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UNIVERSITY OF HAWAI'I and

UNIVERSITY OF HAWAI'I

BOARD OF REGENTS

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FIRST CIRCUIT

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Dkt. 23 MD

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

UNIVERSITY OF HAWAI'I; UNIVERSITY
OF HAWAI'I BOARD OF REGENTS,

Defendants.

CIVIL NO. 1CCV-26-0000569

(Other Civil Action)

DEFENDANTS' MOTION TO DISMISS
ALL CLAIMS AGAINST THE
UNIVERSITY OF HAWAI'I BOARD OF
REGENTS OR, IN THE ALTERNATIVE,
ALL CLAIMS AGAINST THE
UNIVERSITY OF HAWAI'I;
MEMORANDUM IN SUPPORT OF
MOTION; NOTICE OF HEARING AND
CERTIFICATE OF SERVICE

HEARING

Date: July 22, 2026

Time 10:00 A.M.

Judge: Hon. Shirley M. Kawamura

No Trial Date Set.



**DEFENDANTS' MOTION TO DISMISS ALL CLAIMS AGAINST
THE UNIVERSITY OF HAWAI'I BOARD OF REGENTS OR, IN THE ALTERNATIVE,
ALL CLAIMS AGAINST THE UNIVERSITY OF HAWAI'I**

COMES NOW, Defendants UNIVERSITY OF HAWAI'I (“University”) and UNIVERSITY OF HAWAI'I BOARD OF REGENTS (“BOR”) (collectively “Defendants”), by and through their attorneys, CARRIE K. S. OKINAGA, University General Counsel, GREG H. TAKASE and JUSTIN M. LUNEY, Associates General Counsel, and hereby move this honorable Court for an order dismissing any and all claims against the BOR arising from Plaintiff PUBLIC FIRST LAW CENTER’s Complaint filed on April 15, 2026 [Dkt. 1], for failure to state a claim upon which relief can be granted. Alternatively, Defendants request dismissal of any and all claims against the University.

Pursuant to section 304A-108(a), HRS, notwithstanding any law to the contrary, all claims arising out of the acts or omissions of the members of the Board of Regents may be brought only against the University. Because the Complaint alleges acts or omissions of the BOR and its members in connection with BOR meetings, those claims may be brought only against the University under HRS § 304A-108. Therefore, all claims against the BOR must be dismissed.

To the extent a conflict exists between section 304A-108(a) and section 92-12(c), which states that a suit must be commenced against the board or alleged board, the language of 304A-108(a) prevails based on that section’s express language. However, if the Court disagrees and believes that section 92-12(c) prevails, then the Defendants alternatively request that the University be dismissed, as section 92-12(c) does not permit actions against State departments or other government actors that are not “boards or alleged boards.” Further, the Complaint does not allege any violations of Sunshine Law by the University, separately and apart from the BOR.

This Motion is brought pursuant to Rules 7 and 12(b)(6) of the Hawai’i Rules of Civil

Procedure and Rule 7 of the Rules of the Circuit Courts of the State of Hawai‘i, and is based upon the attached supporting memorandum, the record and files herein, and such other and further matters as may be presented to the Court.

DATED: Honolulu, Hawai‘i, May 7, 2026.

/s/ Justin M. Luney
CARRIE K. S. OKINAGA
University General Counsel
GREG H. TAKASE
JUSTIN M. LUNEY
Associates General Counsel

Attorneys for Defendants
UNIVERSITY OF HAWAI‘I and
UNIVERSITY OF HAWAI‘I
BOARD OF REGENTS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

UNIVERSITY OF HAWAI'I; UNIVERSITY
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Defendants.

CIVIL NO. 1CCV-26-0000569
(Other Civil Action)

**MEMORANDUM IN SUPPORT OF
MOTION**

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Plaintiff PUBLIC FIRST LAW CENTER (“Plaintiff”) filed its Complaint on April 15, 2026 (the “Complaint”) [Dkt. 1] against Defendants UNIVERSITY OF HAWAI'I (“University”) and UNIVERSITY OF HAWAI'I BOARD OF REGENTS (“BOR”) (collectively “Defendants”), alleging certain violations of Hawai'i's Sunshine Law, HRS Ch. 92.

There is no statutory basis for maintaining identical Sunshine Law claims against both the University and the BOR. Pursuant to HRS § 304A-108, any claims arising from the acts or omissions of the University's members of the board of regents, officers, and employees must be brought only against the University itself. HRS § 304A-108(a). The Plaintiff's claims arise from allegations that the BOR failed to comply with provisions of the Sunshine Law. As these claims arise from the alleged acts or omissions by members of the Board of Regents, the claims must be brought against the University.

To the extent HRS § 92-12(c) would require Plaintiff to sue the BOR as the “board or alleged board,” it conflicts with HRS § 304A-108(a), which requires claims arising from the acts or omissions of BOR members to be brought only against the University.

However, if the Court disagrees and determines that HRS § 92-12(c) prevails and the action must be commenced against the BOR, the Defendants alternatively request that the University be dismissed. There are no distinct factual allegations made against the University distinct from the BOR, and the University is further not a “board” under the definition provided in HRS § 92-2.

II. BACKGROUND

The Complaint contains eight counts: (1) The Regents violated the Sunshine Law by meeting in Executive Session to Interview and Evaluate Candidates for UH President and Discuss Compensation on October 16-17, 2024 (“Count I”); (2) The Regents violated the Sunshine Law by Discussing the Creation of a New Position and Hiring the Sole Candidate Entirely in Executive Session on January 16, 2025 (“Count II”); (3) The Regents violated the Sunshine Law by Evaluating President Hensel in Secret on October 16, 2025 (“Count III”); (4) The Regents violated the Sunshine Law by Failing to Summarize Executive Session Discussions (“Count IV”); (5) the Regents violated the Sunshine Law by Failing to Keep Accurate Meeting Minutes (“Count V”); (6) The Regents Violated the Sunshine Law by Remotely Attending Meetings Noticed as ‘In Person Only’ (“Count VI”); (7) The Regents Violated the Sunshine Law by Requiring Registration for Public Testimony (“Count VII”); (8) the Regents Violated the Sunshine Law by Using Overly Vague Agenda Language (“Count VIII”). The Complaint contains legal challenges to the BOR’s application of the Sunshine Law to over a dozen BOR meetings spanning from October 16, 2024 to the date the Complaint was filed. *See* Dkt. 1 at 8, 14, ¶¶ 49, 103.

III. LEGAL STANDARD

A complaint should be dismissed for failure to state a claim pursuant to HRCP Rule 12(b)(6) if it appears beyond doubt that the plaintiff can prove no set of facts in support of its

claim that would entitle it to relief. *Blair v. Ing*, 95 Hawai‘i 247, 252, 21 P.3d 452, 457 (2001). “A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief.” *Civil Beat Law Ctr. for Pub. Int. v. City & Cty. of Honolulu*, 144 Hawai‘i 466, 474, 445 P.3d 47, 55 (2019). While “review is strictly limited to the allegations of the complaint . . . view[ed] in the light most favorable to the plaintiff and deem[ed] to be true . . . the court is not required to accept conclusory allegations on the legal effect of the events alleged.” *Id.*

IV. ARGUMENT

A. HRS § 304A-108 Requires Dismissal of the BOR Because Plaintiff’s Claims Arise from Alleged Acts or Omissions of BOR Members.

Regarding suits against the University, HRS § 304A-108 provides the legal framework.

It states:

The university may sue and be sued in its corporate name. Notwithstanding any other law to the contrary, all claims arising out of the acts or omissions of the university or the members of its board of regents, its officers, or its employees, including claims permitted against the State under chapter 661, part I, and claims for torts permitted against the State under chapter 662, may be brought only pursuant to this section and only against the university. However, the university shall be subject to suit only in the manner provided for suits against the State, including section 661-11, and any liability incurred by the university in such a suit shall be solely the liability of the university, shall be payable solely from the moneys and property of the university, and shall not constitute a general obligation of the State or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State or by any revenue or taxes of the State. All defenses available to the State, as well as all limitations on actions against the State, shall be applicable to the university.

HRS § 304A-108(a). This section contains multiple functions. First, it allows the University to sue and be sued. Second, it imposes a restriction that, notwithstanding any other law to the contrary, claims arising out of the acts or omissions of the University, its board of regents, officers, or employees may be brought **only** against the University itself. Third, it provides that any liability incurred by the university for claims made under this section are solely the liability

of the university and do not constitute general obligations of the State. Last, it clarifies that the University maintains all defenses available to the State.

Pursuant to HRS § 304A-108(a), claims alleging acts or omissions of the members of the BOR must be made against the University “notwithstanding any other law to the contrary.” HRS § 304A-108(a). “When interpreting ‘notwithstanding any other law to the contrary’ clauses, the term ‘contrary’ denotes a conflict.” *Carmichael v. Bd. of Land and Nat. Res.*, 150 Hawai‘i 547, 567, 506 P.3d 211, 231 (2022) (quotation marks modified from original). “Generally, two laws conflict when they are explicitly contrary to, or inconsistent with, each other. But if laws can be interpreted harmoniously, there is no conflict. Two statutes conflict where it is not possible to give effect to both.” *Office of Haw. Affairs v. Kondo*, 153 Hawai‘i 170, 178, 528 P.3d 251, 259 (2023) (internal citations and quotation marks omitted).

Here, a conflict exists to the extent HRS § 92-12(c) is read to require Plaintiff’s claims to proceed against the BOR. Section 92-12(c) provides that Sunshine Law suits may be commenced against a “board or alleged board.” But HRS § 304A-108(a), which is specific to the University and its BOR, provides that, “[n]otwithstanding any other law to the contrary,” all claims arising out of acts or omissions of the University or the members of its Board of Regents may be brought only against the University. Section 92-12 provides the following with respect to lawsuits:

Any person may commence a suit against a board or alleged board in the circuit court of the circuit in which a prohibited act occurs for the purpose of:

- (1) requiring compliance with or preventing violations of this part;
- (2) determining the applicability of this part to discussions or decisions of the public body; or
- (3) challenging an opinion or ruling of the office of information practices concerning a complaint by that person.

HRS § 92-12(c). A “board” is defined as “any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.” HRS § 92-2. Sections 92-12 and 304A-108 of the HRS cannot be interpreted harmoniously when the BOR is sued for alleged violations of Sunshine Law.

As HRS § 304A-108 contains the express language “notwithstanding any other law to the contrary,” it must prevail when conflicting with another statute. “[W]here there is a plainly irreconcilable conflict between a general and a specific statute concerning the same subject matter, the specific will be favored.” *State v. Casugay-Badiang*, 130 Hawai‘i 21, 27, 305 P.3d 437, 443 (2013) (internal quotation marks omitted). However, while specific statutes ordinarily control over general statutes, a “notwithstanding” clause indicates legislative intent to override conflicting provisions. “In construing statutes, the use of such a ‘notwithstanding’ clause clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section.” *Id.* at 28, 305 P.3d at 444 (quoting *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993)). As HRS § 304A-108(a) overrides the provision in HRS § 92-12(c), BOR must be dismissed.

B. In the Alternative, the Court must Dismiss the University, as the University is not a “Board” under Sunshine Law and No Allegations Are Made that the University Violated the Sunshine Law.

In the event the Court disagrees with Defendants and determines that the BOR may still be sued pursuant to HRS 92-12(c), Defendants alternatively request that the University be dismissed.

The BOR is a “board” pursuant to HRS § 92-2 and is distinct from the University for purposes of the Sunshine Law. By statute, the University is “headed by an executive board to be

known as the board of regents.” HRS § 26-11(a). The BOR, consisting of eleven members, has the power “to formulate policy and exercise control over the university through its executive officer, the president of the university” and “shall appoint and may remove” the president. HRS § 26-11(a)-(b). The BOR consists of eleven members appointed by the governor and confirmed by the senate. HRS § 304A-104(a). The BOR requires quorum to conduct business and must meet at least ten times annually. HRS § 304A-104(c). The BOR’s members serve without pay but are entitled to travel expenses within the State for attending meetings and when engaged in business relating to the BOR’s work. HRS § 304A-104(e). On the other hand, the University is established as the state university and is constituted a body corporate. Haw. Const. Art. X, § 5; HRS § 304A-103. It is also a department of the State and not a “board.” Section 26-4, HRS, describes the structure of government and describes the University as a “principal department[.]” HRS § 26-4(7). The Complaint itself identifies the BOR as a “board” under section 92-2, while separately identifying the University only as the state university and body corporate. Dkt. 1 at 1-2, ¶¶ 2-3.

As the University is not a board as defined in HRS § 92-2, and the Complaint does not allege that the University is a board, the Plaintiff cannot sue the University for alleged violations of the Sunshine Law. The language of HRS § 92-12 is clear in that a person “may commence a suit against a board or alleged board[.]” HRS § 92-12(c). It does not authorize a separate Sunshine Law claim against the department or entity with which the board is affiliated. Nor does the Complaint allege that the University, separately from the BOR, violated any provision of the Sunshine Law. Therefore, if the Court determines that BOR may still be sued notwithstanding the provisions of HRS § 304A-108, there is no basis for the University to remain a party in the

suit. Therefore, on the alternative basis that BOR remains a party, Defendants request the University be dismissed.

V. CONCLUSION

Based on the foregoing, the Defendants respectfully request that the Motion be granted and that BOR be dismissed with prejudice, as HRS § 304A-108(a) requires claims arising from acts or omissions of members of the BOR to be brought, if at all, only against the University, notwithstanding any contrary law. Alternatively, if the Court determines HRS § 92-12(c) controls and requires the action to proceed against the BOR, Defendants request that the Court dismiss all claims against the University with prejudice, because the University is not a “Board” under HRS § 92-2 and the Complaint does not allege that the University, separately and independently from the BOR, violated the Sunshine Law.

DATED: Honolulu, Hawai‘i, May 7, 2026.

/s/ Justin M. Luney
CARRIE K. S. OKINAGA
University General Counsel
GREG H. TAKASE
JUSTIN M. LUNEY
Associates General Counsel

Attorneys for Defendants
UNIVERSITY OF HAWAI‘I and
UNIVERSITY OF HAWAI‘I
BOARD OF REGENTS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

PUBLIC FIRST LAW CENTER,

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Defendants.

CIVIL NO. 1CCV-26-0000569
(Other Civil Action)

**NOTICE OF HEARING AND
CERTIFICATE OF SERVICE**

TO: ROBERT BRIAN BLACK, ESQ.
BENJAMIN M. CREPS, ESQ.
DEVI DIANA STONE CHUNG, ESQ.
Public First Law Center
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813
Attorneys for Plaintiff
PUBLIC FIRST LAW CENTER

NOTICE IS HEREBY GIVEN that the foregoing Motion shall come on for hearing before the Honorable Shirley M. Kawamura, Judge of the above-entitled court, in her courtroom at Ka'ahumanu Hale, First Circuit Court, 777 Punchbowl Street, Honolulu, Hawaii 96813 on **July 22, 2026 at 10:00 a.m.**, or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i, May 7, 2026.

/s/ Justin M. Luney
CARRIE K. S. OKINAGA
University General Counsel
GREG H. TAKASE
JUSTIN M. LUNEY
Associates General Counsel
Attorneys for Defendant
UNIVERSITY OF HAWAI'I and
UNIVERSITY OF HAWAI'I
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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served at the following via the Judiciary Electronic Filing and Service System on the date indicated below:

ROBERT BRIAN BLACK, ESQ. – brian@publicfirstlaw.com
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Attorneys for Plaintiff
PUBLIC FIRST LAW CENTER

DATED: Honolulu, Hawai'i, May 7, 2026.

/s/ Justin M. Luney
CARRIE K. S. OKINAGA
University General Counsel
GREG H. TAKASE
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UNIVERSITY OF HAWAI'I and
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