



## **News Release – Office of Rep. Mele Carroll**

Monday, March 14, 2011

**Media Contact:** Michael Greenough, Communications Liaison

(808) 586-6474, [carroll3@capitol.hawaii.gov](mailto:carroll3@capitol.hawaii.gov)

Website: <http://MeleCarroll.wordpress.com>

### **House Concurrent Resolution 107 establishes Legislative Committee to investigate “Executive Agreements” between the United States and the Hawaiian Kingdom in 1893.**

HONOLULU—On Monday, March 14, 2011, Representative Mele Carroll introduced House Concurrent Resolution 107 calling for the establishment of a joint legislative investigating committee to investigate the status of two executive agreements entered into in 1893 between the United States President Grover Cleveland and Queen Lili‘uokalani of the Hawaiian Kingdom, called the *Lili‘uokalani Assignment* (January 17, 1893) and the *Agreement of Restoration* (December 18, 1893). The *Lili‘uokalani Assignment* mandates the President to administer Hawaiian Kingdom law, and the *Agreement of Restoration* mandates the President to restore the Hawaiian Kingdom government as it was prior to illegal landing of U.S. troops on January 16, 1893, and thereafter the Queen to grant amnesty to certain people who committed treason.

According to the U.S. Supreme Court in *U.S. v. Belmont* (1937), *U.S. v. Pink* (1942) and *American Insurance Association v. Garamendi* (2003), executive agreements are treaties, and as such are the Supreme Law of the Land under the *Supremacy Clause* of the U.S. Constitution. Article VI, clause 2 of the U.S. Constitution provides: “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all [executive agreements] made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.” In *Garamendi*, the Supreme Court stated, “valid executive agreements are fit to preempt state law, just as treaties are,” which brings into question the laws of the State of Hawai‘i.

These executive agreements were kept from the general public for the last 113 years when the Hawaiian Islands were unilaterally annexed by Congressional action during the Spanish-American War, but was

recently brought to the attention before the U.S. District Court in Washington, D.C., in *Sai v. Clinton, et al.* (case no. 10-899CKK), when a federal lawsuit was filed by Dr. Keanu Sai against Secretary of State Clinton, Secretary of Defense Gates and Admiral Willard of the U.S. Pacific Command under the Alien Tort Statute for tort injuries suffered as a result of the violation of the *Lili'uokalani assignment*. These executive agreements were also the subject of Dr. Sai's political science doctoral dissertation and law journal articles, which can be accessed online at <http://www2.hawaii.edu/~anu/publications.html>.

On February 25, 2009, Dr. Sai gave a briefing on the legal status of Hawai'i and the executive agreements to Colonel James Herring, Army Staff Judge Advocate, 8<sup>th</sup> Theater Sustainment Command, and his staff officers at Wheeler AAF Courthouse in Wahiawa. The presentation was titled, "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State."

On June 9, 2010, at the request of Gary Kurokawa, Administrator of the City & County of Honolulu Real Property Assessment Division, Dr. Sai gave a presentation on the evolution of Hawaiian land titles and the impact of the 1893 executive agreements to his staff of the Real Property Division at the Mission Memorial Auditorium in Honolulu, and on June 28, 2010, at the request of Scott Teruya, Administrator of the County of Maui Real Property Tax Division, Dr. Sai gave the same presentation to his staff at the HGEA Building in Kahului.

On November 13, 2010, the Association of Hawaiian Civic Clubs at their annual convention at the Sheraton Keauhou unanimously passed Resolution No. 10-15 *Acknowledging Queen Lili'uokalani's Agreements with President Grover Cleveland to Execute Hawaiian Law and to Restore the Hawaiian Government*. The resolution acknowledged the *Lili'uokalani Assignment* and the *Agreement of Restoration* as binding executive agreements upon the successors in office of President Cleveland, which at the present time is President Obama.

Defense attorneys have also been using these executive agreements as grounds for dismissal in *State of Hawai'i v. Kaulia* (criminal no. 09-1-352K), *State of Hawai'i v. Larsen* (case no. 3DTA 08-03139), *State of Hawai'i v. Larsen* (case no. 3DTC 08-023156), *Onewest Bank v. Tamanaha* (case no. 3RC 10-1-1306), and *Fukumitsu v. Fukumitsu, et al.* (case no. 08-1-0843RAT). The executive agreements have also brought to light defects in current fee-simple ownership of land and the filing of title insurance claims, which has a profound impact on the mortgage industry and foreclosures here in Hawai'i.

The purpose and duties of the joint investigating committee shall be to inquire into the status of the executive agreements by holding meetings and hearings as necessary, receiving all information from the inquiry, and submitting a final report to the Legislature. Representative Mele Carroll stated that the purpose of House Concurrent Resolution 107 is to "ensure that we, as Legislators, who took an oath to

support and defend not only the Constitution of the State of Hawai‘i, but also the Constitution of the United States, must be mindful of our fiduciary duty and obligation to conform to the *Supremacy Clause* of the United States Constitution. As Majority Whip for the House of Representatives of the State of Hawai‘i, it is my duty to bring the executive agreements to the attention of the Hawai‘i State Legislature and that the joint investigating committee have the powers necessary to receive all information for its final report to the Legislature.”

###

---

---

# HOUSE CONCURRENT RESOLUTION

ESTABLISHING A JOINT LEGISLATIVE INVESTIGATING COMMITTEE TO INVESTIGATE THE STATUS OF TWO EXECUTIVE AGREEMENTS ENTERED INTO IN 1893 BETWEEN UNITED STATES PRESIDENT GROVER CLEVELAND AND QUEEN LILI'UOKALANI OF THE HAWAIIAN KINGDOM, CALLED THE LILI'UOKALANI ASSIGNMENT AND THE AGREEMENT OF RESTORATION.

1           WHEREAS, on December 19, 1842, United States President John  
2 Tyler recognized the Hawaiian Kingdom as an independent and  
3 sovereign State, extended full and complete diplomatic  
4 recognition to the Hawaiian Government, and entered into  
5 treaties and conventions with the Hawaiian government in 1849,  
6 1875, and 1887; and

7  
8           WHEREAS, on January 14, 1893, John L. Stevens (hereinafter  
9 referred to as the "United States minister"), the United States  
10 minister plenipotentiary assigned to the Hawaiian Kingdom  
11 government, conspired with a small group of insurgents of  
12 diverse nationalities to overthrow the Hawaiian Kingdom  
13 government; and

14  
15           WHEREAS, in pursuance of the conspiracy, the United States  
16 Minister and naval representatives of the United States caused  
17 armed naval forces to invade the Hawaiian Kingdom on January 16,  
18 1893, and to position themselves near government buildings and  
19 Iolani Palace in order to provide protection to the insurgents;  
20 and

21  
22           WHEREAS, on the afternoon of January 17, 1893, this small  
23 group of insurgents declared themselves to be a Provisional  
24 Government; and

25  
26           WHEREAS, the United States minister thereupon extended  
27 diplomatic recognition to the insurgents in violation of



1 treaties between the United States and the Hawaiian Kingdom and  
2 in violation of international law; and  
3

4 WHEREAS, because the police force was unable to apprehend  
5 the insurgents for violating the law of treason without the risk  
6 of bloodshed between the police and the United States troops,  
7 Queen Lili'uokalani issued the following protest temporarily,  
8 conditionally yielding her executive power to the United States  
9 government:

10  
11 "I Liliuokalani, by the Grace of God and under  
12 the Constitution of the Hawaiian Kingdom, Queen, do  
13 hereby solemnly protest against any and all acts done  
14 against myself and the Constitutional Government of  
15 the Hawaiian Kingdom by certain persons claiming to  
16 have established a Provisional Government of and for  
17 this Kingdom.  
18

19 That I yield to the superior force of the United  
20 States of America whose Minister Plenipotentiary, His  
21 Excellency John L. Stevens, has caused United States  
22 troops to be landed at Honolulu and declared that he  
23 would support the Provisional Government.  
24

25 Now to avoid any collision of armed forces, and  
26 perhaps the loss of life, I do this under protest and  
27 impelled by said force yield my authority until such  
28 time as the Government of the United States shall,  
29 upon facts being presented to it, undo the action of  
30 its representatives and reinstate me in the authority  
31 which I claim as the Constitutional Sovereign of the  
32 Hawaiian Islands.  
33

34 Done at Honolulu this 17th day of January, A.D.  
35 1893"; and  
36

37 WHEREAS, under Article 31 of the Constitution of the  
38 Kingdom of Hawaii, as the constitutional monarch of the  
39 Hawaiian islands, the Queen was vested with the executive  
40 power to faithfully execute and administer Hawaiian law:  
41 "To the King belongs the Executive power"; and  
42

43 WHEREAS, on March 9, 1893, President Grover Cleveland  
44 accepted the temporary and conditional assignment of executive



1 power from the Queen and investigated the circumstances of the  
2 overthrow of the Hawaiian Kingdom government; and  
3

4 WHEREAS, on October 18, 1893, the investigation concluded  
5 that the United States violated international law and the  
6 Hawaiian Kingdom government must be restored to its status  
7 before the landing of United States troops; and  
8

9 WHEREAS, negotiations for settlement and restoration took  
10 place between Queen Lili'uokalani and United States minister  
11 plenipotentiary, Albert Willis, between November 13, 1893, and  
12 December 18, 1893, at the United States Embassy in Honolulu; and  
13

14 WHEREAS, a settlement was reached on December 18, 1893,  
15 whereby Queen Lili'uokalani signed the following declaration  
16 that was dispatched to the United States State Department by the  
17 United States minister on December 20, 1893:  
18

19 "I, Liliuokalani, in recognition of the high  
20 sense of justice which has actuated the President of  
21 the United States, and desiring to put aside all  
22 feelings of personal hatred or revenge and to do what  
23 is best for all the people of these Islands, both  
24 native and foreign born, do hereby and herein solemnly  
25 declare and pledge myself that, if reinstated as the  
26 constitutional sovereign of the Hawaiian Islands, that  
27 I will immediately proclaim and declare,  
28 unconditionally and without reservation, to every  
29 person who directly or indirectly participated in the  
30 revolution of January 17, 1893, a full pardon and  
31 amnesty for their offenses, with restoration of all  
32 rights, privileges, and immunities under the  
33 constitution and the laws which have been made in  
34 pursuance thereof, and that I will forbid and prevent  
35 the adoption of any measures of proscription or  
36 punishment for what has been done in the past by those  
37 setting up or supporting the Provisional Government.  
38

39 I further solemnly agree to accept the  
40 restoration under the constitution existing at the  
41 time of said revolution and that I will abide by and  
42 fully execute that constitution with all the  
43 guaranties as to person and property therein  
44 contained.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.

Witness my hand this 18th of December, 1893"; and

WHEREAS, there exist two agreements:

- (1) The Lili'uokalani Assignment, whereby President Grover Cleveland accepted the obligation of administering Hawaiian Law in an assignment of executive power; and
- (2) The Agreement of Restoration, whereby the Queen agreed to grant amnesty after return of executive power and restoration of the government; and

WHEREAS, President Cleveland and his successors in office have violated these agreements by not administering Hawaiian Kingdom Law and not restoring the Hawaiian Kingdom government; and

WHEREAS, for the past one hundred eighteen years the Office of President has retained the temporary and conditional assignment of Hawaiian executive power from the Queen; and

WHEREAS, these agreements are called sole executive agreements under United States constitutional law and the basis of a federal lawsuit in Washington, D.C., filed by Dr. David Keanu Sai against President Barack Obama, Secretary of State Hillary Clinton, Secretary of Defense Robert Gates, Admiral Robert Willard, and Governor Linda Lingle (case no. 1:10-CV-00899CKK) on June 1, 2010; and

WHEREAS, on November 13, 2010, the Association of Hawaiian Civic Clubs at its 51st Convention at Keauhou, Island of Hawaii, unanimously passed Resolution No. 10-15, "Acknowledging Queen Lili'uokalani's Agreements with President Grover Cleveland to Execute Hawaiian Law and to Restore the Hawaiian Government"; and



# H.C.R. NO. 107

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

WHEREAS, under the Supremacy Clause of the United States Constitution, "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding"; and

WHEREAS, the United States Supreme Court declared in United States v. Belmont, 301 U.S. 324 (1937), that executive agreements arising out of the President's sole authority over foreign relations does not require ratification by the Senate or the approval of Congress, and has the force and effect of a treaty; and

WHEREAS, statutes enacted by the Legislature of the State of Hawaii that conflict with valid executive agreements would be considered void under the Supremacy Clause; and

WHEREAS, a joint legislative investigating committee would settle the issue of whether certain statutes enacted by the Hawaii State Legislature violate the United States Constitution; and

WHEREAS, section 21-3, Hawaii Revised Statutes, authorizes the establishment of a legislative investigating committee by resolution, and Rule 14 of the Rules of the House of Representatives and Rule 14(3) of the Rules of the Senate allow for the establishment of special committees; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2011, the Senate concurring, that:

- (1) The Legislature hereby establishes a joint legislative investigating committee to investigate the status of two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili'uokalani of the Hawaiian Kingdom in 1893, called the Lili'uokalani Assignment and the Agreement of Restoration;
- (2) The purpose and duties of the joint investigating committee shall be to inquire into the status of the





1 executive agreements by holding meetings and hearings  
2 as necessary, receiving all information from the  
3 inquiry, and submitting a final report to the  
4 Legislature;

5  
6 (3) The joint investigating committee shall have every  
7 power and function allowed to an investigating  
8 committee under the law, including without limitation  
9 the power to:

10  
11 (A) Adopt rules for the conduct of its proceedings;

12  
13 (B) Issue subpoenas requiring the attendance and  
14 testimony of the witnesses and subpoenas duces  
15 tecum requiring the production of books,  
16 documents, records, papers, or other evidence in  
17 any matter pending before the joint investigating  
18 committee;

19  
20 (C) Hold hearings appropriate for the performance of  
21 its duties, at times and places as the joint  
22 investigating committee determines;

23  
24 (D) Administer oaths and affirmations to witnesses at  
25 hearings of the joint investigating committee;

26  
27 (E) Report or certify instances of contempt as  
28 provided in section 21-14, Hawaii Revised  
29 Statutes;

30  
31 (F) Determine the means by which a record shall be  
32 made of its proceedings in which testimony or  
33 other evidence is demanded or adduced;

34  
35 (G) Provide for the submission, by a witness's own  
36 counsel and counsel for another individual or  
37 entity about whom the witness has devoted  
38 substantial or important portions of the  
39 witness's testimony, of written questions to be  
40 asked of the witness by the chair; and

41  
42 (H) Exercise all other powers specified under chapter  
43 21, Hawaii Revised Statutes, with respect to a  
44 joint investigating committee; and



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43

BE IT FURTHER RESOLVED that the joint investigating committee shall consist of the following ten members:

- (1) The Chairperson of the House Committee on Finance;
- (2) The Chairperson of the House Committee on Water, Land, and Ocean Resources;
- (3) The Chairperson of the House Committee on Hawaiian Affairs;
- (4) One member of the majority leadership from the House of Representatives who shall be appointed by the Speaker of the House of Representatives;
- (5) One member of the minority leadership from the House of Representatives who shall be appointed by the House Minority Leader;
- (6) The Chairperson of the Senate Ways and Means Committee;
- (7) The Chairperson of the Senate Committee on Water, Land, and Agriculture;
- (8) The Chairperson of the Senate Hawaiian Affairs Committee;
- (9) One member of the majority leadership from the Senate who shall be appointed by the President of the Senate; and
- (10) One member of the minority leadership from the Senate who shall be appointed by the Senate Minority Leader; and

BE IT FURTHER RESOLVED that the joint investigating committee shall submit its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2012 and shall dissolve upon submission of its report; and

1 BE IT FURTHER RESOLVED that certified copies of this  
2 Concurrent Resolution be transmitted to the President of the  
3 United States, members of Hawaii's congressional delegation, the  
4 Governor, the President of the Hawaii State Senate, the Speaker  
5 of the Hawaii State House of Representatives, the Director of  
6 Finance, the Attorney General, and the Auditor.

7  
8  
9

OFFERED BY: Mel Carroll

MAR 11 2011

