

IN THE SUPREME COURT OF THE UNITED STATES

No. 07-1372

STATE OF HAWAII, ET AL., PETITIONERS

v.

OFFICE OF HAWAIIAN AFFAIRS, ET AL.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF HAWAII

MOTION OF THE UNITED STATES AS AMICUS CURIAE
FOR DIVIDED ARGUMENT AND TO PARTICIPATE IN ORAL ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioners and that the United States be allowed ten minutes of petitioners' argument time. Petitioners have agreed to cede ten minutes of argument time to the United States. Granting this motion accordingly would not require the Court to enlarge the overall time for argument.

This case concerns whether federal law required or permitted the Supreme Court of Hawaii to enjoin the State of Hawaii from transferring lands that the United States obtained in fee simple absolute upon the annexation of Hawaii in 1898 and granted to the State, to hold in trust, upon its admission to the Union. Those issues implicate significant federal interests.

First, the State's title to the trust lands is a question of federal law in which the United States has a significant interest. Respondents brought this suit claiming that the Native Hawaiian people collectively have a claim to the trust lands, based on events that predated the United States' annexation of Hawaii; that their claim clouds the State's title; and that the cloud justifies enjoining the State from selling or transferring any of the lands until the dispute is resolved through some form of negotiation with the Native Hawaiian people. The State's title to the trust lands derives from the 1898 Act of Congress annexing Hawaii; the State holds the lands pursuant to a federal trust under the Hawaii Statehood Admissions Act (Admissions Act); and the United States is empowered to enforce the trust's requirements. See Hawaiian Annexation Resolution, J. Res. 55, 30 Stat. 750; Admissions Act, Pub. L. No. 86-3, § 5(f), 73 Stat. 6 (48 U.S.C. ch. 3 note). The state supreme court relied on a joint resolution adopted by Congress in 1993 to apologize for the United States' role in the overthrow of the Hawaiian monarchy a hundred years earlier. Act of Nov. 23, 1993, Pub. L. No. 103-150, 107 Stat. 1510. The United States has a significant interest in the correct interpretation of the Acts of Congress that may bear on the State's title to the trust lands.

Second, and relatedly, the United States owns approximately 300,000 acres of land in Hawaii that were acquired in the same 1898

annexation and pursuant to the same statutes asserting absolute fee ownership. The legal issues in this case could bear on the United States' title to its own lands as well.

Third, the relief ordered by the state supreme court -- an injunction forbidding the State from selling or transferring any trust lands as authorized by the Admissions Act and state law -- affects the interests of the United States in the proper implementation of Section 5(f) of the Admissions Act. The injunction also affects the United States in its proprietary capacity. The United States maintains sensitive military and scientific installations on trust lands leased from the State, and it engages in other land transactions with the State (including sales, purchases, and exchanges) that facilitate the operation of military bases and other federal installations in Hawaii. The United States therefore has an interest in the question whether the State's transactions with respect to trust lands must or can be prevented by state courts based on events that predate the annexation.

In light of the substantial interest of the United States in the issues in this case, and the United States' unique perspective

on those issues, oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

EDWIN S. KNEEDLER
Acting Solicitor General

JANUARY 2009