



**DEPARTMENT OF THE ATTORNEY GENERAL**  
KA 'OIHANA O KA LOIO KUHINA

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**DEPARTMENT OF THE ATTORNEY GENERAL PREVAILS IN CONSTITUTIONAL  
CHALLENGE TO PROCUREMENT CODE PROVISION**

**FOR IMMEDIATE RELEASE**

November 30, 2023

HONOLULU – The Department of the Attorney General has prevailed in a lawsuit in which Circuit Court Judge Jeffrey P. Crabtree upheld the constitutionality of a law requiring parties challenging a procurement award to post a protest bond equal to one percent of the estimated value of the contract. Given the court’s ruling, the protest-bond requirement remains in full force and effect.

Robert’s Hawaii School Bus, Inc. filed suit against the State of Hawai‘i, the Department of Education, and the Department of Commerce and Consumer Affairs that sought to strike down the protest-bond statute, section 103D-709(e), Hawaii Revised Statutes, a key provision of the state’s Procurement Code, on a variety of constitutional grounds.

The Department of the Attorney General filed a motion for summary judgment, arguing, among other things, that the protest bond serves important legislative purposes, including discouraging unnecessary procurement protests and compensating the state for damages caused by delays.

Judge Crabtree agreed with the Department of the Attorney General and granted summary judgment in favor of the state defendants, holding that the protest-bond provision does not violate the rights to petition, equal protection, or due process, nor did it constitute a fine. Judge Crabtree entered final judgment in favor of the state defendants.

“We are pleased that the court upheld the Legislature’s policy decisions embodied in the Procurement Code,” said Deputy Solicitor General Lauren Chun, who was the lead attorney for the state defendants on the case. “The Legislature’s job is to promote

fairness in government contracting, while also providing for the expeditious resolution of procurement disputes.”

“My department takes constitutional challenges to statutes extremely seriously because the Legislature represents the will of the people of Hawai‘i,” said Attorney General Anne Lopez. “We will vigorously defend Hawai‘i’s laws in court.”

The case is *Robert’s Hawaii School Bus, Inc. v. State of Hawai‘i*, Civ. No 1CCV-23-0000754. A copy of the court’s dispositive order can be found [here](#). The final judgment can be found [here](#).

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