

FILED

DEC 19 2007

FOR PUBLICATION  
UNITED STATES COURT OF APPEALSCATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

VIRGIL E. DAY; MEL  
HOOMANAWANUI; JOSIAH L.  
HOOHULI; PATRICK L.  
KAHAWAIOLAA; SAMUEL L.  
KEALOHA, JR.,

Plaintiffs - Appellants,

v.

HAUNANI APOLIONA, individually and  
in her official capacity as Chairperson and  
Trustee of the Office of Hawaiian affairs;  
ROWENA AKANA; DANTE  
CARPENTER; DONALD CATALUNA;  
LINDA KEAWE'EHU DELA CRUZ;  
COLETTE Y. PI'UPI MACHADO; BOYD  
P. MOSSMAN; OSWALD K. STENDER;  
JOHN D. WAIHEE, IV, Trustees of the  
Office of Hawaiian Affairs of the State of  
Hawaii, sued in their official capacities for  
declaratory and prospective injunctive  
relief; sued in individual capacities for  
damages; CLAYTON HEE; CHARLES  
OTA, Former Trustees of the Office of  
Hawaiian Affairs of the State of Hawaii,  
sued in their individual capacities for  
damages,

Defendants - Appellees.

No. 06-16625

D.C. No. CV-05-00649-SOM  
District of Hawaii,  
Honolulu

ORDER

Before: THOMPSON, BERZON, and TALLMAN, Circuit Judges.

The opinion is amended to remove the words “*sua sponte*” on page six of the slip opinion (page 9431).