No. 07-1372

In The
Supreme Court of the United States

STATE OF HAWAII, ET AL.,
Petitioners,
v.
OFFICE OF HAWAIIAN AFFAIRS, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF HAWAII

BRIEF OF *AMICI CURIAE* ASIAN AMERICAN JUSTICE CENTER, THE NATIONAL COALITION FOR ASIAN PACIFIC AMERICAN COMMUNITY DEVELOPMENT, INC., ORGANIZATION OF CHINESE AMERICANS, INC., ASIAN LAW CAUCUS, ASIAN AMERICAN INSTITUTE, ASIAN AND PACIFIC ISLANDER AMERICAN HEALTH FORUM, AND ASIAN PACIFIC AMERICAN LEGAL CENTER IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

The Asian American Justice Center ("AAJC") is a 501(c)(3) nonprofit, nonpartisan organization. The AAJC was incorporated in 1991 and opened its Washington, D.C., office in 1993. The AAJC works to advance the human and civil rights of Asian Pacific Americans through advocacy, public policy, public education, and litigation. In accomplishing its mission, the AAJC focuses its work to promote civil engagement, to forge strong and safe communities, and to create an inclusive society in communities on a local, regional, and national level. A nationally recognized voice on behalf of Asian Pacific Americans, the AAJC has an interest in protecting the rights of the Native Hawaiians.[2]

Amici include some of the largest and oldest Asian Pacific American groups in this country.

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[1] The parties have consented to the filing of this brief. Blanket consents of the parties to the filing of *amicus curiae* briefs are on file with the Office of the Clerk of this Court. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] This brief follows Respondents in using the term "Native Hawaiian" to mean any individual who can trace some ancestry to the Hawaiian Islands' pre-1778 inhabitants. *See* Res. Br. at 2 n.1.

These organizations are involved in challenging racial discrimination, safeguarding civil rights, and protecting the rights of the Native Hawaiians. The statements of interest for these additional *amici* are included in Appendix A.

SUMMARY OF ARGUMENT

Petitioners challenge whether the Hawaii Supreme Court properly issued a permanent injunction under state law to halt Petitioners' efforts to sell certain lands that Petitioners hold in trust for Native Hawaiians. Specifically, Petitioners argue that, in finding that Native Hawaiians hold competing claims to the trust lands, the Hawaii Supreme Court improperly relied on a Congressional enactment that recognized the United States government's role in the overthrow in 1893 of the Kingdom of Hawaii (the "Federal Resolution").[3]

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[3] The full citation for the Federal Resolution is: Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii, And to Offer An Apology to Native Hawaiians on Behalf of the United States for the Overthrow of the Kingdom of Hawaii, Pub. L. No. 103-150, 107 Stat. 1510 (1993) ("Federal Resolution"). The State legislature of the State of Hawaii earlier had enacted a similar piece of legislation, the Concurrent Resolution Requesting the President And Congress of the United States to Issue A Formal Apology on Behalf of the United States to Native Hawaiians for the Overthrow of the Kingdom of Hawaii, H.R. Con. Res. 179, 17th Leg., Reg. Sess. (Haw. 1993) ("State Resolution").

Petitioners base this argument in part on the contention that the Federal Resolution has no legal consequence, but instead merely is a "symbolic" "statement of regret." Pet. Br. at 1, 18. This contention posits a false dichotomy – either the Federal Resolution is "a source of substantive rights and obligations" for Native Hawaiians, or the Federal Resolution is solely symbolic and therefore without legal effect. In fact, the Federal Resolution falls between these extremes.

Although the Federal Resolution does not resolve any claims, it contains detailed findings of fact. *See* Argument I, *infra*. These findings are more than mere symbolism. They are an important part of the political process of reconciliation that Hawaii has put into place to resolve the competing land claims resulting from the overthrow of the Native Hawaiian government in 1893. *Id.* As a matter of state law, the Hawaii Supreme Court appropriately could rely on these findings to determine whether the state law requirements for injunctive relief had been met. *See* Argument II, *infra*. Indeed, because resolutions of the sort at issue here are so rare, these findings are entitled to particular deference. *See* Argument III, *infra*.

ARGUMENT

I. THE FEDERAL AND STATE RESOLUTIONS CONTAIN VIRTUALLY IDENTICAL, DETAILED LEGISLATIVE FINDINGS OF FACT DESCRIBING THE ROLE OF THE UNITED STATES IN OVERTHROWING THE KINGDOM OF HAWAII

Under Hawaii law, a court properly may issue a permanent injunction if the court finds, among other things, that the plaintiff "has prevailed on the merits." *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Haw.*, 177 P.3d 884, 922 (Haw. 2008). Here, the Hawaii Supreme Court found that Respondents, including the Office of Hawaiian Affairs ("OHA"), prevailed on the merits of their state-law breach-of-fiduciary-duty claim, based on the factual findings in the Federal Resolution. The factual recitations on which the Hawaii Supreme Court relied on themselves tracked the language of the State Resolution, which is identical to the Federal Resolution in all material respects. *See* H.R. Con. Res. No. 179, 17th Leg., Reg. Sess. (Haw. 1993); Res. Br. at 8. In addition, the Hawaii Supreme Court relied on other state legislative findings in other state law enactments. As Respondents explain, "all of the relevant findings in the [Federal] Resolution were accompanied by parallel findings in state law: indeed, . . . the Hawaii Supreme Court arguably placed as much weight on the latter findings as it did on the former." Res. Br. at 33. These findings fall into four basic categories, which are discussed below.

First, using identical language, the State Resolution and the Federal Resolution (together, the "Resolutions") each describe in detail the overthrow and annexation of the Kingdom of Hawaii, stating, for example:

- "on the afternoon of January 17, 1893, [American representatives] deposed the Hawaiian Monarchy and proclaimed the establishment of a Provisional Government [later renamed the Republic of Hawaii];"

- "on July 7, 1898, . . . President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;"

- "the Newlands Resolution, ratified the cession [of land], annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;" and

- "on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States." Federal Resolution, Pub. L. No. 103-150, 107

Stat. 1510, 1510-13; Haw. State Resolution, H.R. Con. Res. 179.

Second, again using identical language, the Resolutions each acknowledge the United States' role in these events. For example, both Resolutions state that:

- "[i]n pursuance of the conspiracy . . . the United States . . . position[ed] [armed naval forces] near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;"

- "without the active support and intervention by the United States . . . , the insurrection against the Government of Queen Liliuokalani would have failed . . . ;"

- the Provisional Government took power "without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations [Hawaii and the United States] and of international law;"

- "the report of a Presidentially established investigation . . . into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military

representatives had abused their authority and were responsible for the change in government;" and

- "the illegal acts of the conspirators . . . [constituted] an 'act of war committed with the participation of a diplomatic representative of the United States and without authority of Congress.'" Federal Resolution, Pub. L. No. 103-150, 107 Stat. 1510, 1510-13; State Resolution, Haw. H.R. Con. Res. 179.

Third, the State and Federal Resolutions each recognize, again using identical language, that the Native Hawaiians were deprived of their land without ceding title and that competing land claims resulted from the overthrow of the Kingdom of Hawaii. The State and Federal Resolutions each state:

- "[t]he Republic of Hawaii . . . ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people . . . or their sovereign government; . . . Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;" and

- "the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum." Federal Resolution, Pub. L. No. 103-150, 107 Stat. 1510, 1510-13; State Resolution, Haw. H.R. Con. Res. 179.

Finally, both the State and Federal Resolutions expressly recognize that they constitute an important step in the political reconciliation process that the State of Hawaii has put into place to resolve, among other things, the Native Hawaiians' competing land claims. For example:

- the Federal Resolution expresses the intent of Congress to "provide a proper foundation for reconciliation between the United States and the Native Hawaiian people . . . and urges the President of the United States to . . . support [the same]." Federal Resolution, Pub. L. No. 103-150, § 1, 107 Stat. 1510, 1512-13.

- The Federal Resolution goes on to recognize that "Congress . . . expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii," including "the long-range economic and social changes in Hawaii [that] . . . have

> been devastating to the population and to the health and well-being of the Hawaiian people." *Id.*

- The State Resolution similarly "urges the President and Congress of the United States to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, and to support reconciliation efforts between the United States and the Native Hawaiian people." State Resolution, Haw. H.R. Con. Res. 179.

Based on these findings from the State and Federal Resolutions, the Hawaii Supreme Court found that

> native Hawaiians (1) "never directly relinquished their claims to . . . their national lands to the United States," and (2) "are determined to preserve, develop and transmit to future generations their ancestral territory . . . ." As such, we believe and, therefore, hold that the Apology Resolution and related state legislation . . . give rise to the State's fiduciary duty to preserve the corpus of the public lands trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved.

Office of Hawaiian Affairs, 177 P.3d at 905 (internal citation omitted).

Particularly in light of the virtually identical terms and structure of the State and Federal Resolutions, it is neither surprising nor improper for the Hawaii Supreme Court to have analyzed and relied on the factual findings in the Federal Resolution.

II. COURTS APPROPRIATELY MAY RELY ON CONGRESSIONAL FACT FINDING, PARTICULARLY IN THE CONTEXT OF A GOVERNMENTAL APOLOGY AND RECONCILIATION PROCESS

In describing the United States-supported overthrow and annexation of the Kingdom of Hawaii, the Federal Resolution provides detailed factual findings upon which courts properly may rely. These findings rest on a thorough review of primary source material regarding the history of the United States' annexation of Hawaii. For example, Congress provided a detailed report to accompany the Federal Resolution, Senate Report 103-126, that contains a myriad of primary source materials, which the Senate Report describes as including "presidential messages, conventions, and treaties . . . between the [United States and Hawaii]." This Report demonstrates that Congress based its factual findings on a substantial record. And, this Report shows that, in making these findings, Congress understood that it was giving voice to those who were hurt by the improper acts that the Federal Resolution recounts. *See, e.g.*, 139 Cong. Rec.

H9627-02, H9629 (1993) (Mr. Thomas speaking); *id.* at H9630 (Mr. Faleomavaega speaking); *id.* at H9631-H9632 (Mrs. Mink speaking).

This Court consistently has made clear that courts properly may rely on congressional findings of fact. For example, this Court has held that "[w]hen Congress makes findings on essentially factual issues . . . , those findings are of course entitled to a great deal of deference, inasmuch as Congress is an institution better equipped to amass and evaluate the vast amounts of data bearing on such an issue." *Walters v. Nat'l Assoc. of Radiation Survivors*, 473 U.S. 305, 330 n.12 (1985). *See also Turner Broad. Sys. Inc. v. Fed. Commc'n Comm'n*, 520 U.S. 180, 195 (1997) ("We owe Congress' findings deference in part because the institution 'is far better equipped than the judiciary to "amass and evaluate the vast amounts of data" bearing upon' legislative questions." (citing *Turner Broad. Sys., Inc. v. Fed. Commc'n Comm'n*, 512 U.S. 622, 665-66 (1994) (plurality opinion) (quoting *Walters*, 473 U.S. at 330, n. 12)). *See, e.g.*, *Gonzales v. Raich*, 545 U.S. 1, 20-21 (2005) (relying on congressional findings of fact in the Controlled Substances Act); *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 730 (2003) (relying on congressional findings of fact in the Family and Medical Leave Act); *Turner Broad. Sys., Inc. v. Fed. Commc'n Comm'n*, 512 U.S. 622, 646 (1994) (relying on congressional findings of fact in the Cable Television Consumer Protection and Competition Act of 1992); *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 45 (1989) (relying on congressional findings of fact in the Indian Child Welfare Act).

Indeed, the U.S. Court of Appeals for the Ninth Circuit recently relied on the factual findings in the Federal Resolution. In *Doe v. Kamehameha Schools*, 470 F.3d 827, 845 (9th Cir. 2006), the Ninth Circuit considered a private school's admission policy that favored Native Hawaiians. In finding that the school's admission policy "does not unnecessarily trammel the rights of non-Native Hawaiians," the Ninth Circuit cited the Federal Resolution as establishing that the Native Hawaiians have historically suffered particularly difficult challenges "in the educational arena." *Id.* The Ninth Circuit also relied on the Federal Resolution as "Congressional recognition of the challenges faced by the Native Hawaiians." *Id.*

Legislative fact findings are particularly significant in the context of legislative reconciliation efforts. The very purpose of these efforts is to set forth the facts giving rise to the wrongs at issue, and to acknowledge responsibility for those wrongs. As one scholar recently noted, an "[a]pology may be morally important even if it plays little or no role in reparative justice." Janna Thompson, *Apology, Justice, and Respect: A Critical Defense of Political Apology*, *in The Age of Apology: Facing Up to the Past* 31, 33 (Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud & Niklaus Steiner eds., University of Pennsylvania Press 2008). To the victims of governmental wrongdoing, apologies often may be more important than monetary or material remuneration. *See* Erin Ann O'Hara, Douglas Yarn,

On Apology & Consilience, 77 Wash. L. Rev. 1121, 1125 (2002).[4]

Thus, legislative fact findings are important, even where, as here, the legislative act does not award reparations or create rights or obligations. These factual findings are a critical part of "[r]epairing the damaged relationship between racial groups[, which] requires that the victimizers accept responsibility for their acts or those of their predecessor governments and people, recognize and

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[4] One key reason is that the fact-finding aspect of legislative apology resolutions furthers the reconciliation process by giving voice to groups such as Native Hawaiians. The fact findings in legislative apologies are important for other reasons as well. For example, the fact-finding element of legislative apologies serves a particularly critical role in the reconciliation process because that element creates for the government and the affected individuals a common narrative from which further political efforts can grow. *See* Rhoda E. Howard-Hassmann, Mark Gibney, *Apologies and the West, in The Age of Apology: Facing Up to the Past* 1, 4-5. Consequently, governmental recognition of historical facts and governmental apology can be a critical element in ensuring the furtherance of an equal, just, and stable society. *See* Michael Freeman, *Historical Injustice and Liberal Political Theory, in The Age of Apology: Facing Up to the Past* 45, 58-59. In addition, the fact findings can be critical to showing a governmental commitment to restoring the relationship with the affected group and to ensuring that history will not repeat itself. *See* Roy L. Brooks, *The Age of Apology, in When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice* 3, 4 (Roy L. Brooks ed., New York University Press 1999). This is particularly important in the Native Hawaiian community. *See* Sharon K. Hom, Eric K. Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. Rev. 1747, 1759-60 (2000).

act upon the injustice done, and in some way ask forgiveness of the victims." Eric K. Yamamoto, *Race Apologies*, 1 J. Gender Race & Justice 47, 64 (1997). Indeed, Congress recognized this precise point in a resolution apologizing for the role of the United States in slavery, stating that "a genuine apology is an important and necessary first step in the process of racial reconciliation." *See* Slavery Resolution, H.R. Res. 194, 110th Cong. (2008), discussed *infra* at 18-19.[5]

In sum, one of the important goals of a legislative apology is to acknowledge and set forth the facts that establish the wrong for which the government apologizes. The fact findings are an end in themselves. Courts appropriately rely on those fact findings in determining the application of state law.

III. LEGISLATIVE APOLOGIES ARE RARE, AND THUS THE FACT FINDINGS THEY INCLUDE ARE PARTICULARLY SIGNIFICANT

Governmental attempts at reconciliation are not new, and apologies (including factual acknowledgements) long have held an important role in those efforts. As one scholar writes, "*[m]ea culpa*

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[5] The Hawaii Supreme Court also recognized the importance of apologies in the reconciliation process. *See* Brief *amici curiae* of Equal Justice Society and Japanese American Citizens League of Hawaii-Honolulu Chapter in Support of Respondents at 28 n.13.

is not a post-Enlightenment sentiment, of course. Forever etched in Western culture as the symbol of remorse is the image of Henry IV standing barefoot and repentant at the castle of Pope Gregory VII in 1077." Brooks, *supra* note 4, at 3.[6] *See also* Richard B. Bilder, *The Role of Apology in International Law and Diplomacy*, 46 Va. J. Int'l L. 433, 440 n.14 ("[A]pologies, and demands for apology, have figured significantly in earlier [United States] history."). The United States long ago recognized the need for official apologies in the context of international relations. For instance, on July 19, 1928, the United States government apologized to Great Britain for violating the sovereignty of the Bahamas when the Coast Guard seized a ship suspected of smuggling liquor. Dodds, *supra* note 6.[7]

But beginning in the late 20th century, two important trends emerged that, together,

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[6] In 1077, Holy Roman Emperor Henry IV apologized to Pope Gregory VII by standing barefoot in the snow for three days. Graham G. Dodds, Political Apologies Chronological List, http://reserve.mg2.org/apologies.htm (last visited Jan. 26, 2009).

[7] Governments benefit from apologies for various reasons. Indeed, governments "would usually not apologize if they did not think that apologies served their national or governmental interests." Bilder, *supra,* at 463. Among other reasons, a government may apologize: (1) to bolster its domestic and/or international reputation; (2) to signal a change in position regarding the appropriateness or legality of certain conduct; or (3) as a way of defusing and resolving a contentious and potentially volatile dispute regarding an alleged harm. *Id.* at 464-67.

demonstrate why it is particularly appropriate to rely on factual findings in legislative apology resolutions. First, beginning after World War II, and with increasing frequency, governments around the world issued formal apologies for human rights violations, improper governmental actions, and race-based wrongs. Second, in very rare instances, the federal Congress and state legislatures undertook formal fact-finding and legislative action to enact formal apology resolutions, including the Resolutions. When taken in this context, the fact findings in the Federal Resolution can be understood to be a significant governmental action that courts may and should rely upon.

Beginning in the late 20th century, governmental apologies became increasingly common.[8] Many of these apologies stemmed from

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[8] For example, some of the United States' non-legislative apologies in the late 20th and early 21st centuries include the following: On December 31, 1989, the United States apologized to Nicaragua for American troops searching the Nicaraguan ambassador's residence in Panama City. On May 5, 1990, Ohio Governor Richard F. Celeste apologized for the 1970 Kent State shootings. On March 11, 1995, the thirtieth anniversary of the Selma-to-Montgomery civil rights march, former Alabama Governor George Wallace apologized to civil rights advocates for resisting desegregation. On May 16, 1997, President Clinton held a White House ceremony to apologize for the 48-year Tuskegee Syphilis Study by the United States Public Health Service that withheld medical treatment of the disease. On July 14, 2000, Thomas Foley, the United States Ambassador to Japan, and Lieutenant General Earl Hailston, the highest ranking American officer in Japan, apologized to Okinawa Governor Inamine Keiichi for crimes committed by United States military personnel in Japan. On November 28,

(Continued ...)

government action regarding a particular race or culture. *See* Bilder, *supra*, at 440 n.14; Eric K. Yamamoto, *Interracial Justice: Conflict & Reconciliation in Post-Civil Rights America* 51 (New York University Press 1999); *see also* Alison Dundes Renteln, *Apologies: A Cross-Cultural Analysis*, *in The Age of Apology: Facing Up to the Past* 61, 61. The reasons for the growing apology trend are widely debated.[9] But whatever the reasons for it, governments in the late 20th century viewed as significant the process of the acknowledgement of and apology for historical wrongs.

(... Continued)
2002, President Bush apologized, via the United States ambassador in Seoul, for the deaths of two South Korean girls hit by a United States military vehicle in June. Dodds, *supra* note 6.

[9] According to one author, this trend resulted from changes in religious and secular thought, combined with the emergence of new social movements such as the civil rights movement. *See* Howard-Hassmann, *supra* note 4, at 2-3. Another author posits that a new emphasis on morality might have caused the increase in apologies. Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices XVII* (W.W. Norton & Co. 2000). This author also opines that the increase resulted from the decolonization of the international world and the simultaneous trend towards equality in America. *Id.* at 159-60. Other scholars have suggested other potential causes of the increase. *See, e.g.*, Jean-Marc Coicaud, Jibecke Jönsson, *Elements of a Road Map for a Politics of Apology*, *in The Age of Apology: Facing Up to the Past* 77, 82 (shifts "from dictatorships, in which basic liberties had been regularly violated, to democratic governments" presented a host of "ethical, legal and political difficulties," and apologies became a tool to address the "abusive and criminal past").

In rare instances, the federal and state governments took special action, enacting detailed legislative apology resolutions. At the federal level, Congress has enacted only three such resolutions, apologizing for the internment of Japanese-Americans during World War II, for slavery, and for the overthrow of the sovereign Hawaiian Kingdom in 1893. And the issues of slavery and Hawaiian annexation are the only human rights issues to produce concurrent federal and state legislation.

The first legislative apology enacted by the United States Congress was the Civil Liberties Act of 1988. Pub. L. No. 100-383, 102 Stat. 904 (1988), which apologized to the United States citizens and permanent resident aliens of Japanese ancestry who were victims of the Japanese internment and relocation during World War II.[10] The Civil Liberties Act used the structure later used by Congress and the Hawaii State Legislature in the Resolutions: factual recitation, governmental acknowledgment of its role in the events and the consequences of its actions, and apology.

Since the Civil Liberties Act, Congress has issued only two legislative apologies: House Resolution 194, which apologizes "for the enslavement and racial segregation of African-Americans," and the Federal Resolution at issue

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[10] The Civil Liberties Act also addressed and apologized for wrongs perpetrated on the Aleutian people. For ease of explanation, this brief focuses only on the portions of the Act that address the wrongs perpetrated on Japanese-Americans.

here. Both of these resolutions had a similar structure and articulated a purpose similar to that stated in the Civil Liberties Act. As described *supra* at 3-8, the Federal Resolution, like the Civil Liberties Act, made factual findings about the events in question, acknowledged the government's role in those events, acknowledged the consequences of those events, and took important steps towards reconciliation.

Petitioners argue that, because Congress can alter the substantive rights of victimized groups when it chooses to do so, its decision not to do so here renders the Federal Resolution meaningless.[11] In fact, just the opposite is true. Although Congress can alter substantive rights if it chooses, Petitioners fail to recognize that these resolutions are meant to further the reconciliation process, and that substantive reparations are not the only way to accomplish this task. Indeed, as discussed *supra* at Argument II, resolutions have a significant impact regardless of whether they provide for reparations or create legal rights.

Therefore, when a legislature enacts, and the President signs, a resolution that does not create

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[11] Unlike H.R. 194 and the Resolutions at issue here, the Civil Liberties Act also established the framework for potential pardons of those convicted of violating the anti-Japanese legislation of the time, and awarded monetary reparations to some of the victims. Civil Liberties Act of 1988, Pub. L. No. 100-383 §§ 102, 105, 102 Stat. 903; Pet. Br. at 29.

legal rights or obligations, it is not choosing to enact a meaningless piece of legislation. Rather, it is choosing a different path towards reconciliation. Both options result in significant steps toward ultimate resolution, and neither choice results in a resolution devoid of meaning. Indeed, the one resolution that provides substantive remuneration has no more validity than the two that simply lay out the facts, apologize, and let the healing political process progress on its own.

This Court has wisely chosen not to second guess such legislative judgments. Rather, this Court has allowed state legislatures to experiment with solutions to various problems they confront, subject only to the requirement that the solutions do not violate the United States Constitution or federal law. As Justice Brandeis wrote long ago, "[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann,* 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting); *see also Oregon v. Ice*, --- S. Ct. ----, No. 07-901, 2009 WL 77896, at *7, (Jan. 14, 2009) ("We have long recognized the role of the States as laboratories for devising solutions to difficult legal problems. This Court should not diminish that role absent impelling reason to do so.") (citing *Liebmann*, 285 U.S. at 311) (internal citation omitted).

Because legislative apologies are rare, legislative findings in the context of such apologies are especially significant, particularly where, as

here, they are present in both federal and state enactments. Thus, it was particularly appropriate for the Hawaii Supreme Court to rely on the factual findings in the Federal Resolution.

CONCLUSION

For the foregoing reasons, and for the reasons described in Respondents' brief, the petition for a writ of certiorari should be dismissed. In the alternative, the judgment of the Hawaii Supreme Court should be vacated, and the case remanded for further proceedings.

January 29, 2009

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APPENDIX

APPENDIX

List of *Amici Curiae*

The National Coalition for Asian Pacific American Community Development, Inc. (National CAPACD)
CAPACD is the first national advocacy organization dedicated to addressing the housing, economic, and community development needs of Asian Americans, Native Hawaiians, and Pacific Islanders. Our mission is to be a powerful voice for the unique community development needs of Asian American, Native Hawaiian, and Pacific Islander communities and to strengthen the capacity of community-based organizations to create neighborhoods of hope and opportunity. National CAPACD has member organizations whose mission it is to serve Native Hawaiian communities.

Organization of Chinese Americans, Inc. (OCA)
OCA is a 501(c)(3) nonprofit, nonpartisan social justice organization dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans in the United States. Founded in 1973 and headquartered in Washington, DC, OCA works with 10,000 members in 81 chapters and college affiliates to embrace the hopes and aspirations of Asian Americans, Pacific Islanders, and Native Hawaiians. With a chapter in Hawaii and Native Hawaiian members and allies throughout the United States, OCA has an interest in protecting the rights of the Native Hawaiians.

Asian Law Caucus
Founded in 1972, the Asian Law Caucus is a non-profit organization advancing the legal and civil rights of Asian American and Pacific Islander communities. It is the nation's oldest legal organization serving Asian Americans and is dedicated to the pursuit of equality and justice for all sectors of society.

Asian American Institute (AAI)
AAI is a pan-Asian, nonprofit organization, whose mission is to empower the Asian American & Pacific Islander community through advocacy, utilizing research, education, and coalition-building. AAI is committed to remedying past and present social inequalities by advocating for policies that promote social, economic, educational, and political equity of the Asian American community as a whole.

Asian and Pacific Islander American Health Forum (APIAHF)
APIAHF is a national organization dedicated to promoting policy, program, and research efforts to improve the health and well-being of Asian Americans, Native Hawaiians, and Pacific Islanders. Founded in 1986, the APIAHF's mission is to enable Asian Americans, Native Hawaiians, and Pacific Islanders to attain the highest possible level of health and well-being through advocacy on health issues of significance to those communities, community-based technical assistance and training, health and U.S. Census data analysis, and research. The APIAHF has a commitment to the Native Hawaiians and Pacific Islander community, who have a unique and rich history and political status;

APIAHF has an interest in matters surrounding the protection and upholding of Native Hawaiian rights. The APIAHF believes that the protection of these rights is critical to the preservation of the Native Hawaiian community and its health and well-being.

Asian Pacific American Legal Center (APALC)
Founded in 1983, the Asian Pacific American Legal Center of Southern California is the largest public interest law firm in the nation devoted to the Asian and Pacific Islander community. In advocating for social justice, APALC supports the full and equal rights of the diverse members of our community including those of Native Hawaiians.