
25 of subclasses was granted with the largest subclass for those on
26 the waiting list, comprising of nearly seventy percent of all
27 class members; and
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29 WHEREAS, in 2009, the First Circuit Court ruled that the
30 State had breached its trust obligations to Hawaiian home lands



1 beneficiaries on the waiting list and was financially liable for
2 the delays in beneficiaries receiving homesteads; and
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4 WHEREAS, in 2011, the First Circuit Court determined that a
5 waiting list subclass-wide damages model would be adopted that
6 would measure each applicants damages by the length of time that
7 they waited for a homestead; and
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9 WHEREAS, in 2018, the First Circuit Court's final judgment
10 ruled in favor of the waiting list subclass of native Hawaiian
11 beneficiaries and the State immediately appealed the decision
12 contending that it did not breach its trust obligations to
13 claimants and therefore should not be liable for damages; and
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15 WHEREAS, in 2020, the Hawaii Supreme Court ruled that the
16 State breached its duties as trustee of the Hawaii Home Lands
17 Trust, that the fair market value model is an adequate method
18 for approximating actual damages from the time beneficiaries
19 applied to be on the waitlist, and that the State bears the
20 burden of proving if an individual beneficiary is entitled to
21 reduced damages for any reason; and
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23 WHEREAS, the Hawaii Supreme Court stated that, "[i]t is
24 clear to us that the State, by mismanaging the Trust, failing to
25 keep adequate records, and continuing to litigate this case for
26 decades, is creating a situation in which it would be difficult
27 to accurately assess damages"; and
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29 WHEREAS, *Kalima v. State of Hawaii* is still being
30 contentiously litigated in the First Circuit Court because the
31 State seems unwilling to amicably and responsibly settle any
32 outstanding issues about administering the claims process and
33 calculating the damages for eligible claimants; now, therefore,
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35 BE IT RESOLVED by the Senate of the Thirty-first
36 Legislature of the State of Hawaii, Regular Session of 2022, the
37 House of Representatives concurring, that the Governor is urged
38 to expeditiously comply with the Hawaii Supreme Court ruling in
39 *Kalima v. State of Hawaii* and stop opposing the payment of
40 damages to beneficiaries harmed by the State's breach of trust;
41 and
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S.C.R. NO. 112

1 BE IT FURTHER RESOLVED that a certified copy of this
2 Concurrent Resolution be transmitted to the Governor.

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5 OFFERED BY:

Jose Acasio

