

Probate Court of the State of Hawai'i
777 Punchbowl Street
Honolulu, Hawai'i 96813

ATTENTION: THE HONORABLE JEANNETTE CASTAGNETTI

Aloha e Judge Castagnetti,

We would like to extend our sincere mahalo for allowing one of our group, Mr. Julian Ako, to address the Court on September 19, 2024, regarding the Special Masters' Report on the Trustee Selection Process for Kamehameha Schools. Because we do not have standing in this matter, we did not anticipate the opportunity to express our concerns at that time. Mahalo nui loa for giving Mr. Ako the chance to speak on this important matter.

By way of introduction, our group has been engaged in efforts to amend the process for selecting successor trustees for the Bernice Pauahi Bishop Estate dba Kamehameha Schools since 2016. We are all alumni of The Kamehameha School for Boys, Class of 1961 and have been closely associated with our alma mater in various capacities since our graduation.

Background. Though Mr. Ako summarized our main concerns to the Court at the September 19 hearing, we are unsure if you have had the opportunity to fully consider our views on the selection of successor trustees of the Kamehameha Schools. We are not implying that you have not; we simply have no way of knowing. We submitted letters to Judge Derrick Chan in 2016 and Judge Mark Browning in 2017; neither acknowledged receipt. Similarly, in 2023 and 2024, we submitted letters to both the Special Masters, who were tasked with reviewing the current trustee selection process, and to the Attorney General, who was responding to the Special Masters' report. We also had meetings with the Special Masters and the Attorney General's office. However, in their respective reports to the Probate Court, our concerns were never mentioned.

We understand that due to our lack of standing, a formal legal filing of our ideas with the Court would not be accepted. In light of this, we are submitting our views directly to you through this letter and its attachments. If there is another path we need to take in bringing our thoughts to your attention, please advise and we will comply expeditiously.

The Issue. After a history of colonization in Hawai'i, many in our community continue to believe that Native Hawaiians, in general, and Kamehameha stakeholders in particular, are somehow less capable of managing our own lives and affairs than others can for us. In truth, colonization robbed Native Hawaiians of the opportunity, but not the ability, to govern ourselves. Despite the theft of our Kingdom, the loss of our lands, the erosion of our rights, and the systematic suppression of our culture, Native Hawaiians continue to possess the competence and character for self-determination that is right and just, including those who have benefited directly from Ke Ali'i Pauahi's enduring

trust. Yet, the same paternalistic mindset persists, suggesting that unlike other Ali'i trusts, and unlike other private schools, Kamehameha's stakeholders can still be ignored. There remains a strong and persistent undercurrent of belief that Native Hawaiians cannot make their own decisions because we are not smart or capable enough to determine what is best for ourselves. This deeply ingrained mindset, a direct result of colonization, continues to fuel the idea that others must step in and take charge of our affairs. It undermines our autonomy, perpetuates the myth of Native Hawaiian inferiority, and ignores the wisdom, resilience and self-sufficiency our people have demonstrated throughout history.

This false narrative serves only to perpetuate the losses we have endured for generations. It justifies the continued control of our schools, our lands, our resources and our rights by external powers, reinforcing the very structures of oppression that colonization set in motion. Native Hawaiians have long demonstrated resilience, intelligence, and a deep connection to the land. We have the right and the capacity to determine our own destiny, to reclaim our stolen rights, and to govern our affairs without the interference of those who continue to profit from our disempowerment. To deny us this is to continue the cycle of colonization, erasing our inherent sovereignty and agency. As stakeholders, we are fully capable of governing ourselves and making the decisions that will impact our lives and future.

This, then, is the issue at hand – empowering stakeholders of Kamehameha Schools with the authority to select our own governing leaders, the trustees.

The Goal. Our ultimate goal is to *have successor trustees of Kamehameha Schools be selected by stakeholders of the institution*. Two immediate and underlying objectives to this goal are:

1. Reauthorize the current screening committee to operate as a selection committee

The current trustee selection process operates with a screening committee that first recruits and evaluates applicants for the position of trustee, and then from this pool recommends a slate of three finalists from which the Probate Court selects a successor trustee. Once selected, the successor trustee is formally appointed by the Court, as required by law. Our goal is to reframe this process by transforming the screening committee into a selection committee that not only recruits and evaluates candidates but also selects the successor trustee, who is then presented to the Court for formal appointment. The Court would retain the authority to reject the candidate and request another selection.

2. Ensure the selection committee is composed of Kamehameha Schools stakeholders

Currently, the screening committee consists of community leaders without regard to any knowledge and understanding of Kamehameha's mission or the needs

and priorities of the Native Hawaiian people. We fervently believe that important decisions around trust governance should be made by those who have demonstrated, among other criteria, well-grounded knowledge and understanding of the Kamehameha Schools and its mission, as well as genuine concern for the needs and priorities of the Native Hawaiian community. These qualifications provide important lenses through which trustee candidates can be evaluated. Our objective, therefore, is to have a selection committee comprised of Kamehameha stakeholders who meet these criteria.

Some may argue that the changes we are seeking are unnecessary because they do not address any immediate existential threat to the well-being of the trust itself, unlike that associated with the trustee controversy of the 1990's. Indeed, we have no quarrel with the appointments that have been made since the Justices of the Supreme Court of Hawai'i removed themselves from selecting and appointing successor trustees in 1997. However, the issue at hand is one of self-determination and self-governance. We believe unapologetically that these decisions should be made by individuals who are part of, and not separate from, the institution and the Native Hawaiian community.

In their press release of December 20, 1997 (see attached), four of the then sitting Supreme Court justices announced their withdrawal from the trustee selection process. In their announcement, Justices Moon, Levinson, Nakayama and Ramil stated that the "Bishop Estate ultimately 'belongs' to the Hawaiian people" and that "the ultimate 'ownership' of the trustee selection process should lie in the indigenous Hawaiian community." They even suggested a process that included the appropriateness of presenting a single candidate to the Probate Court for appointment, which closely aligns with our vision to differentiate between the authority to select and the authority to appoint. While we agree with the Justices that the Bishop Estate " 'belongs' to the Hawaiian people," we have refined this concept to focus specifically on Kamehameha stakeholders.

To our dismay, the process that was subsequently adopted by the Probate Court deviated from the suggestions and sentiments of the Justices. As it stands, the Probate Court selects and appoints successor trustees and the screening committee is comprised of broad community representation. This certainly does not align with the true spirit of self-determination for Kamehameha Schools.

The Proposal. In support of our goal and underlying objectives to have stakeholders select Kamehameha trustees, a "straw man" process was described in a letter to the Special Masters (see attached). In our letter, we also set forth three compelling reasons for giving stakeholders authority to select successor trustees: alignment with standard practice in trust and school governance; wisdom, judgment and values for responsible stewardship in the ranks of Kamehameha stakeholders; no legal requirement for judicial management of a selection process that continues to evolve.

After reviewing the report of the Special Masters, we submitted a letter to the Attorney General (see attached) summarizing our thoughts regarding this report. In that letter,

we clearly emphasized the need for mandatory and not discretionary transparency in the process; sharply criticized the lack of rationale to support the Special Masters' recommendation to maintain the screening committee as a community body; and strongly countered the rationale underlying their recommendation for the Probate Court to retain the power to "select," as opposed to "appoint," successor trustees.

Closing Thoughts. We hope our perspectives are persuasive and that you agree with our goals and objectives. An equally important concern is that you fully understand our issue with the current process for selecting KS trustees and our reasons for challenging the status quo.

At the heart of our message is a commitment to the principle of self-determination, particularly for the Kamehameha community and its stakeholders. We believe that decisions affecting Kamehameha should be guided by those who have the deepest ties to its mission and legacy. This is not just about representation; it is about empowering the Kamehameha 'ohana – students, alumni, faculty, staff and families – to shape the future of an institution built to uplift Hawaiians, in alignment with the vision and enduring values of Ke Ali'i Pauahi.

Your decision will have far-reaching implications, and we urge you to consider how it reflects an understanding of the unique role Kamehameha stakeholders play in ensuring the continued fulfillment of its purpose. The echo of our voices and the wisdom of our words, rooted in Hawaii's history and its aspirations, deserve to be heard and respected as part of this process.

Mahalo nui loa, Judge Castagnetti.

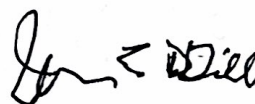
Me ka ha'aha'a,



Julian K. Ako



Michael J. Chun



Jan E. H. Dill