No. CAAP-25-0000562

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

STATE OF HAWAII, by its Attorney General, Respondent/Plaintiff-Appellant, vs. DON HOWARD WILLIAMS, JR., TRUSTEE OF THE WILLIAMS OPPORTUNITY TRUST, Petitioner/Defendant-Appellee,	On Appeal from the Circuit Court of the Second Circuit Civil No. 2CC121000724 (Condemnation) Final Judgment: July 9, 2025 Hon. Kirstin M. Hamman *(caption continued on next page)*

PETITIONER/DEFENDANT-APPELLEE DON HOWARD WILLIAMS, JR., TRUSTEE OF THE WILLIAMS OPPORTUNITY TRUST'S APPLICATION FOR TRANSFER TO THE SUPREME COURT

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CITY BANK, a Hawaii corporation, now known as Central Pacific Bank, a Hawaii corporation; AMERUS LIFE INSURANCE COMPANY, an Iowa corporation; JOHN DOES 1-100; MARY ROES 1-100; DOE PARTNERSHIPS 1-100; DOE TRUSTS 1-100; DOE ENTITIES 1-100; DOE ESTATES 1-100; and DOE CORPORATIONS 1-100,

Respondents/Defendants.

DON HOWARD WILLIAMS, JR., TRUSTEE OF THE WILLIAMS OPPORTUNITY TRUST,

Petitioner/Defendant/Counterclaimant,

vs.

STATE OF HAWAII,

Respondent/Plaintiff/Counterclaim Defendant.

(caption continued from previous page)

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PETITIONER/DEFENDANT-APPELLEE DON HOWARD WILLIAMS, JR., TRUSTEE OF THE WILLIAMS OPPORTUNITY TRUST'S APPLICATION FOR TRANSFER TO THE SUPREME COURT

I. REQUEST FOR TRANSFER TO THE SUPREME COURT

Pursuant to Haw. Rev. Stat. § 602-58 and Haw. R. App. P. 40.2, Petitioner/Defendant-Appellee Don Howard Williams, Jr., requests this appeal be transferred to the Supreme Court of Hawaii.[1] This appeal involves the application of Rule 56 summary judgment standards in eminent domain cases. After Williams, the defendant, sought summary judgment and offered evidence of just compensation which had already been ruled admissible by the ICA, the plaintiff State failed to meet its Rule 56(e) obligation to dispute this valuation with admissible evidence of its own. Consequently, the circuit court entered summary judgment on the amount of compensation based on Williams's uncontravened appraisal.

This appeal presents two questions of imperative or fundamental importance: (1) whether the usual burdens in summary judgment govern the factual determination of the amount of just compensation the State is obligated to provide in eminent domain; and (2) the duties and obligations of the government when exercising the sovereign power to forcibly acquire property from an owner. Haw. Rev. Stat. § 602-58(a)(1).

II. STATEMENT OF PRIOR PROCEEDINGS

In the previous appeal, the ICA held that Williams's appraisal was admissible, because it used the capitalization of income approach and Williams's property was actually generating income. *State v. Williams*, 154 Haw. 107, 546 P.3d 1221 (Ct. App. 2024) (2024 WL 1623547, at *4) (*Williams I*). This valuation method measures the anticipated net income the property may generate, discounts it for risk, and reduces it to present value. *United States v. Waterhouse*, 132 F.2d 699 (9th Cir. 1943) (the "capitalization of income" method is a widely-accepted approach to valuing property which does, or has the potential to, produce income). The ICA held:

> Therefore, a future income stream from leasing the Property would not be speculative because Williams had received actual income from leasing the Property and appraisal of the leased interest could have been presented to a jury.

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[1] This application (filed on April 10, 2026, which is within 20 days after the last brief was filed on April 9, 2026) is timely. *See* Haw. R. App. P. 40.2(a)(2). Respondent/Plaintiff-Appellant State of Hawaii, by its Attorney General, is referred to as "State" and Petitioner/Defendant-Appellee Don Howard Williams, Jr., Trustee of the Williams Opportunity Trust, as "Williams."

> Thus, to the extent the circuit court's granting of the State's motion in limine precluded admission of possible future lease income as evidence in determining the value of just compensation for taking Williams' property, the circuit court abused its discretion.

Williams I, 2024 WL 1623547, at *4. *See also City & Cnty. of Honolulu v. Bishop Trust Co*., 48 Haw. 444, 450, 404 P.2d 373, 379 (1965) (detailing the use of the capitalization of income approach in determining just compensation).

On remand, the sole issue remaining was the amount of just compensation the plaintiff State must pay before it may condemn and acquire Williams's interest in property, after entry of the final order of condemnation. *See* Haw. Rev. Stat. § 101-26 ("When all payments required by the final judgment have been made, the court shall make a final order of condemnation … and thereupon the property shall vest in the plaintiff.").

In accordance with the ICA's ruling and Rules 56(b) and 56(e), Williams submitted this appraisal of the leased-fee (the property interest he owned on the statutory date of valuation, the date of the summons) with his motion for summary judgment. To avoid summary judgment, the State was required to bring this material fact into contention by opposing with its own admissible evidence of valuation. Haw. R. Civ. P. 56(e) ("affidavits … shall set forth such facts as would be admissible in evidence"). But the State did not do so. Instead, it pointed only to appraisals which the U.S. and Hawaii Constitutions and Hawaii's eminent domain statutes render irrelevant and inadmissible.

First, the State pointed to two appraisals which valued a legally irrelevant interest, the fee simple absolute. But Williams did not own the fee simple absolute on the date of the summons. Rather, because the State was leasing his land on that date, he owned the leased-fee (the fee encumbered by the State's lease), meaning the leased-fee was the property interest that must be valued, and valuations of other property interests are constitutionally inadmissible. *Boston Chamber of Commerce v. City of Boston*, 217 U.S. 189, 195 (1910) ("the question is, What has the owner lost? not, What the taker gained?"). Put another way, the State's valuation of a fee simple absolute estate was not admissible because the only way the fee simple would come into being was as a result of the condemnation terminating the lease. In such cases, the "project influence" rule prohibits admission of evidence of valuation influenced by the taking itself. At this Court put it, "[a] major goal of the valuation process in eminent domain proceedings is to deter-

mine market conditions for the taken property *as though no condemnation had ever been contemplated*." *City & Cnty. of Honolulu v. Market Place, Ltd.*, 55 Haw. 226, 246-47, 517 P.2d 7, 22 (1973) (emphasis added).

Second, the State relied on two valuations which appraised the property on a date other than the mandatory date of valuation, the date of summons. *See* Haw. Rev. Stat. § 101-24 ("For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of summons and … its actual value at that date *shall be the measure of valuation of all property to be condemned*[.]") (emphasis added). Valuations of the property taken on a date other than the date of summons are irrelevant and inadmissible. *City & Cnty. of Honolulu v. Chun*, 54 Haw. 287, 288-89, 506 P.2d 770, 771 (1973) ("The law in this jurisdiction is that in a condemnation action the date of summons establishes the point in time at which the compensation for property taken or damaged due to partial taking is to be computed.").

Lacking admissible countervailing evidence, the circuit court entered summary judgment in accordance with Rule 56(e) ("If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."). The State appealed. JEFS Dkt. 204 NA.

III. STATEMENT OF FACTS

A. The Williams Property and the State's Lease

In September 1994, the State Department of Land and Natural Resources leased a roughly one-acre parcel of undeveloped land in Maalaea, Maui (property) owned by Williams, for a term of thirty years, commencing on September 1, 1994, to August 31, 2024. State's ICA Op. Br. at 1.

B. The State's Eminent Domain Complaint and Summons: June 27, 2013

Nearly twenty years later, the State launched this eminent domain action. JEFS Dkt. 1. By this lawsuit filed in 2013, the State is seeking to acquire and condemn by eminent domain Williams's interest in the property. *Id*. Summons issued on June 27, 2013. *Id*.

C. State of Title and Ownership on June 27, 2013

On the date of summons, Williams owned the leased-fee interest (subject to a mortgage). JEFS Dkt. 34 OB at 1, 2. This means he possessed the right to receive rent for eleven years and two months, and to resume possession at the end of the Lease. The State possessed the leasehold interest in the property and, accordingly, had sole possession and exclusive use for the remainder of the Lease, and the obligation to pay rent. *Id*.

D. The Parties' Appraisals

On the date of summons, Williams's leased-fee interest was generating a $350,000 yearly income, and more than eleven years remained on the State's Lease. *Id*. at 6. Consequently, Williams's appraiser, R.S. Spangler (Spangler), employed the capitalization of income method (typical when valuing income-generating properties), where reasonably-certain future rent payments are discounted for risk, and reduced to present value. *Id.* at 6-7. After all, a free-market purchaser buying what Williams owned would reasonably view the property's main value as Williams's rights as lessor to receive the future income flow. Spangler valued Williams's leased-fee at $7,000,000. *Id*. at 7.

The State eventually commissioned three different appraisals over the course of the circuit court litigation, each using a different method, and each arriving at a different conclusion of value. First, it produced Hallstrom Group, Inc.'s opinion of (a) the leased-fee interest ($4,165,000); and (b) the fee simple interest ($3,115,000) (Hallstrom #1). *Id*. at 6. These opinions were based on a date of valuation of June 17, 2013, not the date of summons. *Id*. at 5 (chart). Next, the State produced a second report by Hallstrom, which boosted his opinion of (a) the leased-fee interest by nearly a million dollars (to $5,060,000); and (b) the fee simple interest ($3,115,000), both keyed to June 17, 2013—again, not the date of summons (Hallstrom #2). *Id*. The State then got rid of Hallstrom and commissioned a third, radically lower valuation by Lesher Chee Stadlbauer (through Stephen E. Stadlbauer), which valued the unencumbered fee simple interest on June 27, 2013, at $2,670,000 (Stadlbauer). *Id.*

E. *Williams I*: Capitalization of Income Valuation Is Admissible

"The case, however, never went to trial[.]" *Williams I*, 2024 WL 1623547, at *1. Rather, after the circuit court *in limine* excluded Williams's valuation evidence and concluded that Stadlbauer's (the State's third appraisal) opinion was the only relevant and admissible evidence of valuation, the parties stipulated to judgment. JEFS Dkt. 34 OB at 2. Williams appealed, and the ICA reversed. *Williams I*, 2024 WL 1623547, at *1. The ICA held that capitalization of income is a relevant and admissible method of valuing Williams's property (which was generating income—rent from the State under the Lease—on the date of the summons), and that the circuit court abused its discretion by excluding Spangler's valuation of that interest. *Id*. at *4.

F. Summary Judgment on Remand After *Williams I*

The case had languished on the docket for so long that by the time it was remanded to the

Second Circuit, the lead counsel for the State had retired, and the originally-assigned circuit judge had also retired and a newly-appointed judge had taken over. *See* JEFS Dkt. 141 ORD at pdf 2.[2] At the trial resetting conference, the circuit court orally scheduled a bench trial for April 14, 2025. Fixing the trial date established the discovery cutoff as February 13, 2025, or sixty days before trial. *See* R. Cir. Cts. 12(r). This also meant that motions for summary judgment were due not later than February 21, 2025 (fifty days prior to April 14, 2025). *See* Haw. R. Civ. P. 56(a).

On February 20, 2025, after discovery was completed, and based on the holding in *Williams I*, Williams timely moved for summary judgment on the sole remaining issue, the amount of just compensation the State was obligated to provide. JEFS Dkt. 148 MSJ. Williams submitted Spangler's valuation, which the ICA had already ruled admissible *Id*. at pdf 6.

After the motions cutoff had passed (a deadline the State acknowledged), the State untimely moved for partial summary judgment on the same issue. *See* JEFS Dkt. 178 MEO at pdf 2 ("The State apologizes for inadvertently filing past the 50-day deadline."). The State did not request a Rule 56(f) continuance (nor could it because the discovery cutoff had passed). Instead, the State—without attaching any of its appraisal reports—argued that the reports supported its valuation and asked the circuit court to "determine[e] that the correct valuation method is the comparable sales approach as a matter of law." JEFS Dkt. 156 MPSJ at pdf 6. *See also* JEFS Dkt. 176 MEO (State opposed Williams's motion for summary judgment but did not attach any of the State's three appraisal reports).

After briefing and hearing, the circuit court granted Williams's motion for summary judgment, denied the State's motion for partial summary judgment (JEFS Dkt. 195 ORD), and

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[2] Suing someone who has done nothing wrong to forcibly acquire their property is the severest civil force the sovereign may direct at an innocent citizen, and the practical consequences of eminent domain actions can be extreme. For example, the State's seizure of land it already possessed and its unilateral termination of its own rent obligation wiped out Williams's plan for his Maalaea land to be his testamentary legacy for his only child, Sebastian. Cases like this are why the legislature has required eminent domain lawsuits to be resolved expeditiously. *See* Haw. Rev. Stat. § 101-9 ("In all actions brought under this chapter, to enforce the right of eminent domain, all courts shall give the actions preference over all other civil actions in the matter of setting the actions for hearing or trial, and in hearing them, to the end that all the actions shall be quickly heard and determined."). Yet somehow, nearly *thirteen years* after the State sued him, Williams remains in legal purgatory—uncompensated—with additional years-long delay the likely result of the State's appeal.

entered final judgment for just compensation. JEFS Dkt. 202 FJ. The State appealed. JEFS Dkt. 204 NA.

IV. STATEMENT OF POINTS OF ERROR

The State asserted three points of error in the ICA: (1) the circuit court erred granting summary judgment and determining just compensation as a matter of law when material facts remained in dispute; (2) it wrongly excluded "the State's expert appraisers based on a ten-day timing difference"; and (3) it should not have "determine[ed]the income capitalization method appropriate instead of the comparable sales method." JEFS Dkt. 34 OB at 7-8.

V. THIS CASE MEETS STATUTORY QUALIFICATIONS FOR TRANSFER

A. This Court Should Confirm That Eminent Domain Plaintiffs Have the Same Obligation to Oppose Summary Judgment with Admissible Evidence as Plaintiffs in Every Other Civil Case

This Court recognizes the essential role of the jury in resolving factual disputes involving the amount of just compensation the condemnor must provide. *See*, *e.g*., *Hous. Fin. & Dev. Corp. v. Ferguson*, 91 Haw. 81, 89, 979 P.2d 1107, 1115 (1999) ("Based on the established common-law convention of this jurisdiction at the time of the adoption of the state constitution, we hold that, as a general matter, a right to jury trial exists in state eminent domain proceedings."). And recently, this Court emphasized that the jury's function of determining just compensation must be carefully guarded. *See City & Cnty. of Honolulu* ex rel. *Honolulu Auth. For Rapid Transp. v. Victoria Ward, Ltd*., 153 Haw. 462, 476, 541 P.3d 1225, 1239 (2023) (reversing grant of summary judgment because "it is the province of the jury to determine the contours of this obligation and to calculate the amount of severance damages").

But the State's appeal is based on the fundamentally wrong assumption that the usual rules and burdens of summary judgment may not be applied in just compensation cases. *See*, *e.g*., JEFS Dkt. 34 OB at 9 (arguing the State was deprived of opportunity to challenge Spangler's credibility). Although eminent domain actions are not typical civil litigation,[3] the legislature in-

[3] This Court has explained that eminent domain is in "derogation" of "common-law principles," *Marks v. Ackerman*, 39 Haw. 53, 58-59 (Terr. 1959) (citation omitted). As such, eminent domain actions are special proceedings in which a property owner who is not alleged to have committed a civil wrong (the "defendant" is not alleged to have failed a duty, or to have breached a contract) ends up on the target end of government's lawsuit, and must expend unrecoverable legal

(footnote continued on following page)

structs us that, unless there is some reason to deviate, the procedures in such actions "shall be the same as in other civil actions." Haw. Rev. Stat. § 101-11. Here, as in every other civil action, the plaintiff (the State) bears the burden of production and the burden of persuasion. *State* ex rel. *Kobayashi v. Heirs of Kapahi*, 48 Haw. 101, 105, 395 P.2d 932, 935-36 (1964) (condemnor has the burden of proof under predecessor statute to section 101-11) (citing *Carter v. Lulia*, 16 Haw. 630, 632 (Terr. 1905) ("The contention that defendant had the right to open and close the case, because she admitted plaintiffs' paper title and had the burden of proof, is disposed of by section 1768 of the Revised Laws.")). Consequently, to prevail, the State must carry the burdens of production and persuasion on both elements of its claim: that the taking is for a public use, and that it will pay just compensation for the private property taken. U.S. Const. amend. V; Haw. Const. art. I, § 20.

One of the procedures in eminent domain cases that is "the same as in other civil actions" is the summary judgment principle that a jury is not needed to resolve factual disputes where no such disputes exist. *See* Haw. Rev. Stat. § 101-11. The entire point of summary judgment is to save the effort of trial where the nonmoving party has "no competent evidence to support a judgment[,]" *First Hawaiian Bank v. Weeks*, 70 Haw. 392, 396-97, 772 P.2d 1187, 1190 (1989), and that is no different in eminent domain. Thus, the evidence offered by the parties making and responding to a motion for summary judgment in a just compensation case must be admissible at trial (as in every other civil case). Haw. R. Civ. P. 56(e); *Victoria Ward*, 153 Haw. at 476, 541 P.3d at 1239 ("In light of the *admissible evidence* disputing HART's theory that Victoria Ward is precluded from seeking severance damages, the order granting HART's MPSJ No. 3 is vacated.") (emphasis added).

Here Williams, the defendant-property owner, sought summary judgment on the amount of just compensation under Haw. R. Civ. P. 56(b). In conformity with Rule 56, he submitted evi-

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fees and other costs to defend what is already theirs. *See Torrance Unified Sch. Dist. of Los Angeles Cnty. v. Alwag*, 145 Cal. App. 2d 596, 599-600, 302 P.2d 881, 883 (1956) (an action to take private property is not of the same nature as ordinary civil litigation; there is no defendant alleged to have committed some wrong). Thus, eminent domain cases are not supposed to be adversarial, but "[a] condemnation proceeding is a sober inquiry into values, designed to strike a just balance between the economic interests of the public and those of the landowner." *Ryan v. Kansas Power & Light Co*., 249 Kan. 1, 13, 815 P.2d 528, 537 (1991).

dence the ICA had already ruled admissible—that just compensation is $7 million. *Williams I*, 2024 WL 1623547, at *4. This put the burden under Rule 56(e) on the State to oppose with admissible evidence that would, at minimum, meet its burden to dispute that fact by producing evidence to meet its burden of showing *prima facie* evidence of an essential element of its claim. *Ralston v. Yim*, 129 Haw. 46, 60-61, 292 P.3d 1276, 1290-91 (2013) ("a summary judgment movant may satisfy his or her initial burden of production by … demonstrating that the non-movant will be unable to carry his or her burden of proof at trial") (citations omitted). Or it may have obtained a Rule 56(f) continuance. But in response (and in support of its own motion for summary judgment), the State pointed to three different appraisals, none of which would have been admissible at trial, under two longstanding requirements in just compensation. The first is the constitutional project influence rule, and the second is the statutory date-of-summons rule. In short, the State responded only by pointing to *inadmissible* evidence. Having no Rule 56(e)-compliant countervailing evidence drawing a fact into dispute, the court entered summary judgment.

1. First rule of inadmissibility: exclusion of the taking's influence on value

The first rule of categorical inadmissibility is sourced in the Fifth Amendment and the Hawaii Constitution's Just Compensation Clause. The "project influence" rule requires exclusion of evidence of valuation of the property as influenced by the condemnation itself. In other words, the property must be valued as if the acquisition was a free-market, arms-length sale, and not an involuntary transaction where the owner has no choice but to sell. *United States v. Miller*, 317 U.S. 369, 375 (1943) (the property's "special value to the condemnor, as distinguished from others who may or may not possess the power to condemn, must be excluded as an element of market value").

The reason for this longstanding rule is that just compensation is supposed to reflect a situation that does not actually exist: eminent domain is by definition a forced, involuntary sale, yet the constitutional requirement is that the government is obligated to compensate the owner with the free market value of the property. *Territory by Sharpless v. Adelmeyer*, 45 Haw. 144, 150, 363 P.2d 979, 983 (1961) (fair market value standard). Just compensation is "intended to award landowners 'an amount of just compensation which as nearly as possible approximates the value which a free market would attach to the taken property.'" *Victoria Ward*, 153 Haw. at 486, 541 P.3d at 1249 (quoting *Market Place*, 55 Haw. at 242, 517 P.2d at 19). As this Court restated

this same rule, "[a] major goal of the valuation process in eminent domain proceedings is to determine market conditions for the taken property *as though no condemnation had ever been contemplated*." *Market Place*, 55 Haw. at 246-47, 517 P.2d at 22. Put yet another way, the just compensation process establishes the value of "what the owner lost, not what the taker gained." *Boston Chamber*, 217 U.S. at 195.[4]

The project influence rule means that the just compensation owed by the State to Williams must be measured by valuing what he owned on the date of valuation (the date of summons), not the estate the State would end up possessing as a result of the condemnation (which would occur only after the State actually paid all adjudicated compensation and interest). Here, it was undisputed that on the date of valuation, the Maalaea property was held as a divided estate: the State possessed the leasehold, while Williams owned the fee simply encumbered by the State's leasehold (in usual parlance, Williams owned the "leased-fee").

Notwithstanding the clarity of these constitutional requirements (to say nothing of their venerable status), the State has steadfastly insisted throughout the thirteen years of this case that Spangler's valuation of Williams's leased-fee property interest was irrelevant, and that the only property interest that could be valued was the fee simple absolute, an interest that the State would only possess after it paid the adjudicated compensation and the court entered the final order of condemnation. Haw. Rev. Stat. § 101-26. In short, even in the face of longstanding and fundamental precedent (including the ICA in *Williams I*), the State maintains the only interest for which it owes Williams just compensation is the fee simple absolute—an interest Williams did not in fact possess on the date of valuation, and an interest that would only come into being as the result of the State's condemnation. In short, an argument plainly contravening the constitu-

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[4] Excluding evidence of valuation of the property as condemned protects both property owners and the public fisc. The Supreme Court has recognized that property values may go up because of a condemnation or may go down. *See Miller*, 317 U.S. at 376 ("If a distinct tract is condemned in whole or in part, other lands in the neighborhood may increase in market value due to the proximity of the public improvement erected on the land taken."). The project influence rule excludes evidence of either an increase or decrease in value because of the taking. That's why, whatever effect the influence of the project might have on value, evidence of the value of any interest other than Williams's leased-fee is inadmissible. *Id.* at 375 (the property's "special value to the condemnor, as distinguished from others who may or may not possess the power to condemn, must be excluded as an element of market value"). *See also Nichols on Eminent Domain* § 12B.17[1] (rev. 3d ed. 1999).

tional rule excluding valuations influenced by the eminent domain itself. Put another way, the State has urged the courts to apply a patently unconstitutional theory.

The State's most fundamental error is conflating *Williams's interest* on date of summons (the fee simple encumbered by the State's leasehold (aka the leased-fee)), with the property interest *the State* will possess if and when it finally condemns (the unencumbered fee simple absolute). Thus, it argues, Spangler's valuation of the leased-fee is wrong, and Stadlbauer's valuation of the fee simple absolute is not only admissible, it is the sole valid method to determine just compensation. This is grossly wrong, yet the State continues to urge this Court (as it did in the first appeal) to accept its plainly unconstitutional approach, because the Fifth and Fourteenth Amendments and the Hawaii Constitution require valuation evidence to be based only on *the owner's* actual state of title on the date of the taking and prohibit evidence of the interest the taker will gain as a result of the taking.

2. Second rule of inadmissibility: valuations on dates other than the date of summons are not relevant

The second rule of categorical inadmissibility is statutory. "The Court has repeatedly held that just compensation normally is to be measured by 'the market value of the property *at the time of the taking* contemporaneously paid in money.'" *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984) (emphasis added) (citation omitted). In accordance with that constitutional requirement, Hawaii's eminent domain code fixes the date of valuation—the date on which just compensation "shall be" assessed—as the date of summons:

> **§101-24 Assessed as of day of summons.** For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of summons, and, except as provided in section 46-6, its actual value at that date *shall be the measure of valuation of all property to be condemned*, and the basis of damage to property by reason of its severance from the portion sought to be condemned, subject, however, to section 101-23.

Haw. Rev. Stat. § 101-24 (emphasis added). The statute establishes a *prima facie* element of the plaintiff's condemnation claim (proof of valuation on the date of summons), and no prejudice need be shown by the property owner defendant. *See In re Widening of Fort St.*, 6 Haw. 638, 646-47 (Kingdom 1887) ("[W]hen a statute confers upon the Government or other parties the right to take another's property for public purposes, every form and particular required by such statute must be complied with.").

If the plain statutory language was not plain enough, this Court has also confirmed that the statutory date of valuation is mandatory, and that to be admissible, all evidence of valuation must be keyed to that date alone: "The law in this jurisdiction is that in a condemnation action the date of summons establishes the point in time at which the compensation for property taken or damaged due to partial taking is to be computed." *City & Cnty. of Honolulu v. Chun*, 54 Haw. 287, 288-89, 506 P.2d 770, 771 (1973). But the State ignores the statute's plain language, claiming that evidence of value of the subject property on a range of dates is admissible, and that it is up to the jury to determine which date is best.[5] But valuation of the property on any other date is irrelevant and inadmissible.

This longstanding principle was most recently confirmed by this Court in *County of Kauai v. Hanalei River Holdings, Ltd*., 139 Haw. 511, 394 P.3d 741 (2017).[6] There, the unanimous Court no less than twelve times noted that in Hawaii eminent domain actions, the date of valuation is the date of the summons. *See*, *e.g*., *id*. at 530, 394 P.3d at 760 (condemnor acted in good faith when it provided of its own volition, "an updated appraisal that reflected a current value of the subject property as of May 31, 2011 (the date of summons)").[7] The Court's references in *Ha-*

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[5] This isn't a matter of just a few days. After all, the real estate market is obviously not static and changes all the time—often dramatically and with little notice. For example, the Lahaina fires radically altered the real estate market overnight. And we all experienced COVID, which saw dramatic and rapid changes in real estate markets locally and nationally.

[6] *See also Honolulu v. Caetano*, 30 Haw. 1, 7 (Terr. 1927) (noting "date of summons" valuation date in the then-current version of the statute); *City & Cnty. of Honolulu v. Bd. of Water Supply*, 36 Haw. 348, 354 (Terr. 1943) (date of summons is the date of valuation); *State* ex rel. *Kashiwa v. Coney*, 45 Haw. 650, 653, 372 P.2d 348, 350 (1962) (Since the property is presumed to be taken as of the date of summons and its value is calculated as of that date, any payment made subsequent to that date should include blight damage.); *Market Place*, 55 Haw. at 235, 517 P.2d at 15 (blight of summons damages measured from date of the summons).

[7] *See also id*. at 514, 394 P.3d at 744 ("in good faith in seeking to adjust the estimate to accurately reflect the value of the property on the date of the summons . . ."); *id*. at 516, 394 P.3d 741 at 746 (noting the County's initial appraisal was not on the date of summons, and that it subsequently had its appraiser provide a report updated to the date of summons); *id*. at 519, 394 P.3d at 749 (condemnor argued that it was entitled to update its appraisal to the date of summons); *id*. at 524, 394 P.3d at 754 (condemnor argued that interest should be measured from date of summons); *id*. at 519, 394 P.3d at 749 (this Court had approved the condemnor's unprompted update of appraisal report to reflect the date of summons); *id*. at 524, 394 P.3d at 754 (Supreme Court noted that blight of summons damages run from date of summons); *id*. at 523, 394 P.3d at 753

(footnote continued on following page)

nalei River are not mere dicta, because the date of summons was critical to the court's holding that blight of summons damages run from that date.

3. Where the condemnor produces no admissible evidence of just compensation but the property owner does, summary judgment "shall be entered"

In sum, where in the nearly thirteen years an eminent domain action has languished on the docket, the plaintiff-condemnor has produced no admissible evidence to satisfy its *prima facie* burden of proof of the valuation of the property it wants to condemn, and the property owner produces admissible evidence of valuation, the burdens of summary judgment make trial unnecessary. Summary judgment on just compensation was not "unprecedented" as the State claims, merely the usual civil process working exactly as it was designed. *See Flint v. MacKenzie*, 53 Haw. 672, 672-73, 501 P.2d 357, 357 (1972) ("The purpose of summary judgment under Rule 56 is to expedite matters where 'there is no genuine issue as to any material fact.'"); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) ("Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'") (quoting Fed. R. Civ. P. 1).

B. This Appeal Is an Opportunity to Clarify the Duties and Obligations of Those Who Wield Government's "Most Awesome Grant of Power"[8]

This Court should also transfer this case to reaffirm that when exercising sovereign power to deprive by force of law an owner of the right to keep their property, the power must be ex-

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(noting that "[b]light of summons damages refers to 'the indemnification due a condemnee for the damages resulting from the government's delay in paying the full cash equivalent of the property taken on the date of summons'") (citing *Market Place*, 55 Haw. at 235, 517 P.2d at 15); *id*. at 525, 394 P.3d at 755 (applying rule, holding that such damages will be calculated based on the date of summons); *id*. at 525, 394 P.3d at 755 (condemnor owed damages "from May 31, 2011 (the date of the summons)"); *id*. at 530, 394 P.3d at 760 (condemnor "acted in good faith in seeing to adjust the estimate to accurately reflect the value of the property on the date of the summons").

[8] *Winger v. Aires*, 89 A.2d 521, 522 (Pa. 1952) ("The power of eminent domain, next to that of conscription of man power for war, is the most awesome grant of power under the law of the land.").

ercised with great deliberation and care, strictly within the confines which the constitutions and the legislature establish. As detailed above, at the heart of this case are two issues that should be uncontroversial: the project influence rule and the date-of-summons requirement are plain and long-established in U.S. and Hawaii law. If the State, even after thirteen years (including losing an appeal in the ICA) can't get it even close to correct and continues to press counterfactual arguments it already lost, this Court's intervention is plainly needed, and further delay in compensating Williams is unwarranted.

The government's duty as condemnor is to ensure that the owner is "justly" compensated, not merely treated as an adversary to be worn down in order to secure the lowest judgment possible. This duty has two distinct components. The first is procedural. As this Court held long ago, the courts have an unflinching obligation to strictly hold condemnors to the procedures and limitations on the eminent domain power established by the law:

> no person shall be deprived of * * * "property without due process of law," and it is undoubted law that when a statute confers upon the Government or other parties the right to take another's property for public purposes, *every form and particular required by such statute must be complied with*.

Fort St., 6 Haw. at 646-47 (emphasis added), *quoted in Coon v. City & Cnty of Honolulu*, 98 Haw. 233, 247 n.18, 47 P.3d 348, 362 n.18 (2002). *See also Marks*, 39 Haw. at 58-59 (eminent domain statutes "should be construed liberally in favor of the landowner as to remedy in so far as they are in harmony with the common–law principles and constitutional guarantees protecting private property"). In eminent domain the condemnor holds all of the cards: it alone institutes the process (more so when it is the State which is condemning, because all it takes is a department head's request to the Attorney General; unlike takings by counties (which require a public resolution by the elected council), the State's decision to take isn't made by elected officials), it is pretty certain to get the property, and there isn't much the property owner can do about it. Here, the State alone decided what, where, and most importantly here—*when* and *how often* (eminent domain actions are not bound by statutes of limitations, and the usual rules of res judicata do not prevent a condemnor which fails to take property from trying again and again). Given this immense power, about the only thing a property owner can do is ask that a court hold the State to what few limitations there are on such power.

The requirements of the date of summons statute are straightforward. The date of sum-

mons "shall" be the date to which all valuations must be keyed. Haw. Rev. Stat. § 101-24. If that was not sufficiently clear, this Court has repeatedly confirmed the date of summons as the date of valuation. *Chun*, 54 Haw. at 288-89, 506 P.2d at 771. Yet the State has over the course of this case insisted the statute does not preclude it from putting before the jury an appraiser's opinion about the value the property on a *different* date, because it might be informative and there's no danger the jury would be influenced to determine the value the property on a date other than the date of summons. The Opening Brief suggests the statute allows (or at least does not preclude) appraisals that are not "conducted on the exact summons date." JEFS Dkt. 34 OB at 12.[9] While the State may be afforded some latitude for party advocacy, its special role as condemnor obligates it to pay attention to "every form and particular" in section 101-24, *Fort St*., 6 Haw. at 647, and to apply that statute strictly in favor of Williams, the property owner-condemnee. *Marks*, 39 Haw. at 58-59.

The second condemnor duty is owing to the fact that it isn't merely a plaintiff zealously pursuing relief, but rather acts in a quasi-judicial capacity. As the California Supreme Court puts it:

> The duty of a government attorney in an eminent domain action, which has been characterized as "a sober inquiry into values, designed to strike a just balance between the economic interests of the public and those of the landowner" (*Sacramento etc. Drainage Dist. v. Reed* (1963) 215 Cal.App.2d 60, 69, 29 Cal.Rptr. 847, 853), is of high order. "The condemnor acts in a quasi-judicial capacity and should be encouraged to exercise his tremendous power fairly, equitably and with a deep understanding of the theory and practice of just compensation." (Hogan, Trial Techniques in Eminent Domain (1970) 133, 135.)

City of Los Angeles v. Decker, 18 Cal. 3d 860, 871, 558 P.2d 545, 551 (1977).

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[9] The State's argument against the statutory date of summons is based on a fundamental conceptual error, which conflates valuation of the property being condemned (the "subject property," Williams's leased-fee interest), with the "comparable sales" of other properties near in time to the statutory date of valuation. To be sure, expert appraisers often examine sales of similar properties on dates other than the date of summons to inform them of the state of the market. But these "comps" are not themselves evidence and are not admissible and are used only by the expert to formulate an opinion about the only relevant fact on which an appraiser may offer an opinion: the valuation of the subject property on the date of the summons. *See City & Cnty. of Honolulu v. Int'l Air Svc. Co*., 63 Haw. 322, 628 P.2d 192 (1981) (the "market data" or "sales comparison" approach looks at sales of similar, comparable properties). But that in no way permits consideration of evidence of the value of the subject property, however measured, on any date other than the statutory date of valuation.

In short, the State's duty as condemnor is akin to that of a prosecutor—to ensure that justice is done, not merely that compensation is as low as possible—and it has an "independent obligation to pay just compensation," and measure it accurately. And to "turn square corners" in dealing with the condemnee, a property owner who has no choice to surrender his property. *See F.M.C. Stores Co. v. Borough of Morris Plains*, 100 N.J. 418, 426, 495 A.2d 1313, 1317 (1985) (In eminent domain actions, "government must 'turn square corners.'"). This duty should have compelled the State to stop claiming that the interest to be valued is the fee simple absolute and that an appraisal of the leased-fee interest is irrelevant (see State's Point of Error #3). Especially in the face of the ICA's contrary holding in *Williams I*.

This case presents the Court with an opportunity to emphasize what the Kingdom of Hawaii Supreme Court held nearly a century and a half ago: that if an actual monarch was bound by law to treat fairly and justly compensate owners forced to surrender property for the public good, the government of the State of Hawaii is as well. *See Fort St.*, 6 Haw. at 646-47.

VI. CONCLUSION

This appeal should be transferred from the ICA for consideration by this Court.

DATED: San Francisco, California, April 10, 2026.

Respectfully submitted,

PACIFIC LEGAL FOUNDATION

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