

MOTION FILED

JAN 31 1963

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1962

—  
No. 12, Original  
—

STATE OF HAWAII, *Plaintiff*,

v.

KERMIT GORDON, *Defendant*.

—  
MOTION BY PLAINTIFF TO ADVANCE DATE OF  
ARGUMENT AND BRIEF IN SUPPORT THEREOF  
—

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**MOTION BY PLAINTIFF TO ADVANCE DATE  
OF ARGUMENT**

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Plaintiff, the State of Hawaii, by its Attorney General, moves the Court that the oral argument of this cause be advanced from October 14, 1963, to a date during the current term of Court.

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

Respectfully submitted,

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**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION TO  
ADVANCE DATE OF ARGUMENT**

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On January 21, 1963, the Court entered an order setting this case for argument on Monday, October 14, 1963. The State of Hawaii moves the Court that the case be advanced for argument to the earliest date during the present Term which is convenient to the Court. Plaintiff will be severely prejudiced if oral argument is delayed until the October 1963 Term for the following reasons:

1. This case involves a controversy with respect to Section 5(e) of the Hawaii Statehood Act, Public

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\* Mr. Gordon is the new Director, Bureau of the Budget, and is substituted pursuant to Rule 48(3). He is a citizen of a State other than Hawaii.

Law 86-3, March 18, 1959, 73 Stat. 4, 48 U.S.C. (Supp. II 1960), pages 1257-1261, which reads as follows:

“(e) Within five years from the date Hawaii is admitted into the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to subsections (c) and (d) of this section shall report to the President the facts regarding its continued need for such land or property, and if the President determines that the land or property is no longer needed by the United States it shall be conveyed to the State of Hawaii.”

2. The federal authorities have taken the view that unless a parcel of land is processed within the five-year period specified in Section 5(e) of the Statehood Act, it is not eligible for conveyance to Hawaii under that Section. Accordingly, the burden of any delay, however caused, in processing federal lands would fall directly upon the State's interests. That five-year period expires August 21, 1964. If that period expires without any given land referred to in § 5(e) having been processed, the federal authorities take the position that such land cannot be conveyed to Hawaii, even if found to be unneeded by the federal government. At the very least, Hawaii will be forced into litigation over the meaning of the five-year period specified in Section 5(e); and at worst, it would be denied land to which it is otherwise entitled, because of the expiration of the five-year period.

3. Except for the advice from the Department of the Navy with respect to the four housing projects specifically identified in the complaint,<sup>1</sup> there has not been,

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<sup>1</sup> See the State's Opening Brief, pp. 12-13.

There are, of course, many other parcels of land in the category in question, as to which there has not been the degree of review of federal need conducted as to the four housing projects.

and there currently now is not, any processing under § 5(e) by the federal governmental agencies in connection with land acquired by the Federal Government in Hawaii through purchase, condemnation or gift—that is, the land in the category specifically involved in this litigation. It may be anticipated that none will be carried on unless and until the State finally prevails in this litigation.

4. Processing of land under Section 5(e) of the Statehood Act has proven to be a time-consuming matter. Processing involves extensive review within the agency having cognizance over the land (generally the Defense Department), further review by the Budget Bureau, frequently on-site inspection of the land, expression and consideration of the views of the State, and so on. Already 3½ years of the five-year period provided by the Act have elapsed, and even with respect to the principal category of land as to which there is no difference between the parties—the ceded lands—only ½% of the acreage in the category has been processed to a final determination of federal need, on the State's information and belief.

5. If the present case is not argued and decided until the October 1963 Term of court, substantially less than one year will be available for the processing of lands in the category involved in this suit, assuming that plaintiff prevails. This time will be hardly adequate for the task. Excluding National Parks lands, there are approximately 29,000 acres in the category, the State believes. This factor may tend to make any victory won by the plaintiff State in this suit illusory; it will not avail the plaintiff State if this Court should hold in its favor on the merits, if the decision comes when there is not adequate time remaining to process the land in the category in question.

For the reasons stated, Plaintiff respectfully requests that the case be set down for argument at the earliest possible date during the current Term convenient to the Court. If the case is argued and decided within the current Term, more than a full year will remain for resolution of the question of federal need of the various properties which form a part of the category in dispute in this litigation.

Respectfully submitted,

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