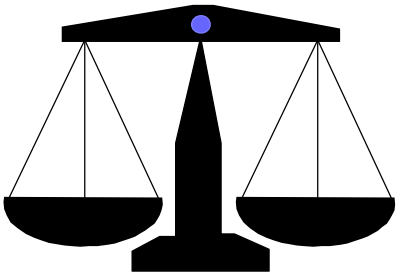

General Counsel Corner

By Peter H. Gunst, Esquire

Supreme Court Does Right by Hawaii

Earlier columns expressed consternation about decisions issued by the federal district court in Hawaii and by the Ninth Circuit Court of Appeals, most recently in *Chevron USA, Inc. v. Cayetano*, 363 F.3d 846 (9th Cir. 2004).

Those decisions had struck down as unconstitutional Hawaii's "rent cap" legislation, which was intended to preserve competition in the gasoline market by deterring suppliers from driving their independent dealers out of business through excessive rent increases.

The view here was that the federal courts had impermissibly substituted their judgment regarding the potential competitive effects of the legislation for that of Hawaii's legislature. This appeared to be a gross usurpation of the state's legislative prerogative.

Given that concern, we were glad to receive the state's request that SSDA participate as an amicus curiae -- friend of the court -- in the state's effort to seek reversal from the United States Supreme Court.

SSDA submitted two amicus briefs, the first urging that the Supreme Court exercise its discretionary review of the Ninth Circuit's opinion; and, once that occurred, the second urging that the Supreme Court uphold the constitutionality of the Hawaii statute.

In its amicus briefs, SSDA analogized the Hawaii statute to Maryland's divorcement law forbidding refiners from displacing independent dealers with company-operation. The oil companies also had attacked the economic wisdom of that statute, but the state's right to exercise its judgment in the matter had been upheld by the Supreme Court over 25 years ago in its decision in *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978).

SSDA cited the *Exxon* decision in its amicus brief in urging reversal of the lower courts' decisions. SSDA argued:

> [T]he present statute represents no more than an alternative method of addressing the problem previously addressed [through divorcement legislation]…. Far from a renegade measure, the [Hawaii] statute represents a compromise, allowing oil companies to operate service stations while simultaneously protecting independent dealers from outrageous rent demands. In *Exxon's* language, "[r]egardless of the ultimate economic efficacy of the statute, … it bears a reasonable relation to the State's legitimate purpose in

> controlling the gasoline retail market…."

On May 23, 2005, the Supreme Court issued its decision in the litigation, now styled *Lingle v. Chevron U.S.A., Inc.*, 554 U.S. ___ (2005). It held by unanimous vote that the lower courts had erred by interfering with Hawaii's legislative process. Citing the *Exxon* opinion, the Supreme Court said:

> We find the proceedings below remarkable, to say the least, given that we have long eschewed such heightened scrutiny when addressing substantive due process challenges to government regulation…. The reasons for deference to legislative judgments about the need for, and likely effectiveness of, regulatory actions are by now well established, and we think they are no less applicable here.

The message is clear. State legislatures should be free to experiment with economic legislation -- be it a divorcement act, a below-cost pricing law or any number of other legislative schemes -- without interference from the federal courts.

This is so not only because it is mandated by the United States Constitution, as the Supreme Court held, but also because it makes good sense. Courts are ill equipped to predict the economic future; and, in any event, appointed judges should rarely be permitted to override the will of the people, as implemented by their elected representatives.