



## DEPARTMENT OF THE ATTORNEY GENERAL

### News Release

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#### **U.S. Supreme Court Grants State's Petition to Review Chevron Case**

HONOLULU - Attorney General Mark Bennett announced today that the United States Supreme Court has granted the petition for a writ of certiorari filed by the State of Hawaii in *Lingle v. Chevron USA Inc.*, No. 04-163 (U.S. Oct. 12, 2004). The State's petition seeks review of a decision by the lower federal courts invalidating, as an unconstitutional taking of an oil company's property, a state law that limits the amount of rent that oil companies can charge dealers who lease gas stations. In granting the writ of certiorari, the Supreme Court agreed to decide whether courts may review the wisdom of state economic legislation under the Just Compensation Clause of the Fifth Amendment. The Court will also consider whether courts engaged in such review should employ a standard of review that gives deference to the judgment of state legislatures on questions of social and economic policy.

Attorney General Bennett stated: "This case raises questions of profound importance concerning the proper relationship between the courts and institutions of democratic governance. Although the case focuses on a particular rent control law, the more fundamental issue is whether the federal courts may freely second-guess the wisdom of state economic legislation under the Just Compensation Clause of the United States Constitution. The State is pleased that the Supreme Court agreed to resolve this important question."

#### Background

Act 257 was enacted by the Hawaii legislature in 1997 to address concerns regarding the high economic concentration in the wholesale market for oil products and gasoline in the State, which is served by only two refiners. To ensure that retail prices for gasoline continue to be set by the many independent gas station operators in the State, Act 257 contains several provisions intended to prevent oil companies and jobbers from converting existing leased stations to company-operated stations. One provision, designed to prevent the oil companies from increasing rents to drive independent dealers out of business, caps the total rent that oil companies and jobbers may charge their dealers.

Chevron USA, Inc., the largest refiner and marketer of gasoline in Hawaii, sued the Governor and Attorney General of Hawaii in federal court, claiming that this restriction on rents constituted a taking of Chevron's property in violation of the Fifth Amendment to the United States Constitution.

Chevron did not seek compensation for the alleged taking, and stipulated that it was receiving a return on its gas stations under Act 257 that "satisfies any Constitutional standards." Chevron nonetheless argued that, as a matter of economic theory, the rent cap in Act 257 would not accomplish its goals, and therefore did not "substantially advance a legitimate state interest." Refusing to give deference to the judgment of the Hawaii legislature regarding the need for and effectiveness of the rent law, the federal district court held a one-day trial at which expert economists debated whether Act 257 would achieve its goal of protecting consumers from high gasoline prices. In April 2002, the district court agreed with Chevron's economist that the law would be ineffective and declared the law unconstitutional.

The Court of Appeals for the Ninth Circuit, over a strong dissent, affirmed the district court's judgment on April 1, 2004. *Chevron USA, Inc. v. Lingle*, 363 F.3d 846 (9th Cir. 2004). The Court of Appeals rejected the State's position that the Just Compensation Clause of the Fifth Amendment does not authorize federal courts to review the wisdom of state legislation, and also rejected the State's view that the federal courts should in any event have given deference to the judgment of the Hawaii legislature on questions of economic policy.

On July 30, 2004, the State petitioned the United States Supreme Court for a writ of certiorari, arguing that the intrusive review conducted by the federal courts of state legislation in this case threatens principles of democratic government and federalism. The State's petition was supported by amicus briefs filed by the Attorneys General of 19 states, the Commonwealth of Puerto Rico, and the Territories of the Virgin Islands and Guam; the National Conference of State Legislatures, National Association of Counties, National League of Cities, U.S. Conference of Mayors, and two other associations of municipal governments; and the League of California Cities. The State's petition was granted by the Supreme Court on October 12, 2004.

#### Issues to be decided by the Supreme Court.

Hawaii's petition asks the Court to determine two closely-related issues of constitutional law:

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(1) Whether challenges to a law's wisdom or legitimacy properly lie under the Just Compensation Clause of the Fifth Amendment, whose fundamental purpose is to compensate persons when property is taken by government action, not to impose substantive limits on government's power to act; and

(2) If so, whether courts should give deference to the judgment of the state legislature concerning the need for and efficacy of a challenged law, as they would under other constitutional guarantees, or may instead hold de novo trials, as the district court did in this case, to make an independent determination of the wisdom of a challenged law.

Attorney General Bennett stated: "Each of these issues goes directly to the proper balance between the judiciary and institutions of democratic governance in our nation. It has long been accepted as a bedrock principle that the courts should not substitute their judgment regarding the wisdom of social and economic legislation for that of the democratically-elected legislature. The intrusive review of Hawaii's legislation conducted by the lower federal courts in this case would destroy that basic understanding of the judiciary's proper role. We hope and expect that the Supreme Court will firmly reject the Ninth Circuit's profoundly misguided approach."

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