

Lanny Alan Sinkin
Tx. Bar #18438675
Admitted to Hawai'i Federal Bar
P. O. Box 944
Hilo, Hawai'i 96721-0944
(808) 936-4428
Lanny.Sinkin@gmail.com
Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

Frank Kamehameha Tamehaloha)	CV16 00540 JMS KJM
Anuumealani Nobriga,)	
In his capacity as Kahuna of the)	
Temple of Lono,)	
)	
Plaintiff)	
)	
Vs.)	
)	
Gregory Mooers, in his official capacity as)	
Chair, Mauna Kea Management)	
Board,)	
)	
Dr. Greg Chun, in his official capacity as)	
Member, Mauna Kea Management)	
Board,)	
)	COMPLAINT
Roger Imoto, in his official capacity as)	
Member, Mauna Kea Management)	
Board,)	
)	
Herring Kalua, in his official capacity as)	
Member, Mauna Kea Management)	
Board,)	
)	
Douglas Simons, in his official capacity as)	
Member, Mauna Kea Management)	
Board,)	
)	
Hannah Kiahalani Springer, in her)	
official capacity as Member,)	
Mauna Kea Management Board,)	
)	
Lehua Veincent, in his official capacity)	

as Member, Mauna Kea)
Management Board,)
)
Defendants)

COMPLAINT

NOW COMES FRANK KAMEHAMEHA TAMEHALOHA ANUUMEALANI NOBRIGA and files this Complaint seeking assistance from this Honorable Court in protecting the rights of those embracing the traditional faith of the Hawaiian people.

JURISDICTION

1. Plaintiff herein alleges that Defendants are violating the rights of those embracing the traditional faith of the Hawaiian people by initiating action to coerce those practicing the traditional Hawaiian faith into adopting practices defined by the Defendants and to impose penalties upon those practitioners not conforming to the guidelines and policies adopted by the Defendants. Defendants' actions violate 42 U.S.C. § 1983 and the rights of Plaintiff and others similarly situated protected by the First and Fourteenth Amendments to the United States Constitution.
2. This Honorable Court has jurisdiction under 28 U.S.C. § 1331 (Federal Question).

Plaintiff

3. Plaintiff is the Kahuna of the Temple of Lono, a traditional faith of the Hawaiian people.

Defendants

4. Defendants are all members of the Board of the Office of Mauna Kea Management.¹

¹ Office of Mauna Kea Management(OMKM) - The Maunakea Management Board provides the community with a sustained direct voice for the management of the Maunakea. The Board is comprised of seven members from the community who are

Facts

5. On July 6, 2015, Plaintiff filed a petition for a temporary restraining order in United States District Court for the District of Hawai'i. CV15-00254 DKW BMK.
6. Plaintiff named various State officials, including the Chair of the Office of Mauna Kea Management (OMKM) Board.
7. The basis for the complaint was a set of restrictive rules that the OMKM had imposed on those engaged in the practice of the traditional Hawaiian faith on Mauna Kea, the sacred mountain on the Island of Hawai'i.
8. Those restrictive rules included allowing access to the summit for spiritual purposes only at a particular time of day.
9. Those restrictive rules included limiting the number of people that could ascend the Mountain for spiritual purposes to ten.
10. The restrictive rules included requiring those ascending the Mountain to be accompanied by an OMKM Ranger, who was to remain throughout the spiritual practice.
11. The restrictive rules applied only to those engaged in spiritual practice and did not apply to water trucks, tourists, astronomers, or anyone else.
12. The OMKM issued the rules with no public notice or other opportunity for public comment.

nominated by the UH Hilo Chancellor and approved by the UH Board of Regents. The volunteer members represent a cross-section of the community and serve as the community's voice providing input on operations and activities, developing policies, reviewing and providing recommendations for land uses planned for Maunakea.

<http://www.malamamaunakea.org/management/mauna-kea-management-board>

13. Shortly after the Plaintiff filed suit, the OMKM withdrew the rules.
14. Based on that withdrawal and a separate State court decision striking down rules issued by another State agency also restricting spiritual practices on the Mountain, the Plaintiff agreed to a dismissal of the suit without prejudice.
15. The OMKM Board is scheduled to meet on **Tuesday, October 4 at 10:00 a.m.**
16. On the Agenda for the Board meeting are the following items:
 - "VI. NEW BUSINESS
 - ...
 - B. Action Item CR-5 Develop and Adopt Guidelines for the **Culturally Appropriate Placement and Removal of Offerings**
 - C. Action Item CR-8 Develop and **Adopt a Management Policy** for UH Management Areas **on the Scattering of Cremated Human Remains**
 - D. Action Item CR-7 Determination of the **Appropriateness of Constructing new Hawaiian Cultural Features**
 - E. Action Item CR-9 Management Policy for the **Cultural Appropriateness of Building Ahu [altar] or 'Stacking of Rocks.'**" (emphasis added).
17. The OMKM moving beyond imposing restrictive rules on spiritual practices to now making the determination of what constitutes appropriate spiritual practice compelled the Plaintiff to file this action.

Relief

18. Plaintiff seeks relief in the form of a Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, attorneys' fees, and such other relief as the Court finds appropriate to prevent violations of the constitutional rights of traditional faith practitioners.

Respectfully submitted,

Lanny Alan Sinkin
Counsel for Plaintiff

Dated: October 2, 2016

Lanny Alan Sinkin
Tx. Bar #18438675
Admitted to Hawai'i Federal Bar
P. O. Box 944
Hilo, Hawai'i 96721-0944
(808) 936-4428
Lanny.Sinkin@gmail.com
Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Frank Kamehameha Tamehaloha)
Anuumealani Nobriga,)
In his capacity as Kahuna of the)
Temple of Lono,)
)
Petitioner)
)
Vs.)
)
Gregory Mooers, in his official capacity as)
Chair, Mauna Kea Management)
Board,)
)
Dr. Greg Chun, in his official capacity as)
Member, Mauna Kea Management)
Board,)
)
Roger Imoto, in his official capacity as)
Member, Mauna Kea Management)
Board,)
)
Herring Kalua, in his official capacity as)
Member, Mauna Kea Management)
Board,)
)
Douglas Simons, in his official capacity as)
Member, Mauna Kea Management)
Board,)
)
Hannah Kiahalani Springer, in her)
official capacity as Member,)
Mauna Kea Management Board,)
)
Lehua Veincent, in his official capacity)

PETITION FOR TEMPORARY
RESTRAINING ORDER,

As Member, Mauna Kea)
Management Board)
)
Respondents)

PETITION FOR TEMPORARY RESTRAINING ORDER

Now Comes Frank Tamehameha Kamealoha Anuumealani Nobriga, in his capacity as the Kahuna of the Temple of Lono, pursuant to Federal Rule of Civil Procedure 65(b), to petition this Honorable Court for a temporary restraining order preventing the named respondents from violating the rights of spiritual practitioners whose practices includes Mauna Kea.

This Petition is supported by the accompanying Memorandum in Support of Temporary Restraining Order, Declaration of Counsel, and Declaration of the Kahuna of the Temple of Lono.

Dated: October 2, 2016

Respectfully submitted,

Lanny Alan Sinkin
Counsel for Petitioners

Lanny Alan Sinkin
 Tx. Bar #18438675
 Admitted to Hawai'i Federal Bar
 P. O. Box 944
 Hilo, Hawai'i 96721-0944
 (808) 936-4428
Lanny.Sinkin@gmail.com
 Counsel for Petitioner

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF HAWAII

Frank Kamehameha Tamehaloha)
 Anuumealani Nobriga,)
 In his capacity as Kahuna of the)
 Temple of Lono,)
)
 Plaintiff)
)
 Vs.)
)
 Gregory Mooers, in his official capacity as)
 Chair, Mauna Kea Management)
 Board,)
)
 Dr. Greg Chun, in his official capacity as)
 Member, Mauna Kea Management)
 Board,)
)
 Roger Imoto, in his official capacity as)
 Member, Mauna Kea Management)
 Board,)
)
 Herring Kalua, in his official capacity as)
 Member, Mauna Kea Management)
 Board,)
)
 Douglas Simons, in his official capacity as)
 Member, Mauna Kea Management)
 Board,)
)
 Hannah Kiahalani Springer, in her)
 official capacity as Member,)
 Mauna Kea Management Board,)
)

MEMORANDUM IN
 SUPPORT OF TEMPORARY
 RESTRAINING ORDER WITH
 EXHIBIT 1: AGENDA;
 EXHIBIT 2: DECLARATION OF
 COUNSEL; AND EXHIBIT 2:
 DECLARATION OF
 KAHUNA OF THE TEMPLE OF
 LONO;

Lehua Veincent, in his capacity as)
Member, Mauna Kea)
Management Board,)

Defendants)

MEMORANDUM IN SUPPORT OF TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Assuming for the sake of argument that the State of Hawai'i has legitimate title to the lands that belonged to the Kingdom of Hawai'i Crown and Government and that those lands include the lands on the summit of Mauna Kea, the Office of Mauna Kea Management (OMKM) is tasked with developing policies for land use on the sacred mountain of Mauna Kea on the Island of Hawai'i.²

The Board of the OMKM is scheduled to meet on Tuesday, October 4, 2016 in Hilo, Hawai'i. On the Agenda for that meeting are the following items:

"VI. NEW BUSINESS

...

B. Action Item CR-5 Develop and Adopt Guidelines for the **Culturally Appropriate Placement and Removal of Offerings**

C. Action Item CR-8 Develop and **Adopt a Management Policy** for UH Management Areas **on the Scattering of Cremated Human Remains**

D. Action Item CR-7 Determination of the **Appropriateness of Constructing new Hawaiian Cultural Features**

E. Action Item CR-9 Management Policy for the **Cultural Appropriateness of Building Ahu [altar] or 'Stacking of Rocks.'**"

² Office of Mauna Kea Management(OMKM) - The Maunakea Management Board provides the community with a sustained direct voice for the management of the Maunakea. The Board is comprised of seven members from the community who are nominated by the UH Hilo Chancellor and approved by the UH Board of Regents. The volunteer members represent a cross-section of the community and serve as the community's voice providing input on operations and activities, developing policies, reviewing and providing recommendations for land uses planned for Maunakea.

<http://www.malamamaunakea.org/management/mauna-kea-management-board>

Exhibit 1 (emphasis added).

This is not the first time that the OMKM has attempted to infringe on the traditional spiritual practices of Native Hawaiians.

In response to an outpouring of public opposition to the construction of the Thirty Meter Telescope, the OMKM issued rules severely restricting spiritual practices on the summit of Mauna Kea. Exhibit 2 at ¶¶ 23-31.³

In response to the imposition of those rules, the Petitioner in this case filed suit seeking a temporary restraining order. Exhibit 2.

Shortly after Plaintiff filed suit, the OMKM withdrew the rules. Exhibit 3 ¶¶ 1-5.

Now the OMKM has gone beyond imposing restrictive rules on the practice of the traditional Hawaiian faith to claiming the authority to decide what constitutes appropriate practices of the faith.

II. ARGUMENT

A. The OMKM assertion of authority to dictate religious practices violates the First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

United States Constitution, Amendment I.

The argument that a State agency lacks the authority to establish what

³ The OMKM is within the University of Hawai'i system. The University of Hawai'i is the entity applying for the permit to build the Thirty Meter Telescope. The OMKM actions identified in this case can reasonably be understood as intending to further the University's pursuit of the permit by attempting to control spiritual practices that might impede the granting of the permit.

constitutes the appropriate practice of a faith seems to hardly be debatable. If such authority existed, the First Amendment prohibition on “establishment of religion” would be meaningless. If a State agency can dictate the religious practices of one faith, then the State can dictate the practices of all religions. The distance is short between that power and the establishment of one State religion.

Similarly, if the State can dictate what constitutes an appropriate spiritual practice by a particular faith and what does not, then the State can limit the free exercise of that faith. The second protection afforded by the First Amendment would be equally eviscerated.

While this case does revolve around the practice of the traditional Hawaiian faith, these First Amendment arguments apply across the board to all faiths.

B. Even in the case of indigenous rights, the OMKM actions are *ultra vires*.

This particular case involves a State agency promulgating regulations governing lands the State claims to own and upon which Native Hawaiians conduct religious ceremonies. In such cases, the courts have given the State broad leeway to adversely impact, even destroy, indigenous religions.

In *Lyng c. Northwest Indian Cemetery Protective Ass’n*, 485 U.S. 439 (1988), the U.S. Supreme Court permitted government development of government land, even though the development had serious adverse impacts on a Native American religion.

Even when allowing such harm, the Court did identify two State actions that would be constitutionally impermissible. In *Lyng*, the Court did not find that the Native Americans would “**be coerced by the Government’s action into violating**

their religious beliefs; not would [the] government action penalize religious activity ...” *Id.* at 449 (emphasis added) Has either of those conditions existed, the State action would not be constitutional.

The OMKM is claiming the right to commit both those offenses against Native Hawaiians. If someone has a spiritual practice that is different from the practice determined by the Office of Mauna Kea Management to be appropriate, that person would have to change their practice to conform to the Office of Mauna Kea Management’s guidelines and policies. That would seem to be a classic definition of government coercion.⁴

If someone engages in a practice that is not “authorized” by the guidelines and policies, presumably that person be subject to some form of enforcement action.⁵ Such enforcement action would penalize religious activity.

OMKM satisfies even the very restrictive Supreme Court decision that identified government coercion and penalization of religious activity as satisfying the legal requirement for raising constitutional challenges.

There is no need for the Court to wait for the OMKM Board to act because the posting of the Agenda items is sufficient to demonstrate the belief on the part of the OMKM that the State agency has authority that the agency clearly does not have.

Even if the Board were to withdraw the challenged items, this assertion of regulatory authority over spiritual practices is the second time this agency has

⁴ If OMKM does not intend to require all practitioners to conform their practice to the Office of Mauna Kea Management’s guidelines and policies, there would be no the point in enacting such guidelines and policies.

⁵ If MLKM does not intend to take enforcement action when someone violates the guidelines and policies, there would be no point in adopting such guidelines and policies.

crossed the constitutional lines and qualifies this case for the mootness exception for acts capable of repetition and evading review.

Even the Agenda items standing alone demonstrate a breath-taking assertion of State power over faith that requires a Court correction.

C. The OMKM attempt to evade judicial review is apparent.

A close examination of the OMKM Agenda items at issue finds the OMKM omitting the use of the words faith, religion, or spiritual. Instead, the OMKM repeatedly uses cultural. This obvious attempt to avoid the First Amendment implications of the actions the agency proposes to take is transparent.

If Christianity is a faith, why is the traditional Hawaiian faith a culture? Because that allows the State to suppress or regulate cultural practices at a level that would never pass constitutional muster, if applied to a faith, religion, or spiritual practice. This Court can pierce the veil of misdirection and see exactly what the OMKM is doing.

The misapplication of the word culture is found in a number of the proposals.

CR-5 talks about the "Culturally Appropriate Placement and Removal of Offerings." The OMKM pretends not to recognize that "offerings" are a faith practice, not a cultural activity.

CR-8 addresses cremated remains. Ancestral worship is an essential element of the traditional Hawaiian faith. How cremated remains are dealt with is determined by the spiritual protocols of the family to whom the remains belong.

CR--7 talks about "Constructing new Hawaiian Cultural Features." "Cultural

Features" are code words for sacred constructions, such as an offering tower. Such constructions are spiritual undertakings.

CR-9 talks about "the Cultural Appropriateness of Building Ahu [altars] or 'Stacking Rocks.'" The guidelines for building an ahu are spiritual guidelines, not cultural guidelines. At a State agency, OMKM has no authority or expertise to decide what constitutes an appropriate construction of an altar.

The truth of the Faith is provided by the Kahuna. Exhibit 4.

III. CONCLUSION

It really is astonishing that the OMKM believes that they have legal authority to micro-manage religious practices. There was a level of lawlessness in the earlier restrictions placed on spiritual practices, which unfortunately never received judicial review on the merits, that has now metastasized into a truly rogue agency.

The temporary restraining order sought by the Plaintiff is necessary to restore some semblance of legality to the OMKM administrative process.

Dated: October 2, 2016

Respectfully submitted,

Lanny Alan Sinkin
Counsel for Plaintiffs

Event Details

Date 2016/10/04 - 2016/10/04

Time 10:00 AM - 12:00 PM

Recurring

Event status

Title Mauna Kea Management Board

Location 640 N. Aohoku Place, Room 131, Hilo, Hawaii 96720

Mauna Kea Management Board

Tuesday, October 4, 2016

10:00 a.m. to 12:00 p.m.

Institute for Astronomy

Kukahau'ula - Room 131

640 N. A'ohoku Place

Hilo, Hawaii 96720

AGENDA

I. CALL TO ORDER

II. APPROVAL OF MINUTES OF THE JUNE 22, 2016 MEETING

III. DIRECTOR'S REPORT

IV. KAHU KU MAUNA COUNCIL

V. COMMITTEE REPORTS

A. Environment Committee

VI. NEW BUSINESS

A. Information Only: Bird and Bat Inventory Proposal

B. Action Item: CR-5 Develop and Adopt Guidelines for the Culturally Appropriate Placement and Removal of Offerings

C. Action Item: CR-8 Develop and Adopt a Management Policy for UH Management Areas on the Scattering of Cremated Human Remains

D. Action Item: CR-7 Determination of the Appropriateness of Constructing new Hawaiian Cultural Features

E. Action Item: CR-9 Management Policy for the Cultural Appropriateness of Building Ahu or "Stacking of Rocks"

F. Action Item: Submillimeter Array (SMA) Parking Lot Geotechnical Investigation

G. Action Item: University of Hawaii 2.2-m Telescope Maintenance and Repair

H. Executive Session (Closed to the Public)

To consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities related to the contested case hearing on the application for a Conservation District Use Application permit for the Thirty Meter Telescope project, pursuant to HRS §92-5(a) (4)

I. Action Item: Review and Approval of Draft Administrative Rules

VII. OLD BUSINESS

A. Discussion: Governor's 10 Point Plan

B. Discussion: Decommissioning of Telescopes Update

VIII. ANNOUNCEMENTS

IX. NEXT MEETING

X. ADJOURNMENT

Declaration of Lanny Alan Sinkin

I, LANNY ALAN SINKIN, declare that the following is true to the best of my knowledge and belief:

1. On July 6, 2015, I filed suit on behalf of the Kahuna of the Temple of Lono against various parties to challenge rules issued by the Office of Mauna Kea Management (OMKM) restricting the practice of the traditional Hawaiian faith on the sacred mountain, Mauna Kea, on the Island of Hawai'i. See Memorandum in Support of Temporary Restraining Order, Exhibit 2.
2. I later amended the suit to name the State of Hawai'i Board of Land and Natural Resources (BLNR) based on that State agency also issuing rules restricting the practice of the traditional Hawaiian faith on Mauna Kea.
3. Shortly after I filed the suit, the OMKM withdrew the rules.
4. Subsequently, a State court struck down the rules issued by BLNR.
5. Based on the withdrawal of the OMKM rules and the judicial vacating of the BLNR rules, the Kahuna agreed to a voluntary dismissal without prejudice of that action.
6. When recently I became aware of the OMKM intention to issue guidelines and policies defining what constitutes appropriate spiritual practice of the traditional Hawaiian faith, I wrote a letter to the Board of OMKM suggesting that they consider whether they have any legal authority to proscribe how the traditional Hawaiian faith will be practiced or to penalize anyone not conforming to the OMKM prescription. Exhibit A hereto.
7. The King of the restored Kingdom of Hawai'i also wrote to the OMKM. Exhibit B.
8. The Agenda for the Tuesday meeting did not include an item for citizens to be heard. See Memorandum in Support of Temporary Restraining Order, Exhibit 1.
9. I called the Office of Mauna Kea Management and asked if there was a time for citizens to be heard.
10. I was told that usually the Chair would invite public comment toward the end of the meeting.
11. I asked if that comment period would come before the Board took up the New Business items.
12. I was told that was not the usual process.

13. Considering even the published intentions of the OMKM to be an unconstitutional State assertion of power over the practice of the traditional Hawaiian faith, the Kahuna authorized me to file the case at bar.

Dated: October 2, 2016

Lanny Alan Sinkin

Declaration of Kahuna Tamehameha Kamehaloha Anuumealani Nobriga

I, KAHUNA TAMEHAMEHA KAMEHALOHA ANUUMEALANI NOBRIGA, declare the following to be true to the best of my knowledge and belief:

1. I am the keeper of the faith for the Temple of Lono.
2. The Temple of Lono is a traditional Hawaiian faith.
3. I recently learned that the Office of Mauna Kea Management is considering the adoption of guidelines and policies determining what constitute appropriate practices of the traditional Hawaiian faith on the sacred mountain, Mauna Kea.
4. Hewa is a Hawaiian word meaning "wrong."
5. It is difficult to imagine a greater hewa that the State of Hawai'i could inflict on the traditional Hawaiian faith than an assertion that the State of Hawai'i can dictate to those embracing that faith what constitutes acceptable practice.
6. Earlier I filed suit against various parties, including the OMKM, when they attempted to restrict practices of the traditional Hawaiian faith on Mauna Kea.
7. Now the OMKM has gone beyond imposing restrictions on our practice of our faith to claiming the authority to determine which practices are appropriate and which are not.
8. For the faith to accept the OMKM as the arbiter of truth regarding the traditional Hawaiian faith would be to accept the extinguishing of the faith altogether, which is apparently the intention of the OMKM, the University of Hawai'i, and all those dedicated to the proposition that the Thirty Meter Telescope must be built, regardless of any harm that telescope project does to the traditional Hawaiian faith or the fabric of our Hawaiian community.
9. Additionally, the proposed OMKM guidelines and policies demonstrate a profound ignorance of the traditional Hawaiian faith.
10. The foundation of the faith is the worship of the Four Gods – Ku, the Ocean; Kanaloa, the Sun; Lono, the Earth; and Kane, the Fresh Water.
11. The Four Gods provide the staff of life – food.
12. The religion of the traditional faith is the practice in each family.
13. The practices vary widely from one family to the next.

14. The idea that one body – let alone a State agency – could determine one practice to be appropriate for all families is ridiculous.

Dated: October 2, 2016

Frank Temehameha Kamehaloha Anuumealani Nobriga