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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**HAWAII ET AL. v. OFFICE OF HAWAIIAN AFFAIRS
ET AL.**

CERTIORARI TO THE SUPREME COURT OF HAWAII

No. 07–1372. Argued February 25, 2009—Decided March 31, 2009

After the overthrow of the Hawaiian monarchy in 1893, Congress annexed the Territory of Hawaii pursuant to the Newlands Resolution, under which Hawaii ceded to the United States the “absolute fee” and ownership of all public, government, and crown lands. In 1959, the Admission Act made Hawaii a State, granting it “all the public lands . . . held by the United States,” §5(b), and requiring these lands, “together with the proceeds from [their] sale . . . , [to] be held by [the] State as a public trust,” §5(f). Hawaii state law also authorizes the State to use or sell the ceded lands, provided the proceeds are held in trust for Hawaiian citizens. In 1993, Congress’ joint Apology Resolution “apologize[d]” for this country’s role in overthrowing the Hawaiian monarchy, §1, and declared that nothing in the resolution was “intended to serve as a settlement of any claims against the United States,” §3.

The “Leiali’i parcel,” a Maui tract of former crown land, was ceded to the United States at annexation and has been held by the State since 1959 as part of the Admission Act §5(f) trust. Hawaii’s affordable housing agency (HFDC) received approval to remove the parcel from the trust and redevelop it upon compensating respondent Office of Hawaiian Affairs (OHA), which manages funds from the use or sale of ceded lands for the benefit of native Hawaiians. After HFDC refused OHA’s demand that the payment include a disclaimer preserving any native Hawaiian claims to lands transferred from the trust for redevelopment, respondents sued to enjoin the sale or transfer of the Leiali’i parcel and any other of the ceded lands until final determination of native Hawaiians’ claims. The state trial court entered judgment against respondents, but the Hawaiian Supreme Court vacated that ruling. Relying on the Apology Resolution, the

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court granted the injunction that respondents requested, rejecting petitioners' argument that the Admission Act and state law give the State explicit power to sell ceded lands.

Held:

1. This Court has jurisdiction. Respondents argue to no avail that the case does not raise a federal question because the State Supreme Court merely held that the sale of ceded lands would constitute a breach of the State's fiduciary duty to Native Hawaiians under state law. The Court has jurisdiction whenever "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law." *Michigan v. Long*, 463 U. S. 1032, 1040. Far from providing a plain statement that its decision rested on state law, the state court plainly held that the decision was dictated by federal law, particularly the Apology Resolution. Pp. 6–7.

2. The Apology Resolution did not strip Hawaii of its sovereign authority to alienate the lands the United States held in absolute fee and granted to the State upon its admission to the Union. Pp. 7–12.

(a) Neither of the resolution's substantive provisions justifies the judgment below. The first such provision's six verbs—*i.e.*, Congress "acknowledge[d] the historical significance" of the monarchy's overthrow, "recognize[d] and commend[ed] efforts of reconciliation" with native Hawaiians, "apologize[d] to [them]" for the overthrow, "expresse[d] [the] commitment to acknowledge [the overthrow's] ramifications," and "urge[d] the President . . . to also acknowledge [those] ramifications," §1—are all conciliatory or precatory. This is not the kind of language Congress uses to create substantive rights, especially rights enforceable against the cosovereign States. See, *e.g.*, *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17–18. The resolution's second substantive provision, the §3 disclaimer, by its terms speaks only to those who may or may not have "claims against the United States." The State Supreme Court, however, read §3 as a congressional recognition—and preservation—of claims *against Hawaii*. There is no justification for turning an express disclaimer of claims against one sovereign into an affirmative recognition of claims against another. Pp. 8–10.

(b) The State Supreme Court's conclusion that the 37 "whereas" clauses prefacing the Apology Resolution clearly recognize native Hawaiians' "unrelinquished" claims over the ceded lands is wrong for at least three reasons. First, such "whereas" clauses cannot bear the weight that the lower court placed on them. See, *e.g.*, *District of Columbia v. Heller*, 554 U. S. ___, ___, n. 3. Second, even if the clauses had some legal effect, they did not restructure Hawaii's rights and obligations, as the lower court found. "[R]epeals by implication are not favored and will not be presumed unless the intention of the leg-

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islature to repeal [is] clear and manifest.” *National Assn. of Home Builders v. Defenders of Wildlife*, 551 U. S. 644, _____. The Apology Resolution reveals no such intention, much less a clear and manifest one. Third, because the resolution would raise grave constitutional concerns if it purported to “cloud” Hawaii’s title to its sovereign lands more than three decades after the State’s admission to the Union, see, e.g., *Idaho v. United States*, 533 U. S. 262, 280, n. 9, the Court refuses to read the nonsubstantive “whereas” clauses to create such a “cloud” retroactively, see, e.g., *Clark v. Martinez*, 543 U. S. 371, 381–382. Pp. 10–12.

117 Haw. 174, 177 P. 3d 884, reversed and remanded.

ALITO, J., delivered the opinion for a unanimous Court.