INCLINATIONS

It is Judge Mollway's practice, whenever possible, to notify attorneys and pro se parties scheduled to argue motions before her of her inclinations on the motions and the reasons for the inclinations. This is part of Judge Mollway's normal practice, rather than a procedure unique to a particular case, and is designed to help the advocates prepare for oral argument. It is the judge's hope that the advance notice of her inclination and the accompanying reasons will focus the oral argument and permit the advocates to use the hearing to show the judge why she is mistaken or why she is correct. The judge is not bound by the inclination and sometimes departs from the inclination in light of oral argument.

Judge Mollway attempts to communicate her inclinations no later than one working day before a hearing. If your case is not mentioned on the webpage when you check it, please check again later to see whether the webpage has been updated to include the inclination in your case.

The inclination is intended to be only a summary of the court's thinking before the hearing and not a complete legal discussion. The court will issue a written order with a detailed analysis after the hearing.

The parties are reminded that, under Local Rule 7.4, they may not submit supplemental briefs (such as briefs addressing the inclination) unless authorized by the court. The parties are also reminded that they must comply with Local Rule 7.8.

Occasionally, Judge Mollway does not announce an inclination, especially if materials are submitted to her right before the hearing. Because briefing on criminal motions closes just a few days before the hearing, it is not uncommon for her to be unable to announce an inclination on a criminal motion until the start of the hearing itself. Certainly if an evidentiary hearing is scheduled on matters necessary to a decision on either a civil or criminal motion, no inclination will be announced.

Judge Mollway's inclinations may not be cited as authority for any proposition. However, the inclinations will be included with case-related correspondence in the applicable case files for the convenience of the parties.

Judge Mollway announces the following inclinations:

Arakaki v. Lingle, Civil No. 02-00139 SOM/KSC

Plaintiffs have two claims that survive the court's earlier rulings. Plaintiffs' standing to bring both claims arises only out of Plaintiffs' status as state taxpayers. One claim seeks to enjoin the State of Hawaii from appropriating state tax revenue for the Hawaiian Home Lands lease program administered by the Department of Hawaiian Homelands ("DHHL"), which is headed by an executive board known as the Hawaiian Homes Commission ("HHC"). Plaintiffs' other remaining claim seeks to enjoin the state from appropriating state tax revenue for programs administered by the Office of Hawaiian Affairs ("OHA").

The hearing scheduled for November 17 is limited to motions made necessary or appropriate by the Ninth Circuit's recent ruling in Carroll v. Nakatani, 342 F.3d 934 (9th Cir. 2003). Six motions that purport to be based on Carroll are set for hearing on November 17.

1. Plaintiffs' motion asks this court to vacate the restrictions placed on Plaintiffs' standing in the court's earlier orders. Alternatively, Plaintiffs request Rule 54(b) certification of the court's earlier decision to limit Plaintiffs' claims to those based on state taxpayer standing.

Inclination as to Plaintiffs' motion: *The court is inclined to rule that Plaintiffs' motion is not one made necessary or appropriate by Carroll. The court is therefore inclined to deny the motion. The court is inclined to view Plaintiffs' motion as a reconsideration motion that is untimely and that fails to satisfy the requirements for reconsideration. The court is further inclined to deny the request for Rule 54(b) certification on the ground that neither judicial nor equitable concerns support such certification.*

Four of the other motions raise issues related to each other:

2. The United States moves for dismissal, asserting that Plaintiffs lack standing to sue the United States. This court had granted an earlier motion to dismiss brought by the United States, but vacated that earlier order after the Ninth Circuit issued its decision in Carroll. In the present motion, the United States argues that Carroll does nothing to affect the correctness of the court's earlier dismissal.

3. DHHL/HHC's motion argues that, because Plaintiffs lack standing to pursue claims against the United States,

Plaintiffs' claims challenging the Hawaiian Home Lands lease program created by the Hawaiian Homes Commission Act ("HHCA") must be dismissed. Under Carroll, the United States is a necessary party to such a challenge, but, the motion argues, Plaintiffs' state taxpayer standing does not give Plaintiffs standing to challenge the federal law that is a necessary part of any challenge to the Hawaiian Home Lands lease program.

4. OHA's motion argues that, under Carroll, the United States is an indispensable party to any challenge to the Hawaiian Home Lands lease program under the HHCA. OHA argues that, because Plaintiffs lack standing to bring suit against the United States, Plaintiffs' Hawaiian Home Lands lease program claims must be dismissed. OHA also argues that Plaintiffs lack standing to pursue their claims against OHA because those claims involve an analysis of the public land trust created by the Admission Act.

5. The motion brought by Defendant-Intervenors State Council of Hawaiian Homestead Association and Anthony Sang, Sr. (collectively "SCHHA"), argues that Plaintiffs' challenge to the Hawaiian Home Lands lease program is a nonjusticiable political question. SCHHA also contends that, under Carroll, Plaintiffs lack standing to pursue that claim.

Inclination as to Motions 2 through 5: *The court is inclined to dismiss claims against DHHL/HHC and the United States based on lack of standing. State taxpayer standing only allows a plaintiff to challenge the state law underlying the expenditure of state taxes. The court has already ruled that state taxpayer status does not provide standing to challenge expenditures that do not involve state tax revenue. Thus, Plaintiffs' state taxpayer status does not allow Plaintiffs to challenge spending by DHHL/HHC and/or OHA that involves rental income or other money not derived from state tax revenues. Any success Plaintiffs may have in this lawsuit, therefore, will fall short of closing down entirely either DHHL/HHC or OHA, as neither relies entirely on state tax revenue. The court is inclined to rule that, not only is state taxpayer standing too limited to permit a challenge to rental income, state taxpayer standing is too limited to support a challenge to a federal law. Carroll v. Nakatani, 342 F.3d 934 (9th Cir. 2003), teaches that any challenge to the lessee requirements of the Hawaiian Home Lands lease program necessarily involves a challenge to the Admission Act, which is a federal law. This court is inclined to rule that Plaintiffs' state taxpayer standing does not give them standing to challenge the Admission Act. See W. Mining Council v. Watt, 643 F.2d 618, 631-32 (9th Cir. 1981).*

The court's inclination is not based on the premise that the Admission Act can never be challenged. The court can certainly envision claimants with standing to challenge the Admission Act, but the court is inclined to rule that any such claimant must have more than state taxpayer status. State taxpayer status provides for only limited standing. A claimant with more than state taxpayer status could include, for example, someone who has completed the process of applying for benefits from DHHL and who has been denied benefits only because he or she is not Hawaiian or native Hawaiian. No Plaintiff in this case has shown any such standing.

The court is inclined to deny the other portions of Motions 2 through 5. That is, the court is inclined to reject as moot OHA's argument that the United States is a necessary party to Plaintiffs' challenge to the use by OHA of ceded land revenue. The court is inclined to rule that, as state taxpayer standing does not extend to any challenge to use of ceded land revenue, which is not tax revenue, the issue of who is a necessary party to any such challenge need not be addressed. The court has already ruled that Plaintiffs may not proceed on the basis that they are the beneficiaries of a public land trust. To the extent OHA's motion contends that appropriations of state tax revenues for OHA are somehow required by the Admission Act, the court is inclined to disagree. The court is further inclined to reject SCHHA's argument that Plaintiffs' claims raise a political question, as that is not an issue arising as a result of the Carroll decision. The court is inclined to rule that the political question issue may be raised in another round of motions (presumably by a different party, if the court follows its inclination, which would end SCHHA's participation in this lawsuit).

6. The United States has moved to strike material filed with this court.

Inclination as to Motion 6: *If this court dismisses the United States, the court is inclined to deny the motion to strike as moot.*

If the court rules in accordance with this inclination, the only remaining claim will be Plaintiffs' challenge to the use of state tax revenue for OHA. DHHL/HHC, the United States, SCHHA, and Intervenor Hui Kako`o `Aina Ho`opulapula'o, together with Blossom Feiteira and Dutchy Saffery, will then no longer be parties to this lawsuit.

(Posted: November 14, 2003)