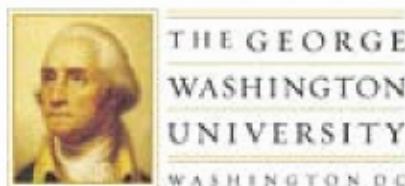


# The Burger Court Opinion Writing Database

*Hawaii v. Standard Oil Co. of California*  
405 U.S. 251 (1972)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 9, 1971

Re: No. 70-49 - Hawaii v. Standard Oil Co. of California

Dear Thurgood:

I am having some problems with the breadth  
of your proposed opinion and I may need a little time to  
give you my reasons.

Regards,

W. B.

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
THE CHIEF JUSTICE

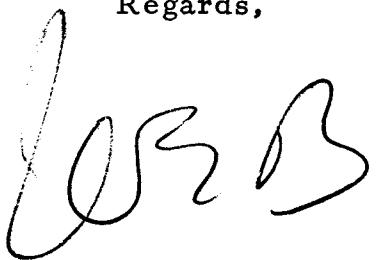
February 28, 1972

No. 70-49 -- Hawaii v. Standard Oil of California

Dear Thurgood:

Please join me.

Regards,



Mr. Justice Marshall

Copies to the Conference

to: The Chief Justice  
Mr. Justice Black  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Clark  
Mr. Justice Harlan  
Mr. Justice Stewart  
Mr. Justice Douglas

## 2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 70-49

11/8/71

State of Hawaii, Petitioner, } On Writ of Certiorari to the  
v. Standard Oil Company of } United States Court of  
California et al. } Appeals for the Ninth  
Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Hawaii, in her fourth amended complaint sues for damages and injunctive relief as *parens patriae* by virtue of her "duty to protect the general welfare of the State and its citizens." She alleges that "the alleged conspiracy" among the respondent oil companies has "injured and adversely affected the economy and property" of Hawaii as follows:

- "(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;
- "(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;
- "(c) opportunity in manufacturing, shipping and commerce have been restricted and curtailed;
- "(d) the full and complete utilization of the natural wealth of the State has been prevented;
- "(e) the high cost of manufacture in Hawaii has precluded goods made there from equal competitive access with those of other States to the national market;
- "(f) measures taken by the State to promote the general progress and welfare of its people have been frustrated;
- "(g) the Hawaii economy has been held in a state of arrested development."

File  
Recd

11/9/71

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 70-49

State of Hawaii, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Standard Oil Company of } Appeals for the Ninth  
California et al. } Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Hawaii, in her fourth amended complaint, sues for damages and injunctive relief as *parens patriae* by virtue of her "duty to protect the general welfare of the State and its citizens." She alleges that "the alleged conspiracy" among the respondent oil companies has "injured and adversely affected the economy and property" of Hawaii as follows:

"(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;

"(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;

"(c) opportunity in manufacturing, shipping and commerce have been restricted and curtailed;

"(d) the full and complete utilization of the natural wealth of the State has been prevented;

"(e) the high cost of manufacture in Hawaii has precluded goods made there from equal competitive access with those of other States to the national market;

"(f) measures taken by the State to promote the general progress and welfare of its people have been frustrated;

"(g) the Hawaii economy has been held in a state of arrested development."

W M Douglas

Oct 71

70-49

*File  
Rec'd  
11-10*

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
No. 70-49  
\_\_\_\_\_

State of Hawaii, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of  
Standard Oil Company of | Appeals for the Ninth  
California et al. | Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Today's decision reflects a niggardly approach to the fashioning of federal remedies rectifying injuries to the collective interests of the citizens of a State through action by the State itself. It is reminiscent of the ill-starred decision in *Ohio v. Wyandotte Chemicals Corp.*, 401 U. S. 493.<sup>1</sup>

Hawaii, in her fourth amended complaint, sues for damages and injunctive relief as *parens patriae* by virtue of her "duty to protect the general welfare of the State and its citizens." She alleges that "the alleged conspiracy" among the respondent oil companies has "injured and adversely affected the economy and property" of Hawaii as follows:

"(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;

<sup>1</sup> In *Wyandotte*, the Court refused to exercise its conceded original jurisdiction over an original complaint filed by the State of Ohio to enjoin alleged pollution of Lake Erie by manufacturing plants in Michigan and Ontario, Canada, because "as a practical matter, it would be inappropriate for this Court to attempt to adjudicate the issues . . ." 401 U. S., at 501. In the light of our rules permitting the appointment of special masters, however, this rationale is questionable at best. *Id.*, at 510-512 (DOUGLAS, J., dissenting). See generally W. Woods & K. Reed, The Supreme Court and Interstate Environmental Quality: Some Notes on the *Wyandotte* case, 12 Ariz. L. Rev. 691 (1970).

*Wm Douglas*  
Oct 71  
70-49

*Re*  
*Recd*  
*1/26/72*

5th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 70-49

State of Hawaii, Petitioner, v. Standard Oil Company of California et al. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

Today's decision reflects a niggardly approach to the fashioning of federal remedies rectifying injuries to the collective interests of the citizens of a State through action by the State itself. It is reminiscent of the ill-starred decision in *Ohio v. Wyandotte Chemicals Corp.*, 401 U. S. 493.<sup>1</sup>

Hawaii, in her fourth amended complaint, sues for damages and injunctive relief as *parens patriae* by virtue of her "duty to protect the general welfare of the State and its citizens." She alleges that "the alleged conspiracy" among the respondent oil companies has "injured and adversely affected the economy and property" of Hawaii as follows:

"(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;

<sup>1</sup> In *Wyandotte*, the Court refused to exercise its conceded original jurisdiction over an original complaint filed by the State of Ohio to enjoin alleged pollution of Lake Erie by manufacturing plants in Michigan and Ontario, Canada, because "as a practical matter, it would be inappropriate for this Court to attempt to adjudicate the issues . . . ." 401 U. S., at 501. In the light of our rules permitting the appointment of special masters, however, this rationale is questionable at best. *Id.*, at 510-512 (DOUGLAS, J., dissenting). See generally W. Woods & K. Reed, The Supreme Court and Interstate Environmental Quality: Some Notes on the *Wyandotte* case, 12 Ariz. L. Rev. 691 (1970).

*Wm Douglas*  
*Oct 71*  
*70-49*

File  
Rec'd  
2-17

6th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 70-49

State of Hawaii, Petitioner, v. Standard Oil Company of California et al. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

Today's decision reflects a niggardly approach to the fashioning of federal remedies rectifying injuries to the collective interests of the citizens of a State through action by the State itself. It is reminiscent of the ill-starred decision in *Ohio v. Wyandotte Chemicals Corp.*, 401 U. S. 493.<sup>1</sup>

Hawaii, in her fourth amended complaint, sues for damages and injunctive relief as *parens patriae* by virtue of her "duty to protect the general welfare of the State and its citizens." She alleges that "the alleged conspiracy" among the respondent oil companies has "injured and adversely affected the economy and property" of Hawaii as follows:

"(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;

"(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;

<sup>1</sup> In *Wyandotte*, the Court refused to exercise its conceded original jurisdiction over an original complaint filed by the State of Ohio to enjoin alleged pollution of Lake Erie by manufacturing plants in Michigan and Ontario, Canada, because "as a practical matter, it would be inappropriate for this Court to attempt to adjudicate the issues . . . ." 401 U. S., at 501. In the light of our rules permitting the appointment of special masters, however, this rationale is questionable at best. *Id.*, at 510-512 (DOUGLAS, J., dissenting). See generally W. Woods & K. Reed, The Supreme Court and Interstate Environmental Quality: Some Notes on the Wyandotte case, 12 Ariz. L. Rev. 691 (1970).

Wm. Douglas  
Oct 71

70-49

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 17, 1972

Dear Bill:

Please join me in your dissent  
in No. 70-49 - Hawaii v. Standard Oil.

On page 4 in the second full  
paragraph you should not say "largely  
dependent" as I am not sure, having  
once seen the figures. Something like  
"Hawaii's economy, to which tourism and  
tourist trade is important" would do  
it.

*W.O.D.*  
William O. Douglas

Mr. Justice Brennan

CC: The Conference

31  
WY  
7th DRAFT

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Powell  
Mr. Justice Harlan

## SUPREME COURT OF THE UNITED STATES

No. 70-49

From: Douglas, J.

Circulated:

State of Hawaii, Petitioner, v. Standard Oil Company of California et al. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Circulated: 2-21

[February —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

Today's decision reflects a miserly approach to the fashioning of federal remedies rectifying injuries to the collective interests of the citizens of a State through action by the State itself. It is reminiscent of the ill-starred decision in *Ohio v. Wyandotte Chemicals Corp.*, 401 U. S. 493.<sup>1</sup>

Hawaii, in her fourth amended complaint, sues for damages and injunctive relief as *parens patriae* by virtue of her "duty to protect the general welfare of the State and its citizens." She alleges that "the alleged conspiracy" among the respondent oil companies has "injured and adversely affected the economy and property" of Hawaii as follows:

- "(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;
- "(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;

<sup>1</sup> In *Wyandotte*, the Court refused to exercise its conceded original jurisdiction over an original complaint filed by the State of Ohio to enjoin alleged pollution of Lake Erie by manufacturing plants in Michigan and Ontario, Canada, because "as a practical matter, it would be inappropriate for this Court to attempt to adjudicate the issues . . . ." 401 U. S., at 501. In the light of our rules permitting the appointment of special masters, however, this rationale is questionable at best. *Id.*, at 510-512 (DOUGLAS, J., dissenting). See generally W. Woods & K. Reed, The Supreme Court and Interstate Environmental Quality: Some Notes on the *Wyandotte* case, 12 Ariz. L. Rev. 691 (1970).

*Circulated*

12-10-71

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

\_\_\_\_\_  
No. 70-49  
\_\_\_\_\_

State of Hawaii, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Standard Oil Company of } Appeals for the Ninth  
California et al. } Circuit.

[December —, 1971]

MR. JUSTICE BRENNAN, dissenting.

The State of Hawaii seeks treble damages and injunctive relief for an alleged conspiracy among respondents to monopolize and fix prices on the sale of petroleum products in the State. Count 1 of Hawaii's complaint alleges an economic injury to the State in its proprietary capacity as purchaser of those products. Count 2 states a claim by the State, as *parens patriae*, for injury to its "economy and prosperity," including the withdrawal of its citizens' revenues, loss of taxes, curtailment of manufacturing, shipping and commerce, and injury to the competitive position of Hawaiian goods in the national market. Count 3 alleges a class action as representative of all purchasers in the State of respondents' petroleum products. The District Court dismissed Count 3 as unmanageable, but denied respondents' motion to dismiss Count 2, the *parens patriae* claim. An interlocutory appeal was taken by respondents under 28 U. S. C. § 1292 (b) and the Court of Appeals for the Ninth Circuit reversed and ordered dismissal of Count 2. The Court of Appeals held that even if the State's economy might suffer injury from antitrust violations, independent of the injury suffered by private persons, that injury would not be to the State's "business or property," within the meaning of § 4 of the Clayton Act, and in any event would be too remote from respondents' alleged violations to permit the State to recover as *parens patriae*.

Wm. BRENNAN  
OTII

pp 2-7

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

From: Bre

## SUPREME COURT OF THE UNITED STATES

circulated

No. 70-49

Recirculated

2-9-72

State of Hawaii, Petitioner, On Writ of Certiorari to the  
v. United States Court of  
Standard Oil Company of Appeals for the Ninth  
California et al. Circuit.

[February —, 1972]

MR. JUSTICE BRENNAN, dissenting.

The State of Hawaii seeks treble damages and injunctive relief for an alleged conspiracy among respondents to monopolize and fix prices on the sale of petroleum products in the State. Count 1 of Hawaii's complaint alleges an economic injury to the State in its proprietary capacity as purchaser of those products. Count 2 states a claim by the State, as *parens patriae*, for injury to its "economy and prosperity," including the withdrawal of its citizens' revenues, loss of taxes, curtailment of manufacturing, shipping and commerce, and injury to the competitive position of Hawaiian goods in the national market. Count 3 alleges a class action as representative of all purchasers in the State of respondents' petroleum products. The District Court dismissed Count 3 as unmanageable, but denied respondents' motion to dismiss Count 2, the *parens patriae* claim. An interlocutory appeal was taken by respondents under 28 U. S. C. § 1292 (b) and the Court of Appeals for the Ninth Circuit reversed and ordered dismissal of Count 2. The Court of Appeals held that even if the State's economy might suffer injury from antitrust violations, independent of the injury suffered by private persons, that injury would not be to the State's "business or property," within the meaning of § 4 of the Clayton Act, and in any event would be too remote from respondents' alleged violations to permit the State to recover as *parens patriae*.

page 1 + 4

4th DRAFT

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

## SUPREME COURT OF THE UNITED STATES

from: Brennan, J.

No. 70-49

Circulated: \_\_\_\_\_

Recirculated: 3/17/72

State of Hawaii, Petitioner, v. Standard Oil Company of California et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1972]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting.

The State of Hawaii seeks treble damages and injunctive relief for an alleged conspiracy among respondents to monopolize and fix prices on the sale of petroleum products in the State. Count 1 of Hawaii's complaint alleges an economic injury to the State in its proprietary capacity as purchaser of those products. Count 2 states a claim by the State, as *parens patriae*, for injury to its "economy and prosperity," including the withdrawal of its citizens' revenues, loss of taxes, curtailment of manufacturing, shipping and commerce, and injury to the competitive position of Hawaiian goods in the national market. Count 3 alleges a class action as representative of all purchasers in the State of respondents' petroleum products. The District Court dismissed Count 3 as unmanageable, but denied respondents' motion to dismiss Count 2, the *parens patriae* claim. An interlocutory appeal was taken by respondents under 28 U. S. C. § 1292 (b) and the Court of Appeals for the Ninth Circuit reversed and ordered dismissal of Count 2. The Court of Appeals held that even if the State's economy might suffer injury from antitrust violations, independent of the injury suffered by private persons, that injury would not be to the State's "business or property," within the meaning of § 4 of the Clayton Act, and in any event would be too remote from respondents' alleged violations to permit the State to recover as *parens patriae*.

*B* *full*  
To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

From: Stewart, J.

Circulated: NOV 26 1971

No. 70-49

Recirculated

State of Hawaii, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Standard Oil Company of } Appeals for the Ninth  
California et al. } Circuit.

[December — , 1971]

MR. JUSTICE STEWART, concurring in the result.

The State of Hawaii filed this action for injunctive relief and treble damages based upon an alleged conspiracy among the respondents to restrain and monopolize the sale and distribution of petroleum products within that State. In its fourth amended complaint, Hawaii framed three causes of action. The first count alleged that the conspiracy had raised the prices paid for gasoline by agencies of the State, and claimed damages measured by treble the amount of the overcharges. In the second count, Hawaii stated a claim "as *parens patriae*, trustee, guardian and representative of its citizens," seeking money damages for injuries to "the economy and prosperity of the State . . ." This count detailed seven examples of ways in which Hawaii alleged the economy had been adversely affected.<sup>1</sup> The third count was stated

<sup>1</sup> These examples were as follows:

- "(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;
- "(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;
- "(c) opportunity in manufacturing, shipping and commerce have been restricted and curtailed;
- "(d) the full and complete utilization of the natural wealth of the State has been prevented;
- "(e) the high cost of manufacture in Hawaii has precluded goods

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 24, 1972

70-49, Hawaii v. Standard Oil Co.

Dear Byron and Harry,

I have made some additions and changes in the attached proposed circulation. Since I took the liberty of putting your names on it, I shall wait to hear from you before circulating it.

Sincerely yours,

P. S.

Mr. Justice White  
Mr. Justice Blackmun

OK  
teleph.  
1-15

This was prepared before receipt of Thurgood's  
recirculation of today.

P.S.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 70-49

Recirculated: JAN 25 1972

State of Hawaii, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Standard Oil Company of } Appeals for the Ninth  
California et al. } Circuit.

[February —, 1972]

MR. JUSTICE STEWART, with whom MR. JUSTICE WHITE  
and MR. JUSTICE BLACKMUN join.

The State of Hawaii filed this action for injunctive relief and treble damages based upon an alleged conspiracy among the respondents to restrain and monopolize the sale and distribution of petroleum products within that State. In its fourth amended complaint, Hawaii framed three causes of action. The first count alleged that the conspiracy had raised the prices paid for gasoline by agencies of the State, and claimed damages measured by treble the amount of the overcharges. In the second count, Hawaii stated a claim "as *parens patriae*, trustee, guardian and representative of its citizens," seeking money damages for injuries to "the economy and prosperity of the State . . ." This count detailed seven examples of ways in which Hawaii alleged the economy had been adversely affected.<sup>1</sup> The third count was stated

<sup>1</sup> These examples were as follows:

- "(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;
- "(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;
- "(c) opportunity in manufacturing, shipping and commerce have been restricted and curtailed;
- "(d) the full and complete utilization of the natural wealth of the State has been prevented;
- "(e) the high cost of manufacture in Hawaii has precluded goods

see next page

*changes throughout*

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: Stewart, J.

Circulated:

No. 70-49

Recirculated: JAN 25 1972

SUPREME COURT OF THE UNITED STATES

State of Hawaii, Petitioner, v. Standard Oil Company of California et al. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1972]

MR. JUSTICE STEWART, with whom MR. JUSTICE WHITE and MR. JUSTICE BLACKMUN join.

The State of Hawaii filed this action for injunctive relief and treble damages based upon an alleged conspiracy among the respondents to restrain and monopolize the sale and distribution of petroleum products within that State. In its fourth amended complaint, Hawaii framed three causes of action. The first count alleged that the conspiracy had raised the prices paid for gasoline by agencies of the State, and claimed damages measured by treble the amount of the overcharges. In the second count, Hawaii stated a claim "as *parens patriae*, trustee, guardian and representative of its citizens," seeking money damages for injuries to "the economy and prosperity of the State . . . ." This count detailed seven examples of ways in which Hawaii alleged the economy had been adversely affected.<sup>1</sup> The third count was stated

<sup>1</sup> These examples were as follows:

- "(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;
- "(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;
- "(c) opportunity in manufacturing, shipping and commerce have been restricted and curtailed;
- "(d) the full and complete utilization of the natural wealth of the State has been prevented;
- "(e) the high cost of manufacture in Hawaii has precluded goods

Supreme Court of the United States  
Washington, D. C. 20543

1) Steve  
2) AMO  
3) (C)  
CHAMBERS OF  
JUSTICE POTTER STEWART

February 4, 1972

70-49, Hawaii v. Standard Oil Co.

Dear Thurgood,

Your opinion, as recirculated yesterday, resolves my problems with this case, and I am glad to join it. I shall withdraw my concurring opinion.

Sincerely yours,

P. S.  
P.

Mr. Justice Marshall

Copies to the Conference

*B*  
*2*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 5, 1972

Re: No. 70-49 - Hawaii v. Standard  
Oil Co.

Dear Thurgood:

Since Brother Stewart has  
scuttled his own canoe and is now  
sharing yours, please let me aboard  
too.

Sincerely,

*Byron*  
B.R.W.

Mr. Justice Marshall

cc: Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-49

State of Hawaii, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of  
Standard Oil Company of | Appeals for the Ninth  
California, et al. | Circuit.

[November —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents one issue, which, simply stated, is: whether the State of Hawaii is entitled to sue as *parens patriae* for injunctive and monetary relief when its citizens allegedly are suffering economic injury attributable to a violation of the anti-trust laws of the United States.

I. PROCEDURAL HISTORY

Hawaii filed its initial complaint on April 1, 1968, against three of the four respondents.<sup>1</sup> That complaint

<sup>1</sup> Chevron Asphalt Company was not named as a defendant in the initial complaint. As pointed out in the text, *infra*, the company was named as a defendant in the third and fourth amended complaints which raise the question presented to the Court.

It should be noted, here, perhaps, that Hawaii charges respondents with selling products at an artificially high price as a result of their violating the antitrust laws. It is evident from the complaint that respondents did not themselves sell all the products directly to the State. Many products were sold through independent service stations. The complaint charges, however, that:

"Each defendant effectively controls the price at which most dealers sell gasoline; each controls the hours of operation of the independent dealers; each controls the details of bookkeeping, accounting procedures and records; each controls the manner in which the dealer displays and advertises merchandise as well as

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-49

State of Hawaii, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of  
Standard Oil Company of | Appeals for the Ninth  
California et al. | Circuit.

[December —, 1971]

MR. JUSTICE MARSHALL delivered the following opinion.

This case presents one issue, which, simply stated, is: whether the State of Hawaii is entitled to sue as *parens patriae* for injunctive and monetary relief when its citizens allegedly are suffering economic injury attributable to a violation of the anti-trust laws of the United States.

I. PROCEDURAL HISTORY

Hawaii filed its initial complaint on April 1, 1968, against three of the four respondents.<sup>1</sup> On May 24,

<sup>1</sup> Chevron Asphalt Company was not named as a defendant in the initial complaint. As pointed out in the text, *infra*, the company was named as a defendant in the third and fourth amended complaints which raise the question presented to the Court.

It should be noted, here, perhaps, that Hawaii charges respondents with selling products at an artificially high price as a result of their violating the antitrust laws. It is evident from the complaint that respondents did not themselves sell all the products directly to the State. Many products were sold through independent service stations. The complaint charges, however, that:

"Each defendant effectively controls the price at which most dealers sell gasoline; each controls the hours of operation of the independent dealers; each controls the details of bookkeeping, accounting procedures and records; each controls the manner in which the dealer displays and advertises merchandise as well as

*Circulated  
1/25*

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 70-49

State of Hawaii, Petitioner, } On Writ of Certiorari to the  
v. } United States Court of  
Standard Oil Company of } Appeals for the Ninth  
California et al. } Circuit.

[February —, 1972]

MR. JUSTICE MARSHALL delivered the following opinion.

This case presents one issue, which, simply stated, is: whether the State of Hawaii is entitled to sue as *parens patriae* for damages when its citizens are allegedly suffering economic injury attributable to a violation of the antitrust laws of the United States.

### I. PROCEDURAL HISTORY

Hawaii filed its initial complaint on April 1, 1968, against three of the four respondents.<sup>1</sup> On May 24,

<sup>1</sup> Chevron Asphalt Company was not named as a defendant in the initial complaint. As pointed out in the text, *infra*, the company was named as a defendant in the third and fourth amended complaints which raise the question presented to the Court.

It should be noted, here, perhaps, that Hawaii charges respondents with selling products at an artificially high price as a result of their violating the antitrust laws. It is evident from the complaint that respondents did not themselves sell all the products directly to the State. Many products were sold through independent service stations. The complaint charges, however, that:

"Each defendant effectively controls the price at which most dealers sell gasoline; each controls the hours of operation of the independent dealers; each controls the details of bookkeeping, accounting procedures and records; each controls the manner in which the dealer displays and advertises merchandise as well as

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-49

State of Hawaii, Petitioner, ) On Writ of Certiorari to the  
v. ) United States Court of  
Standard Oil Company of ) Appeals for the Ninth  
California et al. ) Circuit.

[February —, 1972]

MR. JUSTICE MARSHALL delivered the following opinion.

The issue presented by this case is whether § 4 of the Clayton Act, 15 U. S. C. § 15, authorizes a State to sue for damages for an injury to its economy allegedly attributable to a violation of the antitrust laws of the United States. We hold that it does not.

I. PROCEDURAL HISTORY

Hawaii filed its initial complaint on April 1, 1968, against three of the four respondents.<sup>1</sup> On May 24,

<sup>1</sup> Chevron Asphalt Company was not named as a defendant in the initial complaint. As pointed out in the text, *infra*, the company was named as a defendant in the third and fourth amended complaints which raise the question presented to the Court.

It should be noted, here, perhaps, that Hawaii charges respondents with selling products at an artificially high price as a result of their violating the antitrust laws. It is evident from the complaint that respondents did not themselves sell all the products directly to the State. Many products were sold through independent service stations. The complaint charges, however, that:

"Each defendant effectively controls the price at which most dealers sell gasoline; each controls the hours of operation of the independent dealers; each controls the details of bookkeeping, accounting procedures and records; each controls the manner in which the dealer displays and advertises merchandise as well as

*Any thought*

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan X  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Marshall, J.

5th DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated:

Recirculated: 2/3/72

No. 70-49

State of Hawaii, Petitioner, v. Standard Oil Company of California et al. On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[February —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue presented by this case is whether § 4 of the Clayton Act, 15 U. S. C. § 15, authorizes a State to sue for damages for an injury to its economy allegedly attributable to a violation of the antitrust laws of the United States. We hold that it does not.

I. PROCEDURAL HISTORY

Hawaii filed its initial complaint on April 1, 1968, against three of the four respondents.<sup>1</sup> On May 24, 1968, and again on August 19, 1968, Hawaii filed amended complaints. The third amended complaint, filed on September 9, 1968, marked the first attempt by the State to sue as *parens patriae*. That complaint named all four respondents as defendants and charged them with violating the Sherman Act, 26 Stat. 209, 15 U. S. C. § 4, in the following ways: by entering into unlawful contracts; by conspiring and combining to

<sup>1</sup> Chevron Asphalt Company was not named as a defendant in the initial complaint. As pointed out in the text, *infra*, the company was named as a defendant in the third and fourth amended complaints which raise the question presented to the Court.

*Wm. Brennan  
Oct 11*

211<sup>D</sup>

## 6th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 70-49

State of Hawaii, Petitioner, | On Writ of Certiorari to the  
v. | United States Court of  
Standard Oil Company of | Appeals for the Ninth  
California et al. | Circuit.

[February —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue presented by this case is whether § 4 of the Clayton Act, 15 U. S. C. § 15, authorizes a State to sue for damages for an injury to its economy allegedly attributable to a violation of the antitrust laws of the United States. We hold that it does not.

## I. PROCEDURAL HISTORY

Hawaii filed its initial complaint on April 1, 1968, against three of the four respondents.<sup>1</sup> On May 24, 1968, and again on August 19, 1968, Hawaii filed amended complaints. The third amended complaint, filed on September 9, 1968, marked the first attempt by the State to sue as *parens patriae*. That complaint named all four respondents as defendants and charged them with violating the Sherman Act, 26 Stat. 209, 15 U. S. C. § 4, in the following ways: by entering into unlawful contracts; by conspiring and combining to

<sup>1</sup> Chevron Asphalt Company was not named as a defendant in the initial complaint. As pointed out in the text, *infra*, the company was named as a defendant in the third and fourth amended complaints which raise the question presented to the Court.

7  
3. 4

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-49

From: Douglas, J.

Circulated:

State of Hawaii, Petitioner, On Writ of Certiorari to the  
v. United States ~~Concluded~~: 2-17  
Standard Oil Company of Appeals for the Ninth  
California et al. Circuit.

[February —, 1972]

MR. JUSTICE DOUGLAS, dissenting

Today's decision reflects a niggardly approach to the fashioning of federal remedies rectifying injuries to the collective interests of the citizens of a State through action by the State itself. It is reminiscent of the ill-starred decision in *Ohio v. Wyandotte Chemicals Corp.*, 401 U. S. 493.<sup>1</sup>

Hawaii, in her fourth amended complaint, sues for damages and injunctive relief as *parens patriae* by virtue of her "duty to protect the general welfare of the State and its citizens." She alleges that "the alleged conspiracy" among the respondent oil companies has "injured and adversely affected the economy and property" of Hawaii as follows:

"(a) revenues of its citizens have been wrongfully extracted from the State of Hawaii;  
"(b) taxes affecting the citizens and commercial entities have been increased to affect such losses of revenues and income;

<sup>1</sup> In *Wyandotte*, the Court refused to exercise its conceded original jurisdiction over an original complaint filed by the State of Ohio to enjoin alleged pollution of Lake Erie by manufacturing plants in Michigan and Ontario, Canada, because "as a practical matter, it would be inappropriate for this Court to attempt to adjudicate the issues . . ." 401 U. S., at 501. In the light of our rules permitting the appointment of special masters, however, this rationale is questionable at best. *Id.*, at 510-512 (DOUGLAS, J., dissenting). See generally W. Woods & K. Reed, The Supreme Court and Interstate Environmental Quality: Some Notes on the Wyandotte case, 12 Ariz. L. Rev. 691 (1970).

W.W.-me!!  
J.W.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 29, 1971

Re: No. 70-49 .- Hawaii v. Standard Oil Co.  
of California

Dear Potter:

Your circulation of November 26 is generally in line with my own reactions, for I much prefer your approach over the broader sweep of Thurgood's opinion. If these proposed writings remain as they are, I shall probably join yours or its equivalent.

Sincerely,

*Hab.*

Mr. Justice Stewart

cc: The Conference

*B* *Steve*  
*TM*  
*2*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 10, 1972

Re: No. 70-49 - Hawaii v. Standard Oil Co., et al.

Dear Thurgood:

You may join me in your recirculation of

February 3.

Sincerely,

*H.A.B.*

Mr. Justice Marshall

cc: The Conference