

No. 12, Original

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1962

STATE OF HAWAII, *Plaintiff*

v.

DAVID E. BELL, *Defendant*

**PLAINTIFF'S CROSS-MOTION FOR JUDGMENT
ON THE PLEADINGS**

**PLAINTIFF'S BRIEF IN SUPPORT OF PLAINTIFF'S
CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS,
AND IN OPPOSITION TO DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

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The plaintiff, the State of Hawaii, by its Attorney General, moves the Court for judgment on the pleadings in its favor. The grounds for this motion are that the Answer filed by the defendant admits all the essential allegations of the Complaint, and that upon those admitted allegations, plaintiff is entitled to a judgment as a matter of law.

The grounds for this motion are more fully set forth
in the attached brief.

Respectfully submitted,

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1. The Answer filed by the defendant¹ admits all the essential factual allegations of the Complaint. On this state of the pleadings, as we anticipated in our Opening Brief in Support of Motion for Leave to File Complaint (pp. 22-23), the question at issue is purely one of law. Accordingly, we respectfully submit that this case is ripe for decision upon the motions for judgment on the pleadings that have been filed by the respective parties.

This brief is submitted in support of the State's motion for judgment on the pleadings, and in opposition to the defendant's motion.

2. With the defendant, we rest upon the briefs filed at the time of the Motion for Leave to File Complaint—the State's Opening Brief and its Reply Brief on that motion—and we respectfully refer the Court to them. We summarize the state of the legal issues in this case as reflected by those briefs as follows:

The relief which plaintiff seeks is to compel the defendant to follow his statutory duty spelled out in Sections 5(c) and 5(e) of the Hawaii Statehood Act. Section 5(c) of the Act states that “Any lands or other properties that, on the date Hawaii is admitted to the Union, are set aside pursuant to law for the use of the United States under any (1) Act of Congress,

¹ Defendant is reported soon to be succeeded by Mr. Kermit Gordon. This succession will be within the terms of amended Rule 48(3) of the Rules of this Court. Mr. Gordon is a citizen of a state other than Hawaii.

. . . shall remain the property of the United States” With respect to such lands Section 5(e) imposes a duty on the defendant to report to the President the facts regarding the continued need for such property. If the lands are found to be no longer needed by the United States the Act directs that they shall be conveyed to the State of Hawaii.

The lands involved in this action are a category of lands, and the record shows that certain identified ones of them were formerly acquired by the United States by condemnation for military housing purposes. The State of Hawaii is interested in them as public housing projects in the event that the defendant’s report shows that the United States has no further use for them. The Defense Department has indicated no further need for these lands. (Complaint, IX; Answer, V). The State believes that if defendant made a report it would show that no further need for the lands by the United States can be found and that thereafter the lands would be conveyed to the State, as the statute directs. However, this is not an action for the return of such lands to the State, nor is it even for a direction as to the nature of the finding which the defendant will make in the event he does follow his statutory duty and make a report.

In Part III of our Opening Brief and in Part I of our Reply Brief we believe we have established in this situation that the United States is not a necessary party and that the bar of sovereign immunity does not apply to this action.

In Part II of our Opening Brief and in Part II of our Reply Brief we believe we have established that the phrase “Any lands and other properties . . . set

aside for the use of the United States under any (1) act of Congress" includes lands taken by condemnation.

It is the defendant's position that the phrase "any lands" in Section 5(c) is restricted to lands which Hawaii had ceded to the United States on its annexation in 1898 and, in addition, lands formerly owned by the Territory of Hawaii.

Obviously no such restriction can be found in Section 5(c). Therefore, the defendant is compelled to support its claims that the phrase "any lands" has this restricted and technical meaning by a complicated argument which amounts to saying that the language of Section 5(c) must have been the result of careless errors in draftsmanship.

We establish in our Reply Brief that in order to support the defendant's position the draftsmen must have made no less than four errors in draftsmanship, which is an impossible coincidence.

In order to read into the Act the new language necessary to excuse defendant's failure to follow directions under Section 5(e) the defendant relies on legislative history. In our Reply Brief we contend that legislative history cannot be resorted to where the language of the Act is as clear as it is in this case. We then go further and show that the totality of the legislative history supports plaintiff's position and not that of the defendant.

The defendant's principal argument seems to us to be that there is a basic inequity in the United States giving back to Hawaii lands which the United States had paid cash for. The defendant contends vigorously that Congress could not have intended such improvident action, in the case of Hawaii, in the light of the fact that other

States on admission into the Union had not been given back lands condemned by the United States.

To meet this argument our Brief goes at some length into the equities of the situation, such as the unfair treatment Hawaii got with respect to public lands as compared with other States; the admission in the Attorney General's Opinion that the equities were on the side of Hawaii's construction of the Act; the opinion supporting Hawaii of the department of the Government most closely associated with the matters involved in Section 5 of the Act; and finally, the fact that the Act as it is written was ratified by popular vote, confirming its obvious language.

For the detailed arguments and the authorities we rely on our former Opening Brief and Reply Brief.

Respectfully submitted,

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