

KENNEDY, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 04–163

LINDA LINGLE, GOVERNOR OF HAWAII, ET AL.,
PETITIONERS *v.* CHEVRON U. S. A. INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May 23, 2005]

JUSTICE KENNEDY, concurring.

This separate writing is to note that today’s decision does not foreclose the possibility that a regulation might be so arbitrary or irrational as to violate due process. *Eastern Enterprises v. Apfel*, 524 U.S. 498, 539 (1998) (KENNEDY, J., concurring in judgment and dissenting in part). The failure of a regulation to accomplish a stated or obvious objective would be relevant to that inquiry. Chevron voluntarily dismissed its due process claim without prejudice, however, and we have no occasion to consider whether Act 257 of the 1997 Hawaii Session Laws “represents one of the rare instances in which even such a permissive standard has been violated.” *Apfel, supra*, at 550. With these observations, I join the opinion of the Court.