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Maui's Bill 9 Signals Sweeping Changes for Apartment-Zoned Vacation Rentals

By Frances "Nicole" L. Tabios

Mauie County has adopted Bill 9, now Ordinance 5909, a major land-use measure that will phase out transient vacation rentals ("TVR") in apartment-zoned districts over the next several years. The County Council approved the bill on December 15, 2025, and Mayor Richard Bissen signed it into law the same day. Bill 9 represents one of the most significant changes to Maui's vacation-rental framework in decades and is intended to return apartment-zoned housing to long-term residential use.



Bill 9 establishes a countywide phase-out of TVRs in apartment-zoned districts, including units historically allowed under the County's "Minatoya List." The list refers to a group of apartment-zoned condominium complexes on Maui that were treated as eligible for short-term rental use under a 2001 Corporation Counsel opinion issued by then-Deputy Corporation Counsel Richard Minatoya. That opinion interpreted the zoning code to allow certain apartment-zoned properties to continue operating short-term rentals even though they were not located in hotel or resort districts. Bill 9 eliminates those exemptions and requires affected properties to transition away from short-term rental use after a defined amortization period. In West Maui, TVR operations must end by January 1, 2029. In all other apartment-zoned districts, the deadline is January 1, 2031. After those dates, units must be used for long-term residential purposes unless future legislation creates alternative pathways.

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The scope of Bill 9 is substantial. Maui County estimates indicate that more than 7,000 units fall within the affected category, many of them concentrated in South and West Maui. The measure was introduced in the context of Maui's ongoing housing shortage and the community's efforts to increase the availability of long-term housing, particularly following the 2023 Lahaina wildfire. Supporters of Bill 9 argue that phasing out TVRs in apartment districts is necessary to restore housing stock for residents. Opponents, including many property owners and industry groups, have raised concerns about economic impacts, reliance on prior County approvals, and the effect on Maui's visitor-industry workforce.

Legal challenges have already been filed in state court, and additional litigation is expected. A central statutory question emerging from these lawsuits mirrors the framework examined in *Hawaii Legal Short-Term Rental Alliance v. City & County of Honolulu*, 709 F. Supp. 3d 1141 (D. Haw. 2023) ("HLSTRA"). In HLSTRA, Chief Judge Watson held that Honolulu's 90-day minimum rental ordinance was a zoning ordinance subject to HRS § 46-4(a), and that it was conflict-preempted because it eliminated previously lawful 30–89-day residential rentals without grandfathering. The opinion emphasized the statute's bright-line rule: counties may amortize nonconforming uses in certain zoning districts, but "in no event" may amortization be used to eliminate an existing residential use. Because 30-day rentals were lawful residential uses under prior City law, the amortization exception did not apply.

This statutory structure is directly relevant to the challenges now being raised against Bill 9. Many Maui owners argue that their short-term rental operations were not merely tolerated nonconforming uses, but lawful residential uses expressly permitted under the County's longstanding Minatoya interpretation. Under that view, Bill 9 does not phase out a nonconforming use—it extinguishes a previously lawful residential use that owners relied upon when purchasing, financing, and operating their units.

Challengers to Bill 9 contend that HRS § 46-4(a) prohibits counties from eliminating such uses, and that the statute's residential-use protection applies with equal force to apartment-zoned properties historically allowed to operate transient rentals. Maui County, by contrast, maintains that the Minatoya List was an interpretive accommodation rather than a vested entitlement, and that short-term transient occupancy in apartment districts has always been nonconforming in nature. From this perspective, Bill 9's amortization periods are a lawful mechanism to restore apartment-zoned housing to long-term residential use, particularly considering Maui's acute post-wildfire housing pressures.

How courts resolve this statutory question, whether the affected uses are lawful residential uses protected by HRS § 46-4(a) or nonconforming uses subject to amortization, will shape the trajectory of Bill 9 litigation and the scope of county zoning authority statewide. The outcome will also influence how counties across Hawaii approach land-use restructuring in response to housing shortages, disaster recovery, and community planning priorities.

At the same time, the County Council has transmitted related zoning proposals to the Maui, Molokai, and Lanai planning commissions for review. These proposals could potentially rezone certain properties or create new hotel-district designations, but they are still in early stages and should not be assumed as guaranteed relief. For now, owners, associations, and industry participants should monitor developments closely.

Damon Key will continue monitoring litigation, rulemaking, and planning-commission proceedings as Maui County implements this significant restructuring of its vacation-rental regulations.



**For more information or questions on this article, please call
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or scan the code with your smartphone.**



Hawaii Challenges Executive Order on Birthright Citizenship as Supreme Court Takes Up Case

By Paris K. Johnson

On January 21, 2025, Hawaii Attorney General Anne Lopez announced that the state has joined 17 other states and the District of Columbia in suing to block President Trump's executive order seeking to end birthright citizenship, the constitutional guarantee that nearly all individuals born on U.S. soil are citizens. The lawsuit argues that the order violates the Fourteenth Amendment and the Immigration and Nationality Act.



What the Executive Order Would Do

Issued January 20th, the order would deny automatic citizenship to babies born in the United States if their parents are in the country illegally or on temporary visas. This marks the first attempt since 1868 to override the citizenship clause of the Fourteenth Amendment, which states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

This clause was adopted after the Civil War to overturn the Supreme Court's infamous decision in *Dred Scott v. Sandford*, which held that Black Americans could not be citizens. 60 U.S. 393 (1857). Its purpose was to guarantee equal citizenship to all persons born in the United States, regardless of race or ancestry.

Supreme Court Steps In

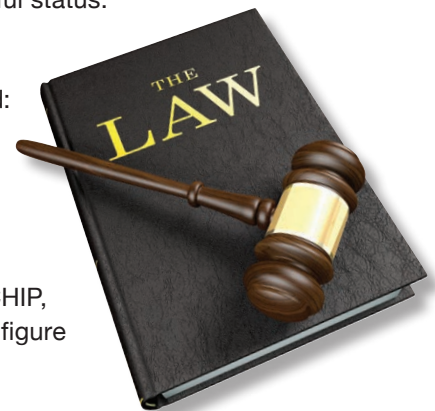
On December 5th, the U.S. Supreme Court agreed to hear *Barbara v. Trump*, one of several cases challenging the order. No. 25-cv-244-JL-AJ (D.N.H. July 10, 2025). Lower courts have already blocked enforcement, finding the order unconstitutional. The Ninth Circuit ruled that the order "contradicts the plain language of the Fourteenth Amendment."

The Court's review will hinge on one key phrase: "subject to the jurisdiction thereof." Both sides agree that a child must be born on U.S. soil, but they sharply disagree on whether children of undocumented or temporary visitors meet this jurisdictional requirement. Advocates for birthright citizenship point to *United States v. Wong Kim Ark* which affirmed citizenship for anyone born in the U.S., regardless of parental status. 169 U.S. 649 (1898). Opponents argue that the clause requires "mutual consent" and excludes those whose parents lack lawful status.

Implications for Hawaii

If the executive order were upheld, the consequences for Hawaii would be profound:

- **Loss of Citizenship Rights:** Children born in Hawaii to non-citizen parents could be denied U.S. citizenship, losing the right to vote, work legally, obtain Social Security numbers, and access federal benefits.
- **Risk of Deportation:** Families could face uncertainty and removal proceedings.
- **Impact on State Programs:** Hawaii could lose federal funding tied to Medicaid, CHIP, and foster care programs, while incurring significant administrative costs to reconfigure eligibility systems.



The Bottom Line

For now, birthright citizenship remains intact, but the Supreme Court's decision, expected by July 4, 2026, could reshape constitutional rights and state obligations. Families, employers, and agencies should monitor developments closely and prepare for potential compliance challenges.

For more information or questions on this article, please call Paris Johnson at (808) 531-8031, email her at pkj@hawaiilawyer.com or scan the code with your smartphone.



Dread Not: Reflections on Leadership, Service, and the Law in Hawaii

By Mark M. Murakami

Twenty years ago, I was serving aboard a Coast Guard cutter on patrol in the Caribbean Sea with a hurricane bearing down on our ship. Navy meteorologists offered us simple advice: hide behind Hispaniola. Use the landmass as shelter, ride out the storm, and emerge intact.

In 2024, at an HSBA pau hana fundraiser, a retired judge told me, “You must be so excited for your year as bar president.” I surprised her and myself by replying, “Judge, I am filled with dread.” There would be no Hispaniola this time. There was no place to hide.

Unlike some bar presidents, I did not come into office with a sweeping reform agenda or a signature initiative. I was not seeking to reinvent the profession or radically reshape the organization. My goals were more modest, and in many ways more daunting: to keep the Hawaii State Bar Association stable during a period of transition, to serve our members well, to do our work efficiently, and to help the organization weather the storm facing both the legal profession and the judiciary in Hawaii.

That storm included the Executive Director transition following the untimely death of Pat Mau-Shimizu, a loss felt deeply across the bar. It included economic pressures, demographic shifts, and growing uncertainty about the future of legal practice in our state. Dread, it turned out, was not an unreasonable response.

But dread is not destiny.

Supported by a phenomenal Executive Director, a loyal and diligent staff, an engaged Executive and Finance Committee, and a committed Board of Directors, the HSBA did more than simply endure the year—we moved forward.

The good news is substantial. The HSBA is financially and operationally sound. We have a strategic plan and are steadily advancing toward its goals. Our committees, sections, and divisions remain engaged, generating meaningful opportunities for professional development, networking, and service. The Publications Committee has continued producing the Hawaii Bar Journal at a consistently high level, contributing to thoughtful dialogue within our profession. Led in significant part by the Young Lawyers Division, the HSBA continues to deliver meaningful community outreach and pro bono service across the state.

Mark M. Murakami, Chief Justice Mark E. Recktenwald and Cathy Betts, Executive Director of HSBA



Mark M. Murakami presided over the 2025 Annual Meeting of the HSBA.



We also undertook one of the most significant operational changes in recent years: a comprehensive upgrade of our member database and the rollout of an integrated website. Change of this scale is rarely seamless.

At the same time, it would be irresponsible to focus only on what is going well.

Judicial applicant numbers are down. Changes to the judicial retirement multiplier have compounded longstanding recruitment challenges. Hawaii is actively considering relaxed licensure requirements in specific practice areas, including paternity and criminal law. Mainland firms are increasingly encroaching on our local legal market, placing new pressures on both the private bar and the judiciary. Meanwhile, HSBA membership continues to decline as Baby Boomers retire, a trend that will likely require difficult conversations about revenue and bar dues. While dues have remained unchanged since 2009, fiscal reality suggests that an increase may be necessary to sustain the services our members expect.

Yet even amid these challenges, I remain optimistic because I have seen the future of the profession up close.

This year, I had the privilege of speaking at two new-attorney admission ceremonies. I wish every lawyer could witness those moments. The sparkle in the eyes of new admittees—the hope, the sense of purpose, the desire simply to be a lawyer was unmistakable. It was a powerful reminder that despite uncertainty, the law still matters. And so do the lawyers who choose to serve.

Leadership, I have learned, is not about avoiding dread. It is about acknowledging it, standing firm, and moving forward anyway. In that sense, my year as HSBA President did not require a place to hide. It required trust in colleagues, in institutions, and in the enduring value of the legal profession in Hawaii.

For that, I am grateful.

Author's Note: This article is excerpts of a speech that I gave at the Annual Meeting of the Hawaii State Bar Association in December 2025. It is provided so our Legal Alert readers get insight into some of the goings-on of the Bar Association.

Mark's successful bar year was celebrated by partners Doug Smith, Anna Oshiro, and Matt Evans.



Meet Attorney Paris K. Johnson

Attorney Paris K. Johnson is one of Damon Key's newest associates, practicing in the firm's Business & Commercial Law, Land Use & Eminent Domain, and Litigation & Dispute Resolution practice groups. What Paris values most about being a lawyer is the chance to serve others in a meaningful and lasting way. As Paris sees it, the law is a vehicle for equity, protection and empowerment.

"My desire to become an attorney comes from a deep commitment to helping individuals navigate complex systems, assert their rights, and find resolutions," said Paris. "My core strengths include effective communication, empathy, and humility. Moreover, my innate attention to detail has been apparent since childhood when my parents observed my capacity to accurately recall specific details and replicate dialogue with precision, often quoting lines from various films verbatim."

Paris earned her law degree from the University of Hawaii at Manoa, William S. Richardson School of Law. While there, she served as President of the student chapter of the Federal Bar Association, as the Volume 26 Executive Editor and Volume 25 Staff Editor of the *Asian-Pacific Law & Policy Journal*, and as a teaching assistant for the First-Year Writing Course.

During the summer of 2024, Paris held a Summer Law Associate position at Damon Key, where she worked on various matters, including legal research, drafting pleadings and estate plans, and assisting with discovery. Paris was also a Legal Extern with The Honorable James H. Ashford and The Honorable Paul B. K. Wong, both Judges of the Circuit Court of the First Circuit of the State of Hawaii.

It was during this time that Paris witnessed a deeply impactful moment that solidified her desire to pursue a legal career. A criminal defendant, overcome with emotion, thanked the judge for his compassion, saying that without it, they would not be alive today. According to Paris, that moment reminded her that the legal system, often perceived as rigid and impersonal, can also be a source of hope and healing. It affirmed her belief that attorneys and judges alike have the power to make a meaningful difference in people's lives, not only through advocacy but through empathy and humanity.

Before pursuing her law degree, Paris earned her Paralegal Certificate at the University of Hawaii, Kapiolani Community College. While working towards her certificate, she served as a paralegal for a criminal defense attorney in Honolulu. She later put her paralegal education to work as a civil litigation paralegal at a mid-sized law firm in Honolulu. Paris also holds a Bachelor of Science in Criminology and Criminal Justice from Northern Arizona University.

Born and raised in Honolulu, Paris is a graduate of Sacred Hearts Academy. Her hobbies include decorating for the holidays, watching movies, and thrifting.



"My core strengths include effective communication, empathy, and humility..."

Damon Key Welcomes Attorney Frances Nicole L. Tabios

Becoming an attorney was never part of Frances Nicole L. Tabios' childhood plan. She originally envisioned a future in the medical field, but that later changed when she took AP U.S. History and AP Government in high school and began to understand how deeply the law and government shape people's daily lives. The versatility of a law degree and the opportunity to make a difference ultimately drew Nicole into the field of law. Today, she is an attorney in the firm's Business & Commercial Law, Land Use & Eminent Domain, Litigation & Dispute Resolution, and Wills, Trusts & Estates practice groups.

Before joining Damon Key, Nicole was a Judicial Law Clerk at the United States District Court for the District of Hawaii for the Honorable Shanlyn A.S. Park. In this position, she researched and drafted judicial opinions and orders on a wide range of dispositive and procedural motions and analyzed complex legal and factual issues across civil cases.

Nicole earned her law degree, *magna cum laude*, from the University of Hawaii at Manoa, William S. Richardson School of Law, and is a proud Ulu Lehua Scholar. While in law school, she received the CALI Excellence for the Future Award for the highest grade in Legal Research and served as the Executive Editor for Volume 25 and Staff Editor for Volume 24 of the *Asian-Pacific Law and Policy Journal*. Nicole was a Scholar Advocate and Research Assistant to Professor Eric K. Yamamoto and Professor Susan K. Serrano, a Summer Law Associate at Damon Key, and a Judicial Extern to the Honorable Shanlyn A.S. Park of the First Circuit Court of Hawaii, before she was appointed to the Federal bench.

Nicole holds a Bachelor of Arts in Political Science with a minor in Philippine Language and Literature from the University of Hawaii at Manoa, graduating *summa cum laude* in just 2.5 years. Born in the Philippines, Nicole moved to Hawaii at age seven, was raised in Aiea and attended Sacred Hearts Academy. She is fluent in English, Ilocano, and Tagalog, and proficient in conversational Japanese, helping to grow Damon Key's multilingual team.

"As a lawyer, I enjoy having the chance to think critically, solve complex problems and connect with people from all walks of life. In this career, I can leverage my resiliency, desire to foster inclusivity, and commitment to making others feel heard, often using my sense of humor to build rapport and put people at ease," said Nicole.

Nicole's professional affiliations include membership in the Hawaii Filipino Lawyers Association and Hawaii Women Lawyers. She volunteers with the Honolulu District Court Access to Justice Room and the William S. Richardson School of Law's Refugee and Immigration Law Clinic.

When she's not practicing law, Nicole loves exploring the world and discovering hidden gem restaurants. She also enjoys cooking a variety of cuisines and staying active with weightlifting, sculpt yoga and pickleball.

"...I enjoy having the chance to think critically, solve complex problems and connect with people..."



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Attorneys in the News

Damon Key was a proud sponsor of this year's University of Hawai'i Law Review Symposium, "Honoring Chief Justice Mark E. Recktenwald."



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Tred R. Eyerly attended the 2026 American Bar Association Insurance Coverage Litigation Committee CLE Seminar and co-facilitated a lunch roundtable discussion entitled "When Does Fraud Vitiating My Policy?" Speakers discussed what constitutes fraud allowing the insurer to void the policy. Topics discussed included what if the insured, in completing an application or submitting a claim, unintentionally

submits incorrect information? Must the insurer give some guidance for completing an application or submitting a claim? Can the insured challenge the insurer's determination of fraud on a motion for summary judgment?



Karin S. Aldama, Gallagher & Kennedy, and Tred R. Eyerly, Damon Key Leong Kupchak Hastert