

# Superferry Sunk

Contributed by Catharine Lo  
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Hawaii Supreme Court decision declares Act 2 unconstitutional

State Supreme Court sinks Superferry operation

On March 16, the Hawaii Supreme Court sided with environmentalists, declaring Act 2, which allowed the Hawaii Superferry to continue operation without completing an environmental impact statement, unconstitutional. Following the decision, Superferry officials announced they would terminate service and begin releasing the 161 full- and part-time staff and 75 contracted employees.

Act 2 was deemed unconstitutional because state laws are not to be imposed to benefit any one entity. The law referred to a "large capacity ferry vessel" instead of "Superferry," but the meaning was implicit, State Senator Kalani English (D-East Maui, Lanai, Molokai) told the Honolulu Advertiser, adding that the law "simply masked the idea of what the Superferry is by calling it by this generic name."

This was the argument upheld in the lawsuit by The Sierra Club, Maui Tomorrow, and the Kahului Harbor Commission. A Honolulu Star-Bulletin story shared this excerpt from the 113-page court decision: "Realistically, Act 2 was conceived, drafted, and enacted to accomplish the specific purpose of allowing the Superferry, and the Superferry alone, to operate without satisfying the requirements of Chapter 343 of the Hawaii statutes. By its own repealing language, once this purpose was accomplished, Act 2 will die before it can accomplish a like purpose for any other entity."

Act 2 also had a provision that protected the state from being sued by Superferry, and by striking down the law, that protection is gone, Senate President Colleen Hanabusa told Star Bulletin reporter Richard Borreca.

Other concerns were raised by Honolulu City Councilmember Charles Djou, who argued that the decision was "so broad" that numerous state laws applying solely to the City and County of Honolulu could be considered "legitimately void as similarly unconstitutional." Among these are the rail system general excise tax increase and a proposed ban on Oahu landfills, Djou spokesman Dylan Nonaka pointed out in Hawaii Free Press.

"The Legislature passes 'special' laws all the time," State Senator Sam Slom (R-Hawaii Kai) stated in Hawaii Reporter, decrying the decision as "terrible" and "further evidence of the dysfunction of this court." These include health laws, tax laws and land laws that have not been previously challenged, he wrote, adding that "no other aircraft or surface vessels have been put to this scrutiny in the past."

KITV reported that Governor Lingle believed the Legislature had the "clear authority" to pass Act 2. Saying the shutdown of the service would be "devastating," she promised, "We're going to make sure the taxpayers are protected and that the Superferry keeps operating." Defending the expeditious law, she insisted, "We know from the beginning we were correct and accurate, did the right thing&hellip;"

"How can?!" asked Lee Cataluna, condemning the colluding state lawmakers and Superferry executives who became "so thoroughly convinced of their supreme power and unquestionable judgment that they talked themselves into a self-righteous frenzy about the goodness of Superferry and the badness of those who dared question their actions."

The governor's head's in the sand, agrees Ian Lind. He points out, "Lingle and company can't blame partisan politics on this one," since the opinion was written by Associate Justice Jim Duffy, a 2003 Lingle appointee.

While Lingle said she might consider filing an appeal, the New York Times reported that Hawaii Superferry would not. Hawaii Superferry president Thomas Fargo suggested to the Times that "the military may very well want to lease this particular ship," as it is similar to a transport catamaran already leased by the Marine Corps. Fargo denied that there was a military agenda from the start, saying, "We certainly wouldn't have gone to the trouble to appoint her with 836 first-class seats, to spend huge sums of money to establish service here in Hawaii if that was our goal."

"I'm sure we'll hear the usual cries and moans about how this sends out a message that Hawaii is a bad place to do business," commented Joan Conrow. "But what it really sends out is the message that it's a bad place to pull a fast one."

In an Associated Press report, co-author of the damning book *The Superferry Chronicles* Koohan Paik summed up the underlying message to big business: "Just follow the law."

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