SCAP-23-0000310

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

HILO BAY MARINA, LLC, and KEAUKAHA MINISTRY LLC Plaintiffs-Appellants, vs. STATE OF HAWAII; BOARD AND NATURAL RESOURCES, STATE OF HAWAII; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; and DOE ENTITIES, 1-10, Defendants-Appellees.	CIVIL NO. 3CCV-22-0000095 APPEAL FROM: (1) FINAL JUDGMENT FILED ON APRIL 13, 2023, AND (2) DEFENDANT STATE OF HAWAII’S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT FILED ON MARCH 21, 2023 CIRCUIT COURT OF THE THIRD CIRCUIT HON. HENRY T. NAKAMOTO

REPLY BRIEF OF APPELLANTS HILO BAY MARINA, LLC, AND KEAUKAHA MINISTRY LLC

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REPLY BRIEF OF APPELLANTS HILO BAY MARINA, LLC, AND KEAUKAHA MINISTRY LLC

I. INTRODUCTION

State has not questioned that property owners have the freedom to use their land for religious purposes—and perhaps more fundamentally to ***not*** use their land for religious purposes if they do not wish to. Thus, State has not argued—because it cannot—that it has an interest, legitimate or otherwise, in compelling private owners, such as Appellants, to use their property for religious purposes, because the Hawai‘i and the U.S. Constitutions prohibit State from forcing owners to make religious use of land.[1] Instead of addressing this argument, State's brief seeks to recast the nature of the religious deed restriction, asserting instead that it must be viewed as an exercise of the state's police power. State does so to convince this Court to apply a deferential standard of review as it does to typical zoning restrictions, rather than more stringent tests rightfully required under the Hawai‘i and U.S. Establishment Clauses. What State's argument overlooks is that the religious deed restriction fails either standard: State cannot compel a property owner to use its land for religious purposes either directly through its police power, or indirectly by imposing and enforcing religious deed restrictions and covenants. In addition to constitutional grounds, Appellants also assert that the deed restriction is statutorily void by operation of HRS § 515-6(b). Appellants thus appeal to prohibit "religion-only" so-called "zoning" and to preserve a quintessential aspect of one's freedom of choice.

II. ARGUMENT

A. <u>The Restriction Violates the Establishment Clause of the U.S. Constitution</u>

Notwithstanding the fact that the restriction is simply not "zoning," the restriction, like all government actions, must answer to the First Amendment. Since the 1940s, the Supreme Court of the United States (SCOTUS) has consistently held that "[t]he 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, **aid all religions**, or prefer one religion

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[1] The religious deed restriction (referred to herein as the "**church purposes restriction**" or simply the "**restriction**") reads, in relevant part:

> The land covered by this Grant is to be used for Church purposes only. In the event of its being used for other than Church purposes, this Grant shall become void and the land mentioned herein shall immediately revert and revest in the Territory of Hawaii[.]

over another." *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947) (emphasis added). By requiring the Property to be used for church purposes only, the church purposes restriction "aid[s] all religions," thereby violating the Establishment Clause. Op. Br., ICA Dkt. 25 at 36–42.[2] In response, State cites several cases arguing that SCOTUS has "upheld numerous laws with religious roots." Ans. Br., ICA Dkt. 35 at 14. State further argues that, under the "historical practices and understandings" test recently established in *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the church purposes restriction passes constitutional muster because the Territory of Hawai'i allegedly used deed restrictions as "an early form of use-zoning." Ans. Br. at 9–17. State's arguments fail, because, unlike the government actions previously upheld by SCOTUS, the church purposes restriction lacks an overarching secular purpose. Additionally, State fails to establish that the Territory intended the restriction to act as "early zoning," and, regardless of the Territory's intent, the restriction amounts to unconstitutional spot-zoning.

First, State's cited cases are inapplicable to the church purposes restriction because the government actions at issue in those cases were ultimately upheld due to their respective *secular* purposes. By State's own admission, the purpose of the restriction here is to benefit religion and lacks a secular purpose. In *McGowan v. Maryland*, SCOTUS upheld Maryland's "Sunday closing laws" because the "present purpose and effect of most of them is to provide a uniform day of rest for all citizens." 366 U.S. 420, 445 (1961). Any benefit to religion merely coincided with the overarching secular goal of providing a uniform day of rest. *Id.* ("[T]he fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar State from achieving its *secular* goals."). Moreover, SCOTUS expressly found that the Sunday closing laws *did not favor religion over non-religion*. Specifically, the Court stated that "[p]eople of all religions and ***people with no religion*** regard Sunday as a time for family activity, for visiting friends and relatives, for late sleeping, for passive and active entertainments, for dining out, and the like." *Id.* at 451–52 (emphasis added). Accordingly, the Sunday closing laws were upheld due to their secular purpose and function of providing a uniform day of rest.

Similarly, the Court in *Walz v. Tax Commission of New York* upheld property tax

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[2] All citations to "ICA Dkt." refer to dockets filed in the Intermediate Court of Appeal of the State of Hawaii, case number CAAP-23-0000310. All citations to "CC Dkt." refer to dockets filed in the Circuit Court of the Third Circuit of the State of Hawaii, case number 3CCV-22-0000095. All page number citations to the Record on Appeal refer to the **PDF page number** of the electronic document.

exemptions for religious groups because such groups simply fell into a broader category of "nonprofit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional, historical, and patriotic groups." 397 U.S. 664, 673 (1970). The tax exemption therefore did not target religious groups, rather, benefitted charitable organizations that serve as "beneficial and stabilizing influences in community life." *Id.* In contrast, the church purposes restriction, here, serves no overarching secular purpose[3] and, instead, strictly and exclusively benefits only religion. State's Mem. Opp., CC Dkt. 93 at 6–7 ("Here, the original transaction was at a reduced price for the benefit of the religious institution purchasing it."); State's Reply, CC Dkt. 95 at 9 ("[t]he legislative intent was for the benefit of religious institutions, which this deed restriction does benefit."); ICA Dkt. 17 at 24:15–18 ("In terms of going into the legislative history as plaintiffs have done, this was put in place for the benefit of religious institutions. There was a clear benefit here for the religious institution.").

Notably, State also cites *Torcaso v. Watkins*, 367 U.S. 488 (1961), for the proposition that "religiously rooted" laws have been upheld. Ans. Br. at 14. Like *Walz* and *McGowan*, State's reliance on *Torcaso* is starkly misplaced. There, SCOTUS struck down Maryland's religious oath requirement for public office and expressly emphasized:

> We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." **Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers**, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.

Id. at 495 (emphasis added). SCOTUS has, in no uncertain terms, repeatedly confirmed that the Establishment Clause forbids both state and federal governments from aiding all religion to the exclusion of non-religion. *See* Op. Br. at 37– 41. Absent secular benefit and purpose, the church purposes restriction must be struck down under the Establishment Clause.

Second, despite State's conclusory statements that the restriction was a form of "early zoning", State presents no evidence substantiating such claim. Instead, State merely points to other

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[3] State attempts to argue that the church purpose restriction has a secular purposes of "zoning", Ans. Br. at 18, while simultaneously claiming that State's authority to impose the restriction is derived from State's police powers to zone, *id.* at 15. State thus presents a circular argument conflating its alleged means with its ends. In effect, State's argument circularly becomes "the purpose of this exercise of police powers is to exercise police powers."

similar deed restrictions as self-proving "evidence."[4] The church purposes restriction's purely non-secular purpose precludes it from bearing any relation to health, safety, and welfare. Accordingly, the restriction should be stricken as an invalid exercise of State's police powers.[5]

Finally, State attempts to paint the restriction as a "freely negotiated deed restriction" in hopes of distinguishing it from other government actions previously struck down under the Establishment Clause. Ans. Br. at 16. Notwithstanding State's internal contradiction of categorizing the restriction as "freely negotiated" while still claiming the restriction to be an exercise of zoning powers, State fails to address Appellants' substantive arguments. Specifically, SCOTUS has consistently struck down government-imposed religious activity even when the

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[4] In addition to other deeds, State also cites several articles in support of its claim that local governments allegedly used restrictive covenants as a form of primitive zoning. Ans. Br. at 12 n. 8–10. However, State's cited sources establish the exact opposite. For example, *Private Law or Social Norms? The Use of Restrictive Covenants in Beaver Hills* analyzed private deed restrictions created by Beaver Hills Company, a private developer, and contrasted those private restrictions with the implementation of public zoning ordinances in the 1920s. 116 Yale L.J. 1302, 1305 (2007). Ultimately, that articled concluded that "[t]his Note provides such an empirical study and concludes that **covenants and zoning should not be treated as interchangeable**." *Id.* at 1307 (emphasis added). *Constitutional Rights and Land Use Planning: the New and the Old Reality* examined the use of zoning ordinances, not deed restrictions, to regulate suburban growth in the 1960s. 24 Duke L.J. 841, 846–47 (1977). Similarly, *Toward a Modern Law of Servitudes: Reweaving the Ancient Strands* focuses on modernizing the law of servitudes as a means of **private** arrangements and makes no mention of local governments using deed restrictions as primitive zoning. 55 S. Cal. L. Rev. 1261, 1262 (1982).

[5] State attempts to argue that Appellants waived their ability to contest that the restriction was an early form of zoning. State asserts that "when asked if their argument was that the deed restriction was part of an early form of zoning but is now illegal, Appellants responded 'yes.'" Ans. Br. at 21. State mischaracterizes the circuit court's exchange with Appellants:

> THE COURT: Okay. So, Mr. Hamada, in – in sum I guess what you're kinda saying is, okay may – and I'm – I'm not trying to put words in your mouth.
> But this is maybe the rough zoning was done before it's not proper now. It should be void, and we should just look at – follow whatever the zoning is now, resort, and that controls the use of the property not the restriction in the deed?
>
> MR. HAMADA: Yes, Your Honor.

ICA Dkt. 17 at 32:20–33:4. The question presented to Appellants was if the County of Hawai'i's resort zoning designation controlled the use of the Property over the church purposes restriction, *not* whether Appellants agreed that the restriction was an early form of zoning.

activity did not favor a specific religion over another. Op. Br. at 40–42; *see, e.g.*, *Lee*, 505 U.S. at 577; *Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948). Similarly, State fails to address Appellants' argument that the restriction nonetheless violates *Kennedy*, because "zoning" for religious purposes was not a "historical practice" conducted by the Founding Fathers or federal government. Accordingly, the restriction violates the First Amendment because it "aids all religions" and was not a historical practice within the meaning of the Establishment Clause.

B. ***Lemon* is the Controlling Test for Article 1, Section 4 of the Hawai'i Constitution, and the Church Purposes Restriction Fails Every Prong**

The legislative history of article 1, section 4 of the Hawai'i Constitution confirms that the 1978 Constitutional Convention intended *Lemon* to be the controlling test for Hawai'i's establishment clause. State's argues that the appropriate test should instead be the historical practices test because "Hawaii courts have interpreted [the establishment clause] co-extensively with the First Amendment of the United States Constitution. Ans. Br. at 17. State cites *Koolau Baptist Church v. Department of Labor*, 68 Haw. 410, 718 P.2d 267 (1986), in support of its argument. However, *Koolau Baptist Church* was strictly a First Amendment case and did not analyze article 1, section 4 of the Hawai'i Constitution. Contrary to State's argument, this Court has never opined on Hawai'i's establishment clause and certainly has never bound it to federal interpretations of the First Amendment. Instead, the Hawai'i Constitutional Convention Studies 1978 confirm that the framers intended *Lemon* to control the Hawai'i establishment clause. Op. Br. at 27–29. Besides its erroneous reference to *Koolau Baptist Church*, State's Answering Brief fails to otherwise address Appellants' numerous legal and practical arguments as to why the *Lemon* test, and not the historical practices test, governs Hawai'i's establishment clause. *See* Op. Br. at 27–29, 31–34.

State alternatively argues that the church purposes restriction nonetheless survives *Lemon* because it allegedly: 1) has a secular purpose of zoning; 2) does not prefer a specific denomination and therefore does not advance religion; and 3) lacks excessive entanglement because government surveillance for the restriction's enforcement is identical to surveillance of zoning ordinances. Ans. Br. at 18–20. As detailed in Appellants' Opening Brief, State's *Lemon* arguments fail for several reasons already mentioned. Op. Br. at 29–31. First, the church purposes restriction bears no secular purpose, and its *only* purpose is to benefit religious institutions. Again, by claiming that the restriction's purpose is zoning, State conflates its alleged authorizing power with its alleged purpose. Second, the restriction's lack of preference for a specific religion does not

preclude it from impermissibly advancing religion. *Sch. Dist. of Abington Twp.*, 374 U.S. 203, 216 (1963) ("[T]his Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another."). Due to the restriction's exclusion of all secular uses in favor of religious uses, the restriction can have no effect other than advancing religion. Third, government surveillance for compliance with the restriction fundamentally differs from normal zoning ordinances, because it requires the government to apply a "religious-only" filter to each and every activity conducted on the Property. Such surveillance excessively entangles State with religion in violation of *Lemon*. The church purposes restriction therefore fails all three prongs of *Lemon* and is unconstitutional.

C. The Restriction Cannot Be "Zoning" Because the Restriction Lacks Any Relation to Public Health, Safety, and General Welfare, Amounts to Spot Zoning, and Lacks a Comprehensive General Plan

State has no interest (rational, legitimate, compelling, or otherwise) in zoning land to be used solely for religious purposes. State claims an interest in building a community that *allows* people to live near churches, yet the church purposes restriction goes far beyond "allowing" a church, it explicitly *requires* it. The only prerogatives the government should have towards religion is to neither prohibit it nor advance it. *Lee v. Weisman*, 505 U.S. 577, 589 (1992) ("[R]eligious beliefs and religious expression are too precious to be either proscribed or prescribed by State."). Put simply, the only role government should have is to leave religious matters to the private person. *Id.* ("The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and choice committed to the private sphere[.]"). Any alleged interest in "allowing people to live near churches" is already satisfied through the County of Hawai'i's "V-Resort Hotel" designation, which *allows* (not requires) church use,[6] unlike the church purposes restriction. Having already delegated its zoning powers to the counties through the Zoning Enabling Act, HRS § 46-4, the State cannot have it both ways.

In addition to lacking any government interest, the restriction fundamentally cannot be "zoning" because it lacks relation to a comprehensive general plan and amounts to spot zoning. *Kaiser Haw. Kai Dev. Co. v. Honolulu*, 70 Haw. 480, 484, 777 P.2d 244, 246 (1989). Spot-zoning is "an arbitrary zoning action by which a small area within a large area is singled out and specially

[6] The Property is zoned "V, Resort-Hotel District", allowing thirty-eight permitted uses, including churches. *See* City of Hilo Zone Map, Section 25-83-3; Haw. Cty. Code § 25-5-92.

zoned for a use classification different from and inconsistent with the classification of the surrounding area and not in accord with a comprehensive plan." Op. Br. at 20 (quoting *Save Sunset Beach Coal. v. City and Cty. of Honolulu*, 102 Hawai'i 465, 473, 78 P.3d 1, 9 (2003)). In its Answering Brief, State contends that the church purposes restriction does not equate to spot zoning because: 1) "the Territory freely sold the property to the original purchaser" and 2) other places of worship exist near the Property. Ans. Br. at 23.

As mentioned above, State's "freely sold" argument fails because it directly contradicts State's position that the restriction is an alleged exercise of State's police powers to zone. Any notion that the restriction is "freely negotiated" and somehow rooted in contract principles is simply a red herring.[7] Additionally, the presence of other nearby churches does not change the fact that the restriction egregiously isolates the Property's use classification from its surrounding "V, Resort-Hotel District", which provides for thirty-eight permitted uses, to an anomalous "church use only" designation. This singling out of the Property constitutes spot zoning.

Moreover, State did not address Appellants' argument that no evidence was submitted substantiating that the Territory intended the restriction to act as "early form zoning" or that the restriction was related to any comprehensive general plan. Op. Br. at 26–29. At most, State points to other deeds conveyed by the Territory containing similar use restrictions. Ans. Br. at 21. However, the mere existence of other spot zoning deed restrictions does not amount to the creation of a general plan — it simply establishes more spot zoning. The restriction thus lacks relation to a comprehensive general plan and cannot be valid zoning.

Finally, according to State, *Euclid* "stands for the proposition that State's police powers grant it broad discretion to zone unless a court finds that a policy is 'clearly arbitrary and unreasonable, having no substantial relation to public health, safety, morals, or general welfare.'"

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[7] Throughout its Answering Brief, State repeatedly alleges that the Property was purchased for "nominal consideration." Ans. Br. at 1, 6, 17–18. However, the circuit court correctly recognized this as a red herring:

> THE COURT: Okay. Miss Stead, question. I know we—we've been talking about the cost, the $20 in 1922, But is that a factor to — for the Court to consider, or is it just like a red herring in this matter because if it's void it's void. Right?
>
> Ms. Steed: Of Course.

ICA Dkt. 17 at 27:17–22.

Ans. Br. at 23. As stated above, there is no state interest in requiring a property to be used solely for religious purposes, thus rendering the restriction "clearly arbitrary and unreasonable." Lacking a substantial relation to public health, safety, and welfare, the church purposes restriction cannot constitute a valid exercise of State's police powers. The State claims no other authorizing power to enforce the restriction.

D. The Church Purposes Restriction is Void Under HRS § 515-6(b), Because Appellants Did Not Waive Any Statutory Argument and the Voidance of State's Possibility of Reverter Furthers the Statute's Intent

The Hawai'i State Legislature consciously and affirmatively voided religiously discriminatory covenants through its enactment of HRS § 515-6(b).[8] Appellants maintain that the church purposes restriction is void under HRS § 515-6(b), because the Property is not "held by a religious institution," thereby rendering the statute's exemption clause inapplicable to the restriction. In response, State contends that: 1) Appellants waived their argument that they are not religious institutions and 2) Appellants' interpretation that the restriction becomes void once the Property is conveyed to a non-religious institution yields absurd results. Ans. Br. at 9–11. However, Appellants have *always* argued that the exemption clause does not apply because the Property is not "held by a religious institution." Furthermore, Appellants' statutory interpretation does not yield absurd results but, rather, directly facilitates the statute's intent to void discriminatory use restrictions. State's statutory arguments therefore fall short, and the church purposes restriction is void under HRS § 515-6(b).

Regarding State's waiver argument, State claims that the "opening brief is the first instance of this ever being raised." Ans. Br. at 10. However, contrary to State's assertion, the basis of

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[8] HRS § 515-6(b) states, in its entirety:

> Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection is void **except** a limitation, on the basis of religion, on the use of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

Haw. Rev. Stat. § 515-6(b) (emphasis added). The language preceding "except" is referred to herein as the "**general voidance clause**," and the language proceeding and including "except" is referred to herein as the "**exemption clause**."

Appellants' statutory argument has always been that the exemption clause does not apply to the church purposes restriction specifically because the Property is not "held by a religious institution." Appellants repeatedly emphasized and argued this throughout summary judgment briefings. Pls.' Mot. Summ. J., CC Dkt. 89 at 14 ("Section 515-6(b) provides a narrow exception allowing only religious institutions to restrict the use of their own property, but this exception cannot apply to the Church purposes restriction here, because the Property encumbered by the Church purposes restriction is not held by a religious institution, organization, or by a religious or charitable organization controlled by a religious institution." (citations and quotations omitted)); Pls.' Opp'n. to Defs.' Mot. for Summ. J., CC Dkt. 91 at 10 ("[T]he exception cannot apply to the Church purposes restriction because the Property is not '<u>held</u>' by a religious institution[.]" (emphasis in original)); Pls.' Reply Mem., CC Dkt. 97 at 4–5 ("The Property is not currently 'held by a religious institution[.]'"). Thus, State's averment that the "opening brief is the first instance of this ever being raised" is inaccurate, and Appellants certainly did not waive any argument as to whether or not the Property is "held by a religious institution." Conversely, at no point in State's summary judgment briefing did State argue that Appellants are religious institutions, let alone present evidence substantiating such a claim.

In addition to its waiver argument, State appears to argue that Appellant's interpretation of the statute (i.e., that once the Property was conveyed to a non-"religious institution," the restriction and possibility of reverter were voided) should not be accepted because it yields absurd results. Ans. Br. at 10. Specifically, State contends that "[i]f a subsequent sale of the property had the effect of rendering a reversionary interest void, the exemption would be meaningless because simply selling the property would negate the rights of the interest holder the exemption seeks to protect." *Id.* In effect, State is dissatisfied that its reversionary interest becomes unenforceable by statute. However, an examination of the statute's intent demonstrates that such a result is exactly what the statute seeks to accomplish.

First, State ignores the overarching purpose of Chapter 515, which is "to prohibit discrimination because of race, color, religion, or national origin in connection with real property transactions[.]" H. Journal, 4th Leg., S.C. Rep. 874 (Haw. 1976), Exh. "5" of Pls' Mot. Summ. J., CC Dkt. 89 at 61. State also overlooks the functional aspect of reversionary interests, which are *enforcement mechanisms* for use restrictions, including discriminatory restrictions. Thus, it logically follows that, in order to void discriminatory restrictions, the statute must also void their

accompanying reversionary interests. This exact intent is manifest in the statute's general voidance clause. The statute seeks to broadly void discriminatory use restrictions.

Second, in addition to ignoring the overarching purpose of Chapter 515, State then misconstrues the intent of the exemption clause. Contrary to State's current position, the exemption clause is intended for "the benefit of religious institutions," ***not*** to protect the rights of the holder of the reversionary interest. Ans. Br. at 10. The purpose of the exemption clause is to allow religious institutions to put religious restrictions on their property while they "hold" (i.e., own) the property. This intent is reinforced by both the plain language of the exemption clause and laws *in pari materia*. *See* Op. Br., ICA Dkt. 25 at 24–26 (analyzing and comparing HRS §§ 515-3, 515-4, 515-8). Once an encumbered property is conveyed to a non-religious institution, the statute voids the religious use restriction and its enforcing reversionary interest.

While State bemoans that its possibility of reverter can "simply" be voided through the Property's conveyance to a non-religious institution, this is the exact result the statute seeks. The exemption clause does *not* save all religious restrictions, just those on properties "held by religious institutions" and "used for religious or charitable purposes." By allowing religious use restrictions and reversionary interests to be easily voided once a non-religious institution gains ownership of the property, the statute does not create an absurd result but, rather, accomplishes its desired goal—ending discriminatory restrictions. HRS § 515-6(b) therefore voids the church purposes restriction and State's possibility of reverter, since the Property is not "held by a religious institution."

III. CONCLUSION

Based on the foregoing, the circuit court committed reversible error by holding the church purposes restriction as a valid exercise of State's police powers under HRS § 515-6(b), the Hawai'i Constitution, and the First Amendment. Accordingly, Appellants respectfully request this Court to vacate the circuit court's Findings of Fact, Conclusions of Law, and Order [CC Dkt. 114] and Final Judgment [CC Dkt. 118] and remand this case with express instructions to enter declaratory judgment invalidating both the church purposes restriction and State's possibility of reverter.

DATED: Honolulu, Hawai'i, January 22, 2024.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document will be duly served upon the following parties upon filing at the address listed below:

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