

**Electronically Filed  
Supreme Court  
SCPW-17-0000927  
03-NOV-2023  
04:17 PM  
Dkt. 43 BAM**

SCPW-17-0000927

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

NICK GRUBE,

Petitioner,

v.

THE HONORABLE ROM A. TRADER,  
Judge of the Circuit Court of the First Circuit,  
State of Hawai‘i,

Respondent Judge,

and

STATE OF HAWAI‘I; ALAN AHN; and  
TIFFANY MATSUNAGA,

Respondents.

Original Proceeding  
Cr. No. 15-1-1338

Petition for Writ of Prohibition and Writ of  
Mandamus

Circuit Court of the First Circuit

The Honorable Rom A. Trader

**AMICUS BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF HAWAI‘I**

**CERTIFICATE OF SERVICE**

ANNE E. LOPEZ 7609  
Attorney General of Hawai‘i

KALIKO‘ONĀLANI D. FERNANDES 9964  
Solicitor General of Hawai‘i

THOMAS J. HUGHES 11059  
Deputy Solicitor General  
Department of the Attorney General  
State of Hawai‘i  
425 Queen Street  
Honolulu, Hawai‘i 96813  
Tel: (808) 586-1360  
E-mail: Thomas.J.Hughes@hawaii.gov

Attorneys for Amicus Curiae  
*Attorney General of the State of Hawai‘i*

## **AMICUS BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF HAWAI‘I**

Following Respondent ALAN AHN’s motion to seal case, Dkt. 33, this Court ordered that notice be provided to the Department of the Attorney General pursuant to HRAP Rule 44, Dkt. 37.<sup>1</sup>

The Attorney General understands Ahn’s motion to be requesting that the Court seal the entire record of this mandamus proceeding. *See* Dkt. 33 at 1. And she understands the position statement of Petitioner NICK GRUBE to be arguing: (1) that sealing the entire record would “raise[] serious constitutional concerns[,]” Dkt. 35 at 1; (2) that the Court should “interpret HRS § 831-3.2(f) narrowly” to avoid such concerns, *id.* at 2; and (3) that the Court should, therefore, either deny Ahn’s motion in its entirety or “take other action short of concealing the entire mandamus proceeding from public view[,]” *id.* at 2. The Attorney General reads Grube’s position statement neither as posing a facial challenge to the constitutionality of HRS § 831-3.2(f), *see id.* at 11 (“Petitioner does not dispute that there is a compelling government interest – expressed by the expungement statute – in rehabilitating certain individuals who have been charged with crimes. . . . Petitioner acknowledges, for present purposes, that in an ordinary criminal case, there would be a substantial probability that efforts to remove the stigma of criminal charges would be irreparably harmed if *criminal* proceedings about the charges were *readily* accessible to the public.”), nor as taking a position on how HRS § 831-3.2(f) should be applied in cases other than

---

<sup>1</sup> HRAP Rule 44 provides that “[i]t shall be the duty of a party who draws in question the constitutionality of any statute of the State of Hawai‘i in any proceeding in any Hawai‘i appellate court to which the State of Hawai‘i, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the appellate court, to give immediate notice in writing to the Attorney General of the State of Hawai‘i of the existence of said question.” The State of Hawai‘i is a party to this case and is represented by the Honolulu Department of the Prosecuting Attorney.

this one, *see id.* at 12 (“[T]his Court should hold that sealing is not justified nor necessary under the unusual circumstances presented here.”).

Given that no party is asserting that HRS § 831-3.2(f) is facially unconstitutional, the Attorney General believes that review of Ahn’s motion can and should be confined to the particular circumstances at issue in Ahn’s case. *Cf. Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (quoting *Ashwander v. TVA*, 297 U.S. 288, 347 (Brandeis, J., concurring)) (Courts should not “formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.”). The Attorney General takes no position as to how HRS § 831-3.2(f) should be applied to this particular proceeding.

DATED: Honolulu, Hawai‘i, November 3, 2023.

/s/ Thomas J. Hughes

THOMAS J. HUGHES

Deputy Solicitor General

Attorney for Amicus Curiae

Attorney General of the State of Hawai‘i

**CERFITICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served electronically via JEFS or conventionally via U.S. Mail on the following parties:

ROBERT BRIAN BLACK, ESQ.  
Civil Beat Law Center for the Public Interest  
700 Bishop Street, Suite 1701  
Honolulu, Hawai'i 96813

Attorney for Petitioner NICK GRUBE

ROBYN B. CHUN, ESQ.  
Department of the Attorney General  
State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813

Attorney for Respondent Judge THE HONORABLE ROM A. TRADER

DUANE M. KOKESCH, ESQ.  
Department of the Prosecuting Attorney  
City and County of Honolulu  
1060 Richards Street  
Honolulu, Hawai'i 96813

Attorney for Respondent STATE OF HAWAI'I

ALAN AHN  
1655 Makaloa Street, Apt. 1905  
Honolulu, Hawai'i 96814

Respondent *pro se*

WILLIAM A. HARRISON  
841 Bishop Street, Suite 800  
Davies Pacific Center  
Honolulu, Hawai'i 96813

Attorney for Respondent TIFFANY MATSUNAGA

DATED: Honolulu, Hawai‘i, November 3, 2023.

*/s/ Thomas J. Hughes*

---

Thomas J. Hughes  
Deputy Solicitor General

Attorney for Amicus Curiae  
Attorney General of the State of Hawai‘i