

David Keanu SAI, Plaintiff,

v.

Hillary Diane Rodham CLINTON,  
Secretary of State of the United  
States et al., Defendants.

Civil Action No. 10-899 (CKK).

United States District Court,  
District of Columbia.

March 9, 2011.

**Background:** Plaintiff, purportedly the acting Regent of the Kingdom of Hawaii, brought pro se action under the Alien Tort Statute (ATS) challenging the constitutionality of the annexation of the Hawaiian Islands by the United States and seeking a declaration that his Hawaii conviction for theft violated federal and international law. Defendants, various U.S. Government officials, moved to dismiss, plaintiff moved for leave to file a supplemental complaint, and two non-parties moved to intervene.

**Holding:** The District Court, Colleen Kollar-Kotelly, J., held that Court lacked subject matter jurisdiction over plaintiff's claims.

Motions granted in part and denied in part.

### 1. Federal Courts ⇌32, 33

In determining whether subject matter jurisdiction exists, District Court may consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

### 2. Federal Courts ⇌34

At the motion to dismiss for lack of subject matter jurisdiction stage, counseled complaints, as well as pro se complaints, are to be construed with sufficient

liberality to afford all possible inferences favorable to the pleader on allegations of fact.

### 3. Federal Courts ⇌33, 34

In spite of the favorable inferences that a plaintiff receives on a motion to dismiss, it remains the plaintiff's burden to prove subject matter jurisdiction by a preponderance of the evidence. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

### 4. Federal Courts ⇌32, 34

Although a court must accept as true all factual allegations contained in the complaint when reviewing a motion to dismiss for lack of subject matter jurisdiction, a plaintiff's factual allegations in the complaint will bear closer scrutiny in resolving such a motion than in resolving a motion to dismiss for failure to state a claim. Fed. Rules Civ.Proc.Rule 12(b)(1), 6), 28 U.S.C.A.

### 5. Constitutional Law ⇌2580, 2588

#### Public Lands ⇌7

District Court lacked subject matter jurisdiction over claims arising out of plaintiff's assertion that the exercise of sovereignty by the United States over the Hawaiian Islands violated federal and international law; claims presented a nonjusticiable political question, since conduct of foreign relations, as well as power to make rules and regulations governing Territories and other property of the U.S., was constitutionally committed to the Executive and Legislative branches. U.S.C.A. Const. Art. 4, § 3, cl. 2; Fed.Rules Civ. Proc.Rule 12(b)(1), 28 U.S.C.A.

### 6. Constitutional Law ⇌2580

Courts lack jurisdiction over political questions that are by their nature committed to the political branches to the exclusion of the judiciary.

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7. Constitutional Law  $\approx$ 2580

In determining whether a case presents a nonjusticiable political question, courts look for six factors: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department, (2) a lack of judicially discoverable and manageable standards for resolving it, (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion, (4) the impossibility of a court's undertaking independent resolution without expressing a lack of respect due coordinate branches of government, (5) an unusual need for unquestioning adherence to a political decision already made, or (6) the potentiality of embarrassment of multifarious pronouncements by various departments on one question; if any one of these factors is present, Court may find that the question is political.

8. Constitutional Law  $\approx$ 2588

The conduct of the foreign relations of the United States Government is committed by the Constitution to the Executive and Legislative branches, the political Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.

9. Constitutional Law  $\approx$ 2580

Political question doctrine deprives federal courts of jurisdiction, based on prudential concerns, over cases which would normally fall within their purview.

10. Federal Civil Procedure  $\approx$ 864.1

Decision whether to grant leave to amend or supplement a complaint is within the discretion of the district court, but leave should be freely given unless there is a good reason, such as futility, to the contrary. Fed.Rules Civ.Proc.Rule 15(d), 28 U.S.C.A.

11. Federal Civil Procedure  $\approx$ 864.1

Motion for leave to file a supplemental complaint, in action challenging the exercise of sovereignty by the United States over the Hawaiian Islands, would be denied as futile; proposed supplemental complaint presented the same nonjusticiable political question presented in the first amended complaint. Fed.Rules Civ.Proc.Rule 15(d), 28 U.S.C.A.

12. Federal Civil Procedure  $\approx$ 331

Motions for leave to intervene in action challenging the exercise of sovereignty by the United States over the Hawaiian Islands, would be denied, where underlying action presented only nonjusticiable political questions, requiring its dismissal. Fed.Rules Civ.Proc.Rule 24, 28 U.S.C.A.

David Keannu Sai, Kaneohe, HI, pro se.  
Christian Alexander Natchelo, Washington, DC, for Defendants.

## MEMORANDUM OPINION

COLLEEN KOLLAR-KOTELLY,

District Judge.

*Pro se* plaintiff David Keannu Sai ("Plaintiff") filed this action against various government officials seeking declaratory and injunctive relief as well as damages stemming from their alleged violation of the Liliuokalani Assignment, a statement issued by Queen Liliuokalani of the Kingdom of Hawaii relinquishing control of the Hawaiian Islands to the United States on January 17, 1898. Plaintiff contends, *inter alia*, that the Liliuokalani Assignment requires the United States to return control of the islands to the Kingdom of Hawaii, that the annexation of the Hawaiian islands by the United States in 1898 is unconstitutional, and that Plaintiff's con-

tion for theft in March 2000 by a Hawaii court should be expunged because it is in violation of federal and international law. In his First Amended Complaint, Plaintiff names as defendants Secretary of State Hillary Diane Rodham Clinton, Secretary of Defense Robert Michael Gates, Admiral Robert F. Willard, and Linda Lingle, Governor of the State of Hawaii. On September 23, 2010, Plaintiff voluntarily dismissed all claims against Governor Lingle. The remaining defendants (collectively, "Defendants") have filed a [10] Motion to Dismiss, which Plaintiff opposes. Also pending before the Court are Plaintiff's [21] Motion for Leave to File Supplemental Complaint and motions to intervene filed by Alfred Napaiahuea Spinney and James Kimokea. For the reasons explained below, the Court shall grant Defendants' motion to dismiss and deny Plaintiff's motion for leave to supplement his complaint and the motions to intervene.

## I. BACKGROUND

A. *Hawaii's History as a Territory of the United States*

The Hawaiian islands were united as one kingdom in 1810 under the leadership of King Kamehameha I. See *Rice v. Cayetano*, 528 U.S. 495, 501, 120 S.Ct. 1044, 145 L.Ed.2d 1007 (2000). Near the end of the nineteenth century, American business interests were dominating the islands and creating tensions with pro-native, anti-Western interests. See *id.* at 504, 120 S.Ct. 1044. In 1887, Westerners forced the resignation of the Hawaiian Prime Minister and the adoption of a new constitution. *Id.* In 1893, "a group of professionals and businessmen, with the active assistance of John Stevens, the United States Minister to Hawaii, acting with the United States Armed Forces, replaced the monarchy with a provisional government" that sought annexation by the United

States. *Id.* at 505, 120 S.Ct. 1044. The overthrow of the Hawaiian government was effected on January 17, 1898, when Queen Liliuokalani issued the following statement:

I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons, claiming to have established a Provisional Government of and for this Kingdom.

That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

Now, to avoid any collision of armed forces, and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.

See Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1898 Overthrow of the Kingdom of Hawaii, Pub. L. No. 103-150, 107 Stat. 1510, 1511 (1993) (hereinafter, "Apology Resolution"); Compl., Ex. B at 18. Plaintiff refers to this assignment of power as the "Liliuokalani Assignment." See Am. Compl. ¶¶ 1, 16-17. In 1998, Congress passed a resolution formally apologizing to Native Hawaiians for the overthrow of the United States in overthrowing the Hawaiian Kingdom. See Apology Resolution, 20 U.S.C. § 7512(5); *Hawaii v. Off. of Hawaiian*

in the complaint . . . will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim." *Wright v. Foreign Serv. Grievance Bd.*, 503 F.Supp.2d 163, 170 (D.D.C.2007) (internal citations and quotation marks omitted).

III. DISCUSSION

[5] Although Plaintiff purports to assert three separate causes of action in his First Amended Complaint, each of Plaintiff's claims is based on his assertion that the exercise of sovereignty by the United States over the Hawaiian Islands violates federal and international law. As explained below, the Court finds that it lacks jurisdiction over such claims because they present a nonjusticiable political question.

A. *The Status of Hawaii As Part of the United States Is a Political Question over Which the Court Lacks Jurisdiction*

[6, 7] "The principle that the courts lack jurisdiction over political questions that are by their nature 'committed to the political branches to the exclusion of the judiciary' is as old as the fundamental principle of judicial review." *Schneider v. Kissinger*, 412 F.3d 190, 193 (D.C.Cir. 2005) (quoting *Antokol v. United States*, 873 F.2d 369, 379 (D.C.Cir.1989) (opinion of Sentelle, J.)). In determining whether a case presents a nonjusticiable political question, the courts look for six factors: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent resolution without expressing a lack of respect due coordinate

branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment of multifarious pronouncements by various departments on one question. *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). If any one of these factors is present, the Court may find that the question is political. *Schneider*, 412 F.3d at 194.

The federal courts have long recognized that the determination of sovereignty over a territory is fundamentally a political question beyond the jurisdiction of the courts. As the Supreme Court recognized in 1890:

Who is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances.

*Jones v. United States*, 137 U.S. 202, 212, 11 S.Ct. 80, 34 L.Ed. 691 (1890). This principle was recently reaffirmed by the D.C. Circuit, which ruled that claims requiring the determination of sovereignty over Taiwan under federal and international law presented a political question requiring dismissal for lack of subject matter jurisdiction. *See Lin v. United States*, 561 F.3d 502, 505-08 (D.C.Cir.), *cert. denied*, \_\_\_ U.S. \_\_\_, 130 S.Ct. 202, 175 L.Ed.2d 128 (2009).

[8] Analysis of the *Baker v. Carr* factors confirms that Plaintiff's claims present this Court with a nonjusticiable political question. Plaintiff's lawsuit challenges the United States's recognition of the Republic of Hawaii as a sovereign entity and

the United States's exercise of authority over Hawaii following annexation. However, "[t]he conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—the political—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302, 38 S.Ct. 309, 62 L.Ed. 726 (1918). In addition, the Constitution vests Congress with the "Power to dispose of or make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., Art. IV, § 3, cl. 2. Therefore, there is a textually demonstrable constitutional commitment of these issues to the political branches. Furthermore, it would be impossible for this Court to grant the relief requested by Plaintiff without disturbing a judgment of the legislative and executive branches that has remained untouched by the federal courts for over a century. Since its annexation in 1898 and admission to the Union as a State in 1959, Hawaii has been firmly established as part of the United States. The passage of time and the significance of the issue of sovereignty present an unusual need for unquestioning adherence to a political decision already made.

[9] Plaintiff argues that he is not challenging the legality of the State of Hawaii and his conviction but is merely asserting a claim for a violation of the Liliuokalani Assignment under the Alien Tort Statute, 28 U.S.C. § 1350. However, in order to find that Defendants have violated the Liliuokalani Assignment as alleged by Plaintiff—or even to conclude that Plaintiff is an alien capable of bringing claims under the Alien Tort Statute rather than a U.S. citizen—the Court would have to determine that the annexation of Hawaii by the United States was unlawful and void. As described above, that is a political question that this Court cannot decide. The fact that the answer might be gleaned through a straightforward analysis of federal and international law does not matter; "[t]he political question doctrine deprives federal courts of jurisdiction, based on prudential concerns, over cases which would normally fall within their purview." *Lin*, 561 F.3d at 506; *see id.* ("We do not disagree with Appellants' assertion that we could resolve this case through treaty analysis and statutory construction; we merely decline to do so as this case presents a political question which strips us of jurisdiction to undertake that otherwise familiar task") (internal citations omitted). Therefore, the Court must dismiss Plaintiff's First Amended Complaint for lack of subject matter jurisdiction.

B. *Plaintiff's Proposed Supplemental Complaint Does Not Assert a Justiciable Claim*

[10] Plaintiff has filed a Motion for Leave to File Supplemental Complaint, which is opposed by Defendants'. Pursuant to Rule 15(d), "the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense." Fed.R.Civ.P. 15(d). "The decision whether to grant leave to amend or supplement a complaint is within the discretion of the district court, but leave should be freely given unless there is a good reason, such as futility, to the contrary." *Wildarth Guardians v. Kempton*, 592 F.Supp.2d 18, 23 (D.D.C.2008) (quoting *Willoughby v. Potomac Elec. Power Co.*, 100 F.3d 999, 1003 (D.C.Cir. 1996)). Here, Plaintiff seeks to supple-

ment his complaint by adding President Barack Obama as a defendant along with thirty-five ambassadors to the United States from various countries with consular offices in Hawaii. Plaintiff also seeks to add specific allegations relating to each of these proposed defendants' allegedly unlawful actions in the Hawaiian Kingdom.

[11, 12] The Court finds that Plaintiffs proposed supplemental complaint presents the same nonjusticiable political question presented in the First Amended Complaint. Therefore, the Court shall deny Plaintiffs motion for leave to file a supplemental complaint as futile. Because Plaintiff has not presented the Court with any justiciable claims, the Court must also dismiss the pending motions for intervention under Rule 24. See *Black v. Cent. Motor Lines, Inc.*, 500 F.2d 407, 408 (4th Cir. 1974) ("Intervention is ancillary and subordinate to a main cause and whenever an action is terminated, for whatever reason, there no longer remains an action in which there can be an intervention. By its very nature intervention presupposes pendency of an action in a court of competent jurisdiction.") (internal citation omitted). Accordingly, the Court shall dismiss this action in its entirety.

#### IV. CONCLUSION

For the foregoing reasons, the Court finds that the claims asserted by Plaintiff in this action present a political question over which this Court lacks subject matter jurisdiction. Accordingly, the Court shall GRANT Defendants' [10] Motion to Dismiss; DENY Plaintiff's [21] Motion for Leave to File Supplemental Complaint; DENY Alfred Napahuelua Spinnery's [17] Application to Intervene; and DENY James Kimo Kekela's [30] Motion to Inter-

vene. An appropriate Order accompanies this Memorandum Opinion.



#### UNITED STATES of America, Plaintiff,

v.

PHILIP MORRIS USA INC.,  
et al, Defendants.

Civil Action No. 99-2496(GK).

United States District Court,  
District of Columbia.

April 19, 2011.

**Background:** In action alleging cigarette manufacturers and tobacco-related trade organizations violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in conspiracy to deceive American public about health effects of smoking, government moved for clarification regarding defendants' obligation to disclose disaggregated marketing data.

**Holdings:** The District Court, Gladys Kessler, J., held that:

- (1) defendants were required to disclose all marketing data disaggregated by geographical region, type of marketing, and any other categories of data collected or maintained on defendants' behalf;
- (2) Department of Justice (DOJ) could disclose to other governmental entities whatever disaggregated marketing data defendants disclosed; and
- (3) 10-year period within which defendants were subject to court's prior order ran

from date Court of Appeals' mandate was issued.  
Motion granted.

#### 1. Injunction $\Rightarrow$ 104

Defendant cigarette manufacturers and tobacco-related trade organizations were required, pursuant to court order directing them to disclose all disaggregated marketing data to government in same form as they disclosed such data to Federal Trade Commission (FTC), to disclose all marketing data disaggregated by geographical region, type of marketing, and any other categories of data collected or maintained on defendants' behalf, rather than only disaggregated marketing data they were required to disclose to FTC, in action alleging defendants violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in conspiracy to deceive American public about health effects of smoking. 18 U.S.C.A. § 1961 et seq.

#### 2. Injunction $\Rightarrow$ 104

Department of Justice (DOJ) could disclose to other governmental entities whatever disaggregated marketing data cigarette manufacturers and tobacco-related trade organizations disclosed pursuant to court order requiring such disclosure in action alleging defendants violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in conspiracy to deceive American public about health effects of smoking, subject to confidentiality provisions contained in order. 18 U.S.C.A. § 1961 et seq.

#### 3. Injunction $\Rightarrow$ 104

The 10-year period within which defendant cigarette manufacturers and tobacco-related trade organizations were subject to court's prior order, which, inter alia, directed them to disclose all disaggregated marketing data to government in

same form as they disclosed such data to Federal Trade Commission (FTC), ran from date Court of Appeals' mandate was issued, rather than date order was originally filed, in action alleging defendants violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in conspiracy to deceive American public about health effects of smoking, since order was not initially in effect due to defendants' success in obtaining emergency stay pending appeal, defendants would not be permitted to benefit from stay given that district court's findings and conclusions were generally affirmed on appeal, and starting 10-year period on such date would fully comply with court's intention in issuing original order. 18 U.S.C.A. § 1961 et seq.

Daniel K. Crane-Hirsch, Linda Margaret McMahon, Renee Brooker, U.S. Department of Justice Office of Consumer, Washington, DC, for Plaintiff.

Beth A. Wilkinson, Paul Weiss, Rifkind, Wharton & Garrison LLP, Washington, DC, David B. Alden, Elizabeth P. Kessler, Geoffrey Kres Beach, Jones, Day, Reavis & Pogue, Cleveland, OH, for Defendants.

#### MEMORANDUM OPINION

GLADYS KESSLER, District Judge.

The United States has filed a Motion for Clarification Regarding Defendants' Obligation to Disclose Disaggregated Marketing Data [Dkt. No. 5854]. Upon consideration of the Motion, the Responses of Defendants and Public Health Interventions, the Reply, Defendants' Surreply, and the entire record, the Court concludes that the Motion should be granted for the following reasons.