

When Governors Bite Back: Circuit Court Upholds Hawaii Governor's Emergency Powers

Minding Your Business Blog on October 23, 2020

As mentioned in our previous [post](#), the legality of state Governors' emergency powers have come under scrutiny during the pandemic. Michigan's Supreme Court, for example, recently struck down Governor Gretchen Whitmer's emergency powers. The Hawaii Circuit Court, however, recently [dismissed](#) a legal challenge to Hawaii Governor David Ige's emergency powers. In response to the victory, Hawaii Attorney General Clare Connors stated "[t]his decision sends an important message at an important time—the Governor's emergency proclamations are lawful. By continuing to follow these rules, all residents and visitors protect each other and promote public health during this pandemic crisis."

The lawsuit alleged that Governor Ige's powers were time-limited, lapsing after the initial 60-day period following the declared state of emergency. Plaintiffs argued that the Governor's supplemental emergency proclamations were facially invalid, and invalid as applied to Plaintiffs. Plaintiffs sought an order permanently enjoining Governor Ige and Hawaii Mayor Harry Kim from issuing further executive orders, or enforcing existing orders. The State argued, however, that no language prohibits supplementary or additional emergency proclamations from being issued, and that HRS Section 127A provides that the Governor or Mayor shall be the "sole judge of the existence of the danger, threat, or circumstances giving rise to a declaration of a state of emergency[.]" HSR § 127A-14(c).

The court agreed with the State, finding that “the use of supplementary proclamations is lawful” and that the purpose of Hawaii’s emergency powers statute “is to confer comprehensive powers to protect the public and save lives.” However, the court acknowledged that the Governor’s powers are not without limit. The court held that “[t]o support each successive emergency proclamation, the Governor must identify the existence of the danger, threat, or circumstances giving rise to a declaration of a state of emergency. When the facts on the ground no longer justify such a determination, the Governor’s emergency powers will cease.” Plaintiffs did not challenge the existence or impact of the pandemic within Hawaii.

Had the Circuit Court found the Governor’s supplemental emergency declarations unlawful as Plaintiffs argued, Hawaii’s price gouging statute may have also been declared unlawfully in effect. Hawaii’s price gouging law, which is triggered upon the governor or mayor declaring a state of emergency prohibits “any increase in the selling price of any commodity, whether at the retail or wholesale level, in the area that is the subject of the proclamation or the severe weather warning.” [Hawaii Rev. Stat. §127A-30](#).

As previously mentioned, the limits of emergency powers have become a hot topic during the pandemic. Businesses need to stay current with respect to changes that may result from the coming potential wave of orders being challenged and rescinded.

* * *

Proskauer’s cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our [Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

[View Original](#)

[Related Professionals](#)

- **Christopher E. Odeck**
Partner
- **John R. Ingrassia**
Partner
- **Kelly Landers Hawthorne**

Associate