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This Side of Paradise

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KAUAI, Hawaii -- The island of Kauai has long been a magnet for visitors from the mainland as well as the main island. With white sand beaches and turquoise blue water, the island on the northern edge of the Hawaiian chain looks like a picture-perfect Hollywood set.

But there is trouble brewing on this island paradise. Last month, the state's Supreme Court declared that voters do not have the power to amend Kauai's County Charter to bring soaring property taxes down to a manageable level. That power is to be reserved for the county's mayor and governing council.

The ruling serves as a warning for anyone, fresh from the beach, who is tempted to buy that vacation home or retire to that ocean-front property. In Kauai, owning a slice of heaven can be a tax hell.

The nightmare for Kauai's homeowners began innocently enough in the late 1990s -- as the island was beginning to enjoy the fruits of the nationwide housing boom and the local economy finally recovered from Iniki, a devastating Category 4 hurricane that struck on Sept. 11, 1992. Iniki inflicted some \$2.5 billion in damages, and it left many residents without municipal water or electricity for weeks -- some went without these government services for months.

By 1997, with little help from the outside world, residents had rebuilt their island and the local real-estate market had begun to turn around. With the reconstruction, new residents began moving in -- and Hollywood took notice. Recognizing Kauai's raw beauty, producers shot movies here and celebrities bought homes on the island's world-class beaches and emerald valleys. By the close of the '90s, Kauai was becoming a major hot spot and local real estate was in high demand.

Not surprisingly, Kauai's real-estate prices skyrocketed, outstripping even the most competitive mainland markets. Today, the subprime crisis notwithstanding, the average price of a home on Kauai is \$635,000. That's up sharply from \$299,000 in 2001. With this meteoric rise came a similar rise in property taxes -- homeowners here, as elsewhere, pay a percentage of their home's value in annual property taxes.

Many residents have seen their property taxes double or even triple since 2000. Arnold Nurock, a local pediatrician who worked for decades in the island's public health clinics, is one of them. In 2000, he paid \$6,000. Three years later, the bill grew to a staggering \$18,000. So he decided, like many of his neighbors, to do something about it.

Kauai County derives two-thirds of its income from property taxes. By 2005 -- with only a modest increase in population -- the county collected some \$67 million in property taxes, up from \$31 million in 1999. Mr. Nurock and other residents formed an advocacy group called Ohana Kauai (Ohana is Hawaiian for "family") and began pushing tax reform.

It's not been easy. In 2004, they collected 3,000 signatures and put on the ballot an amendment to the county's charter that would do two things. First it would roll property taxes back to what residents paid in 1998. Second, it would limit future property tax increases to 2% a year.

The mayor of Kauai, Republican Bryan Baptiste, and Democratic council members, immediately opposed the amendment and campaigned against it. They lost. Two out of every three voters on the island voted for the amendment.

Kauai officials responded by trying to kill the amendment, spending \$250,000 in tax dollars to hire a lawyer from the main island and suing to have the election overturned. And here, they won starting in 2005 when state Judge George Masuoko ruled in *County of Kauai ex rel. Nakazawa v. Baptiste*, that the amendment was actually a ballot initiative that repealed a tax, something not permitted by the County Charter.

The Pacific Legal Foundation's Robert Thomas stepped in, arguing the case before the Hawaii Supreme Court on Feb. 15, 2007, on behalf of four property owners. Honolulu attorney Gary Slovin, for the county, countered that allowing people to vote on taxes would create "chaos." A few members of the County Council publicly agreed. The Hawaii Government Employees Association, fearing government jobs held by union members might be cut, issued a statement to say that giving residents power over taxes was an "absurd proposition."

Last month, despite Mr. Thomas's valiant efforts, Hawaii's state Supreme Court ruled against Kauai taxpayers, 3-2. To support his 70-page majority decision, Chief Justice Ronald Moon argued that property taxpayers have no right to determine how much they are taxed. In dissent, Justices Simeon Acoba and James Duffy said Mr. Moon's "manipulation" created an "unwise and dangerous precedent." Mr. Acoba wrote, "[w]ith all due respect, our role is to protect the judicial process, not to subvert it."

There's little doubt here that the Supreme Court's decision is a blow to citizens who want to hold our state's elected officials accountable. But with a major victory at the ballot box blocked by the courts, the only recourse is a constitutional convention. Hawaii is the only state that reviews its state constitution periodically, and in next year's general election Hawaiian voters must decide whether to hold a convention within the next decade.

But things don't bode well for this option either. Hawaii's last constitutional convention was held in 1978, a landmark event which laid the groundwork for today's modern Hawaiian state. There was almost another in 1998, when voters approved holding a convention only to be over-ruled by -- you guessed it -- the state Supreme Court. It decided that ballots left "blank" on the question of a constitutional convention should be counted as "no."

Is it any wonder then that Hawaii has the dubious distinction of having the nation's highest overall tax burden? The national Small Business Survival Index has rated Hawaii the "worst" place to operate a business. Some here joke that state officials no longer agree with the Founding Fathers when it comes to "taxation without representation." Still, many understand that, even in paradise, power to the people, not the government, is worth the fight.

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