

MAR 11 2022

SENATE 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

7
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

12
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

18
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

23
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

28
29 WHEREAS, in 2009, the First Circuit Court ruled that the
30 State had breached its trust obligations to Hawaiian home lands
31 beneficiaries on the waiting list and was financially liable for
32 the delays in beneficiaries receiving homesteads; and



1 WHEREAS, in 2011, the First Circuit Court determined that a
2 waiting list subclass-wide damages model would be adopted that
3 would measure each applicants damages by the length of time that
4 they waited for a homestead; and
5

6 WHEREAS, in 2018, the First Circuit Court's final judgment
7 ruled in favor of the waiting list subclass of native Hawaiian
8 beneficiaries and the State immediately appealed the decision
9 contending that it did not breach its trust obligations to
10 claimants and therefore should not be liable for damages; and
11

12 WHEREAS, in 2020, the Hawaii Supreme Court ruled that the
13 State breached its duties as trustee of the Hawaii Home Lands
14 Trust, that the fair market value model is an adequate method
15 for approximating actual damages from the time beneficiaries
16 applied to be on the waitlist, and that the State bears the
17 burden of proving if an individual beneficiary is entitled to
18 reduced damages for any reason; and
19

20 WHEREAS, the Hawaii Supreme Court stated that, "[i]t is
21 clear to us that the State, by mismanaging the Trust, failing to
22 keep adequate records, and continuing to litigate this case for
23 decades, is creating a situation in which it would be difficult
24 to accurately assess damages"; and
25

26 WHEREAS, *Kalima v. State of Hawaii* is still being
27 contentiously litigated in the First Circuit Court because the
28 State seems unwilling to amicably and responsibly settle any
29 outstanding issues about administering the claims process and
30 calculating the damages for eligible claimants; now, therefore,
31

32 BE IT RESOLVED by the Senate of the Thirty-first
33 Legislature of the State of Hawaii, Regular Session of 2022,
34 that the Governor is urged to expeditiously comply with the
35 Hawaii Supreme Court ruling in *Kalima v. State of Hawaii* and
36 stop opposing the payment of damages to beneficiaries harmed by
37 the State's breach of trust; and
38
39



1 BE IT FURTHER RESOLVED that a certified copy of this
2 Resolution be transmitted to the Governor.
3
4
5

OFFERED BY: _____

Jane Alcasio

