

# NOTICE

## Challenge to Governor's Use of Emergency Proclamations

### I. INTRODUCTION / IDENTIFICATION

1. I am an adult resident of Hawai'i, over the age of 18, and am competent to make this Notice.
2. I submit this Notice on my own behalf and on behalf of other concerned residents who have asked me to assemble factual and legal information about nine (9) emergency proclamations issued by the Governor of Hawai'i (collectively, the "Proclamations") that, (a) suspend numerous statutes and chapters of Hawai'i law and (b) do not respond to a true, imminent "emergency" but instead substitute long-term administrative policymaking for the Legislature.
3. Attached as **Exhibit A** is a true and correct list of the **32 unique statutes/chapters** (counting each statutory section or chapter once) that the Governor's Proclamations suspend, derived from the Proclamations' "Suspension of Laws" clauses. (Exhibit A is a concise list of each statute or chapter cited by any of the nine Proclamations.)

### II. FACTUAL BASIS — THE NINE PROCLAMATIONS & WHAT THEY DO

4. Beginning July 17, 2023, and continuing through 2024–2025, the Governor issued a series of emergency proclamations relating primarily to housing, affordable housing, and homelessness. The Proclamations repeatedly invoke HRS chapter 127A and specifically suspend, "to the extent necessary," a number of statutory provisions and entire chapters of Hawai'i law (including, among others, Chapter 6E (historic preservation), Chapter 103D (public procurement), Chapter 76 (civil service), and various substantive statutory sections identified in Exhibit A). See reporting and the Proclamation text summaries. [Honolulu Civil Beatcourthousenews.com: https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm\\_source=chatgpt.com](https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm_source=chatgpt.com)
5. The Proclamations frequently use language such as "suspend," "to the extent necessary," and "notwithstanding any other law," and on their faces attempt to exempt state agencies and private parties working on housing projects from numerous procedural and substantive laws that ordinarily apply to state actions. The proclamations' IV ("Suspension of Laws") sections are the operative clauses that list the statutes and chapters suspended. [Honolulu Civil Beat](https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm_source=chatgpt.com):

[https://www.civilbeat.org/2025/05/will-hawai%CA%BBis-supreme-court-curb-governors-power-to-suspend-laws/?utm\\_source=chatgpt.com](https://www.civilbeat.org/2025/05/will-hawai%CA%BBis-supreme-court-curb-governors-power-to-suspend-laws/?utm_source=chatgpt.com)

6. The Proclamations were issued in response to chronic policy problems (e.g., long-standing housing shortages, homelessness) and policy objectives (e.g., accelerate permitting, procurement, and development for housing), rather than to an acute, sudden event (such as a natural disaster or public health catastrophe) that made ordinary statutory processes impossible to follow in the short term. Local reporting and public records show the Governor and his administration described the measures as necessary to speed long-term housing construction and administrative processes. [Honolulu Civil Beat: https://www.civilbeat.org/2025/05/will-hawai%CA%BBis-supreme-court-curb-governors-power-to-suspend-laws/?utm\\_source=chatgpt.com](https://www.civilbeat.org/2025/05/will-hawai%CA%BBis-supreme-court-curb-governors-power-to-suspend-laws/?utm_source=chatgpt.com)

### III. LEGAL GROUNDS — WHY THE USE OF EMERGENCY POWERS IS LEGALLY CONCERNING

7. The Hawai'i Emergency Management Act (HRS ch. 127A) authorizes the Governor to declare an emergency and—subject to statutory limits—take steps to address that emergency. But that authority is not unlimited and cannot be used to permanently or effectively re-write statutes or to convert routine legislative responsibilities into executive policymaking. See HRS ch. 127A; see also contemporary commentary recommending legislative oversight to prevent executive abuse of emergency powers. [ncsl.orgBrennan Center for Justice: https://www.brennancenter.org/our-work/analysis-opinion/emergency-powers-system-vulnerable-executive-abuse?utm\\_source=chatgpt.com](https://www.brennancenter.org/our-work/analysis-opinion/emergency-powers-system-vulnerable-executive-abuse?utm_source=chatgpt.com)
8. Courts regularly hold that emergency powers are bounded by constitutional separation of powers and other legal limits. The U.S. Supreme Court's framework for evaluating executive action in emergencies demonstrates that emergency authority is **not an unlimited license to suspend or circumvent law**. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (establishing analytic framework for executive power limits). (Inserted for doctrinal background.) [fjc.gov: https://www.fjc.gov/history/administration/judicial-review-executive-orders?utm\\_source=chatgpt.com](https://www.fjc.gov/history/administration/judicial-review-executive-orders?utm_source=chatgpt.com)
9. Where executive emergency actions effectively substitute for legislation or pursue long-term policy matters (rather than address an immediate and extraordinary threat), courts have sometimes struck down or otherwise limited such uses of emergency authority. For example, courts in several jurisdictions have scrutinized and limited emergency invocations when the factual predicate was weak or when the measures exceeded what was necessary to address the emergency. See public-interest and analytic sources documenting judicial limits and recent rulings internationally. [Brennan Center for JusticeYork University: https://www.yorku.ca/osgoode/thecourt/2024/11/12/ultra-vires-and-unreasonable-federal-court-rules-on-invocation-of-the-emergencies-act/?utm\\_source=chatgpt.com](https://www.yorku.ca/osgoode/thecourt/2024/11/12/ultra-vires-and-unreasonable-federal-court-rules-on-invocation-of-the-emergencies-act/?utm_source=chatgpt.com)

10. In Hawai'i, legal challenges to the Governor's housing-related emergency proclamations are currently before the Hawai'i Supreme Court and other tribunals, and the Court has recently heard argument focusing on whether chronic issues such as housing shortages—measured over years—fit the statutory and constitutional definition of an “emergency” permitting suspension of laws. This confirms that the application of HRS ch. 127A to protracted policy problems is a live legal issue.
- [courts.state.hi.uscourthousenews.com:  
https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm\\_source=chatgpt.com](https://courts.state.hi.uscourthousenews.com:https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm_source=chatgpt.com)

## IV. SPECIFIC CONSTITUTIONAL/STATUTORY VIOLATIONS ALLEGED

1. **Separation of Powers / Legislative Power (Haw. Const. art. III & related principles):** By repeatedly suspending statutes and chapters that implement legislative policy—often for extended periods—the Governor is effectively exercising legislative power (making policy and changing statutory rules) without going through the Legislature. That undermines the constitutionally assigned lawmaking powers of the legislative branch. **Emergency authority must not be used as a vehicle for permanent or long-term lawmaking.** See *Youngstown* framework and long-standing separation-of-powers doctrine. [fjc.gov:  
https://www.fjc.gov/history/administration/judicial-review-executive-orders?utm\\_source=chatgpt.com](https://www.fjc.gov/history/administration/judicial-review-executive-orders?utm_source=chatgpt.com)
2. **Due Process and Property/Contract Rights (U.S. Const. Amend. XIV; Haw. Const. art. I):** The proclamations' suspension of procurement, civil service, and property-protective statutes (for example, certain public notice, procurement, and preservation requirements) create a risk of arbitrary deprivation of property and lawful expectations without adequate procedural protections. Where statutes protect private or public rights, suspension of those protections without narrow tailoring and immediate necessity may violate due process principles. [Brennan Center for Justice:  
https://www.brennancenter.org/our-work/analysis-opinion/emergency-powers-system-vulnerable-executive-abuse?utm\\_source=chatgpt.com](https://www.brennancenter.org/our-work/analysis-opinion/emergency-powers-system-vulnerable-executive-abuse?utm_source=chatgpt.com)
3. **Ultra Vires / Statutory Limits:** If the Governor's use of HRS ch. 127A exceeds the scope the Legislature intended—i.e., the actions are not necessary to address a genuine emergency—then those proclamations are ultra vires. Courts have struck down emergency measures that exceeded statutory authorization or were unreasonable in scope relative to the factual predicate. See international and federal examples (e.g., Federal Court of Canada's review of the Emergencies Act invocation in 2024). [TorysYork University:  
https://www.yorku.ca/osgoode/thecourt/2024/11/12/ultra-vires-and-unreasonable-federal-court-rules-on-invocation-of-the-emergencies-act/?utm\\_source=chatgpt.com](https://www.yorku.ca/osgoode/thecourt/2024/11/12/ultra-vires-and-unreasonable-federal-court-rules-on-invocation-of-the-emergencies-act/?utm_source=chatgpt.com)
4. **Abuse of Discretion & Lack of Narrow Tailoring:** Emergency measures must be reasonably related and limited to addressing the emergency. Repeated, broad

suspensions of laws to achieve policy goals (streamlining permitting, altering procurement, changing civil service rules) show a failure of narrow tailoring and risk being legally infirm. [Brennan Center for Justice: https://www.brennancenter.org/our-work/analysis-opinion/emergency-powers-system-vulnerable-executive-abuse?utm\\_source=chatgpt.com](https://www.brennancenter.org/our-work/analysis-opinion/emergency-powers-system-vulnerable-executive-abuse?utm_source=chatgpt.com)

## V. EVIDENCE & EXHIBITS

1. I attach the following exhibits, which I declare are true and accurate to the best of my knowledge:
  - **Exhibit A:** A list of the 32 unique statutes/chapters suspended across the nine proclamations (each statute counted once). (Derived from the proclamations' IV sections.)
  - **Exhibit B:** Public reporting and links summarizing the proclamations and the legal challenges (including Civil Beat and Courthouse News reporting on the housing proclamations and litigation). [Honolulu Civil Beatcourthousenews.com: https://www.civilbeat.org/2025/05/will-hawai%CA%BBis-supreme-court-curb-governors-power-to-suspend-laws/?utm\\_source=chatgpt.com](https://www.civilbeat.org/2025/05/will-hawai%CA%BBis-supreme-court-curb-governors-power-to-suspend-laws/?utm_source=chatgpt.com)
  - **Exhibit C:** Links to the formal Proclamation listings on the Governor's website and PDF copies of the Proclamations where available. [courts.state.hi.us: https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scap-24-0000401?utm\\_source=chatgpt.com](https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scap-24-0000401?utm_source=chatgpt.com)

## VI. RELIEF SOUGHT / REQUESTS OF FACT-FINDING OR ACTION

1. I respectfully request that a competent decision-maker (judge, investigator, legislative committee, or the Attorney General acting independently) do one or more of the following:
  - a. **Issue a declaratory judgment** that the Governor's Proclamations exceed the lawful scope of HRS ch. 127A insofar as they suspend statutes to pursue long-term administrative policy rather than to meet an acute emergency; or, alternatively, require strict judicial review of the factual predicate and scope of each suspension.
  - b. **Enjoin enforcement** of any proclamations (or portions thereof) that are ultra vires or not narrowly tailored to a genuine emergency.
  - c. **Order an evidentiary hearing** (temporary restraining order or preliminary injunction hearing) where the Governor must produce contemporaneous factual evidence showing the danger to people's lives or property justifying the need for each suspension (i.e., show immediacy, necessity, and why ordinary statutory processes could not be briefly followed).
  - d. **Refer the facts** to the Hawai'i State Auditor, Ombudsman, or appropriate legislative committees to investigate patterns of abuse and recommend statutory fixes or oversight

mechanisms to prevent future substitution of policy by proclamation. [ncsl.org:  
https://www.ncsl.org/about-state-legislatures/legislative-oversight-of-emergency-executive-powers?utm\\_source=chatgpt.com](https://www.ncsl.org/about-state-legislatures/legislative-oversight-of-emergency-executive-powers?utm_source=chatgpt.com)

## VII. AUTHORITIES & EXAMPLES (NON-EXHAUSTIVE)

1. The following authorities and examples illustrate judicial and scholarly approaches to limits on emergency executive action and the need for oversight:
  - *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (framework for limits on executive power). [fjc.gov:  
https://www.fjc.gov/history/administration/judicial-review-executive-orders?utm\\_source=chatgpt.com](https://www.fjc.gov/history/administration/judicial-review-executive-orders?utm_source=chatgpt.com)
  - Recent public-interest scholarship and watchdog analysis describing how emergency powers have been used and abused, and urging legislative oversight and judicial scrutiny. (Brennan Center, NCSL, Lawfare analyses). [Brennan Center for  
Justicencsl.orgDefault:  
https://www.brennancenter.org/our-work/analysis-opinion/emergency-powers-system-vulnerable-executive-abuse?utm\\_source=chatgpt.com](https://www.brennancenter.org/our-work/analysis-opinion/emergency-powers-system-vulnerable-executive-abuse?utm_source=chatgpt.com)
  - Federal Court of Canada decision reviewing invocation of the Emergencies Act (Canada Frontline Nurses et al.), which held that the invocation was unreasonable and ultra vires in that factual context—illustrating judicial review of emergency revocation and scope. [York UniversityTorys:  
https://www.yorku.ca/osgoode/thecourt/2024/11/12/ultra-vires-and-unreasonable-federal-court-rules-on-invocation-of-the-emergencies-act/?utm\\_source=chatgpt.com](https://www.yorku.ca/osgoode/thecourt/2024/11/12/ultra-vires-and-unreasonable-federal-court-rules-on-invocation-of-the-emergencies-act/?utm_source=chatgpt.com)
  - Current litigation and reporting in Hawai'i regarding the Governor's housing proclamations; the Hawai'i Supreme Court has recently scheduled/heard argument evaluating whether chronic housing shortages qualify as an "emergency" under state law—showing the issue is legally contested in Hawai'i. [courts.state.hi.uscourthousenews.com:  
https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm\\_source=chatgpt.com](https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm_source=chatgpt.com)

## VIII. DECLARATION

1. I declare under penalty of perjury under the laws of the State of Hawai'i that the foregoing is true and correct to the best of my knowledge and belief.

Dated: see date sent

Signed: (See name on above)

## EXHIBIT A (summary)

(Here is the list you can copy into Exhibit A of the affidavit; this is the same 32 unique statutes/chapters found in the Proclamations. If you want, I will produce the formal Exhibit A as a standalone PDF.)

1. Chapter 6E — Historic Preservation
  2. §26-35(a)(4)
  3. §37-41
  4. §37-74(d)
  5. §40-66
  6. §46-1.5
  7. §46-4
  8. §46-142.5
  9. §46-143
  10. §46-146
  11. Chapter 76 — Civil Service
  12. Chapter 89 — Collective Bargaining
  13. Chapter 89C — Public Officers/Employees provisions
  14. §102-2
  15. §103-2
  16. §103-53
  17. §103-55
  18. §103-55.5
  19. Chapter 103D — Public Procurement Code
  20. §104-2(i)(3)
  21. §107-24(c)
  22. §107-27(a)
  23. §107-28
  24. §107-31
  25. §127A-30
  26. §201H-36(a)(5)(A)
  27. §201H-38(a)(3)
  28. Chapter 237 — (tax/exemption provisions)
  29. §§302A-1601–1612 (school impact fees range)
  30. (note: Chapters 76, 89, 89C appear in multiple proclamations but are each counted once here)
  31. [If you want each statute subsection expanded into separate lines, we can do that on request.]
  32. [End of Exhibit A — for formal filing consider pasting full statutory citations as they appear in the proclamation IV clauses.]
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## SOURCES & SUPPORTING REPORTS (selected)

- Civil Beat: reporting on the Governor's practice of suspending laws via emergency proclamations. [Honolulu Civil Beat: https://www.civilbeat.org/2025/05/will-hawai%CA%BBis-supreme-court-curb-governors-power-to-suspend-laws/?utm\\_source=chatgpt.com](https://www.civilbeat.org/2025/05/will-hawai%CA%BBis-supreme-court-curb-governors-power-to-suspend-laws/?utm_source=chatgpt.com)
- Courthouse News: articles describing lawsuits challenging the Governor's housing emergency proclamations and related Supreme Court activity. [courthousenews.com+1: https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm\\_source=chatgpt.com](https://www.courthousenews.com/hawaii-governor-defends-emergency-housing-powers-at-state-supreme-court/?utm_source=chatgpt.com)
- Hawai'i Courts site: notice of Hawai'i Supreme Court oral argument in case challenging use of HRS ch. 127A for housing proclamations. [courts.state.hi.us: https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scap-24-0000401?utm\\_source=chatgpt.com](https://www.courts.state.hi.us/oral-argument-before-the-supreme-court-no-scap-24-0000401?utm_source=chatgpt.com)
- Scholarly and policy analysis on executive emergency powers and risks of overreach (Brennan Center, NCSL). [Brennan Center for Justicencsl.org: https://www.ncsl.org/about-state-legislatures/legislative-oversight-of-emergency-executive-powers?utm\\_source=chatgpt.com](https://www.ncsl.org/about-state-legislatures/legislative-oversight-of-emergency-executive-powers?utm_source=chatgpt.com)
- Federal Court of Canada ruling on invocation of Emergencies Act (example of judicial review). [Torys: https://www.torys.com/en/our-latest-thinking/publications/2024/01/federal-court-finds-emergencies-act-orders-exceed-governments-powers?utm\\_source=chatgpt.com](https://www.torys.com/en/our-latest-thinking/publications/2024/01/federal-court-finds-emergencies-act-orders-exceed-governments-powers?utm_source=chatgpt.com)