

In the Supreme Court of the United States



KOICHI MERA and GAHT-US CORPORATION,
Petitioners,

—v—

CITY OF GLENDALE,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

**JOINT BRIEF OF AMICI CURIAE
THE SOCIETY FOR DISSEMINATION OF
HISTORICAL FACT & NIPPON TODAY'S
RESEARCHERS SOCIETY (KINGEN)
IN SUPPORT OF PETITIONERS**

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INTERESTS OF THE AMICI CURIAE

Pursuant to Supreme Court Rule 37, the Society for Dissemination of Historical Fact (SDHF) and Nippon Today's Researchers Society ("KINGEN") jointly submit this brief in support of the petition for a writ of *certiorari*.¹

SDHF is a private, not-for-profit group based in Japan. Its members dedicate their efforts to making historical materials related to Japan available in English.

KINGEN is a private, not-for profit academic organization founded in Tokyo in 2009. Its seventy members share an interest in recent and con-temporary Japanese history.

SDHF and KINGEN each are an independent entity; they neither receive financial assistance from nor are directed or controlled by Japanese governmental institutions or agencies.

Amici, through their members who constitute a global society of researchers and scholars, have collected voluminous information and documentation on the subject of the "Comfort Women." *Amici* members have

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* discloses that undersigned counsel also represents Petitioners in the matter. However, no person or entity other than *amici curiae*, its members, and undersigned counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

carefully studied Japanese history from the viewpoints of various actors and conclude that the Comfort Women issue engenders a genuine historic controversy.

Amici believe that the City of Glendale has adopted a one-sided and, therefore, inaccurate view of history, exemplified by the city's statue and plaque that needlessly shame the Government of Japan and the Japanese people. The city's behavior, moreover, not only unnecessarily makes the city a partisan for one pole in a vibrant scholarly debate; it also impermissibly thrusts the city into the foreign affairs of Japan, South Korea, and the United States.

Amici hope that this brief will provide the Court with an international perspective on the historical events, disputes, and government-to-government discussions regarding the "Comfort Women," as well as the global response to the demand by the City of Glendale that Japan "take historical responsibility" for the "crime" of "enslavement."



SUMMARY OF ARGUMENT

This case concerns whether the City of Glendale's installation of a public monument projecting its own viewpoint in a genuine historic controversy and a particular foreign policy position on a matter of international dispute—namely, whether 200,000 women were enslaved by the Japanese Imperial Army for sex work—violates the Constitution's Supremacy Clause.

Amici write in support of Petitioners that Glendale’s speech on the matter of the “Comfort Women” constitutes “an intrusion . . . into the field of foreign affairs which the Constitution entrusts to the President and the Congress.”²

The Supreme Court has never held that local governments are free to set their own foreign policy through “expressive speech”; instead this Court has consistently held that state action in the area of foreign affairs is preempted unless the action is a traditional state government function, and even then, it may be preempted if the state action is not consistent with federal foreign policy as matter of conflict preemption.³

Because the federal government has often espoused neutrality in this foreign policy matter, the United States can continue to objectively evaluate the elements of this historic controversy. This neutrality shows a degree of respect to the Japanese viewpoint and people. In contrast, Glendale’s monument projects a divisive historical and foreign policy position that is different from that of the federal government. In so doing, it impermissibly creates a foreign policy for a local government that is distinct from that of the federal government’s.

² *Zschernig v. Miller*, 389 U. S. 429, 432 (1968).

³ See, e.g., *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), *Deutsch v. Turner Corp.*, 324 F.3d 692 (9th Cir. 2003) 389 U.S.429 (1968); *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1077 & n.5 (9th Cir. 2012) (declining to opine on the constitutionality of purely expressive government speech.)

Amici present to this Court evidence controverting Glendale’s accusation that the then Japanese military systematically abducted and enslaved women during World War II. Its scholars take exception to the theory that the “Comfort Women” were sex slaves, and argue that the characterization is taken out of its proper historical context and that it is not based on sound historical evidence. *Amici* wish to highlight contemporary reports by the U.S. government contradicting the view espoused by Glendale, and testimony from Japanese citizens.

Amici, and their members, fear that Glendale’s “Comfort Women” monument “sets in stone” the views of one set of interests while silencing historically-supported contrary viewpoints. Given California’s troubled history of mistreating Japanese residents, this monument and its one-sided view of history can rightfully be seen as a nod to government-sponsored anti-Japanese sentiment.



ARGUMENT

I. THIS COURT SHOULD CLARIFY THAT THE FOREIGN AFFAIRS FIELD PREEMPTION DOCTRINE APPLIES WHEN A MUNICIPALITY ARTICULATES A SPECIFIC FOREIGN POLICY POSITION NOT SUPPORTED BY THE FEDERAL GOVERNMENT

Glendale has installed a permanent monument in a public park—in stone and bronze—which sets forth a disputed and controversial view of history. In so doing, it publically asserts the point of view that

over 200,000 “Comfort Women,” were abducted and enslaved to perform as sex workers during World War II.

Amici respectfully submit that these statements are neither appropriate nor supported by the historical record, and reflect a one-sided in-terpretation of the issue, to the detriment of Japan, resulting in anti-Japanese discrimination in Glendale.

A. The Historical Debate over “Comfort Women” Involves International Diplomacy Among Japan, South Korea, and the United States

Glendale intentionally thrust itself into sensitive matters of diplomacy by its representation that Japan is guilty of “unconscionable violations of human rights” by allegedly abducting and coercing women into sexual slavery. This is a severe accusation against a foreign state.

The gravity of this statement is amplified both because the facts do not show that Japan is guilty of these allegations, and because it oversteps the powers of a municipal government to make foreign policy statements against Japan.

1. The United States Does Not Accuse Japan of War Crimes Regarding “Comfort Women”

On its “Comfort Women” monument, Glendale cites a non-binding resolution from the 2007 session of the House of Representatives, which expressed the idea that Japan follow the “recommendations of the international community with respect to the ‘comfort

women.”⁴ However, this non-binding resolution lacks force of law, expired with that session of Congress, and does not constitute the foreign policy of the United States. Moreover, in this same resolution, the House recognized that the “United States-Japan alliance is the cornerstone of United States security interests in Asia and the Pacific and is fundamental to regional stability and prosperity.”⁵

The United States has previously investigated claims of war crimes related to this issue and made no findings. In response to the Japanese Imperial Government Disclosure Act, Public Law 106-567, (2000), the United States formed a team called the Interagency Working Group (IWG), consisting of top U.S. government officials in a wide variety of departments. The IWG reviewed over 8.5 million pages, yet found no evidence of any alleged “war crimes” pertaining to the “Comfort Women.”⁶

Moreover, the U.S. has declined to consider Japan’s role with regard to “Comfort Women” a war

⁴ United States. Cong. House. “A resolution expressing the sense of the House of Representatives that the Government of Japan should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Forces’ coercion of young women into sexual slavery, known to the world as ‘comfort women,’ during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s through the duration of World War II.” H.Res. 121. 110th Cong. 1st Sess. (2007) 153 Cong. Rec. 123, H8870 *et seq.* Washington: GPO, 2007.

⁵ *Id.*

⁶ U.S. Nazi War Crimes and Japanese Imperial Government Record Interagency Working Group, *The Final Report*, 2007.

crime because it was a then-acceptable, culturally traditional and locally legal practice. (App116a).

For example, in 2001, in a lawsuit seeking damages for the alleged harms to “Comfort Women” the District of Columbia Circuit observed, “the Executive [] determined that choosing between the interests of two foreign states would adversely affect the foreign relations of the United States” and that adjudication of the dispute in the United States “not only ‘would undo’ a settled foreign policy of state-to-state negotiation with Japan, but also could disrupt Japan’s ‘delicate’ relations with China and Korea, thereby creating ‘serious implications for stability in the region.’” *Joo v. Japan*, 413 F.3d. 45, 52 (D.C. Cir. 2005) *cert denied* 546 U.S. 1208 (2006). (quoting 2001 Statement of Interest at 34–35).

Along similar lines, on April 25, 2014, then-President Barack Obama expressed a portion of the United States’ foreign policy view while visiting Seoul, South Korea, declaring that the “Comfort Women” issue will require the “coordinated effort of our three countries.” The President did not demand, as Glendale has, that Japan “take historical responsibility,” and he did not suggest that Japan was guilty of unresolved war crimes. (App.71a.)

Glendale seeks to use a bronze sculpture and a granite plaque, “where the President has consistently chosen kid gloves. The efficacy of the one approach versus the other is beside the point, since preemption turns not on the wisdom of the National Government’s policy but on the evidence of conflict.” *See Garamendi*, 539 U.S. at 399.

The United States government does not demand that Japan “take historical responsibility” for alleged war crimes. To the contrary, on March 2, 2015, Wendy Sherman, then U.S. Under Secretary of State for Political Affairs, addressed the issue of “Comfort Women” as a major obstacle to diplomatic progress in the region, and warned political leaders against using the historical disputes for political gains, prompting angry responses from Korean officials.⁷

Foreign affairs preemption is appropriate here, because Glendale’s permanent statement “reflects a state policy critical of foreign governments and involves ‘sitting in judgment’ on them.” *Garamendi*, at 439. (Ginsburg, J., joined by Stevens, Scalia, and Thomas, JJ., dissenting) (citation and quotation marks omitted and emphasis added).

The present administration of President Donald J. Trump has not taken a stance on the issue of Comfort Women, but has established strong ties with Japanese Prime Minister Shinzo Abe, and reaffirmed the mutual security treaty between the U.S. and Japan.⁸ The current administration is entitled to set its foreign affairs priorities regarding Japan and its relations with its neighbors.

⁷ Boo, Joan, “South Korea Criticizes US Official’s Comments on ‘Comfort Women’,” VOAnews.com, 3 Mar 2015. Online at: <http://www.voanews.com/a/south-korea-criticizes-us-officials-comments-on-comfort-women/2665589.html>

⁸ Davis, Julie Hirschfield and Baker, Peter, “In Welcoming Shinzo Abe, Trump Affirms U.S. Commitment to Defending Japan,” The New York Times, 10 Feb. 2017. Online at: https://www.nytimes.com/2017/02/10/world/asia/trump-shinzo-abe-meeting.html?_r=0

Glendale's effort to permanently "sit in judgment" of Japan conflicts with and interferes with the federal government's relations with Japan and Korea in an extremely delicate matter, and is an unconstitutional interference with the federal foreign affairs power.

2. Japan and Korea Have Long Sought Diplomatic Compromise on the "Comfort Women"

Very recently, the "Comfort Woman" monument "has sparked international incidents, threatened trade deals, and exposed deep and bitter rifts between Japan and South Korea that go back more than seven decades."⁹ In recent months, relations between Japan and Korea have deteriorated because activist groups placed a "Comfort Woman" monument in front of the Japanese embassy in Busan, South Korea.¹⁰ In response, Japan recalled two of its diplomats to Korea, contending that the monument violated a 2015 treaty, and halted talks on a number of other diplomatic and economic issues, including a currency swap.¹¹

⁹ Han, Sol and Griffiths, James, "Why This Statue of a Young Girl Caused a Diplomatic Incident," CNN.com, 10 Feb 2017. Online at: <http://www.cnn.com/2017/02/05/asia/south-korea-comfort-women-statue/>

¹⁰ Odawara, Kiyoshi, "A New Obstacle to Asian Security," The Wall Street Journal, 26 Jan. 2017. Online at: <https://www.wsj.com/articles/a-new-obstacle-to-asian-security-1485453729>

¹¹ France-Presse, Agence, "Japan recalls envoy after South Korea puts 'comfort woman' statue outside consulate," The Guardian. 5 Jan 2017. Online at: <https://www.theguardian.com/world/2017/jan/06/japan-says-recalling-envoy-to-skorea-over-new-comfort-woman-statue>

The “Comfort Women” issue arose in the early 1990’s when a major Japanese newspaper, the Asahi Shimbun, began publishing a series of sensational articles containing the purported testimony of a Japanese male named Yoshida Seiji, who claimed to have abducted more than 100 Korean women for the Japanese military. This sensational news inflamed public sentiment and led to a 1993 statement by then-Chief Cabinet Secretary Kōno Yōhei, commonly called “the Kono Statement.”¹² In 1994, The Asian Women’s Fund was set up by the Japanese government to distribute monetary support to “Comfort Women” in South Korea, the Philippines, Taiwan, the Netherlands, and Indonesia.¹³

However, on August 5, 2014, the Asahi Shimbun retracted its articles, admitting to numerous factual errors in the reporting.¹⁴ In addition, the Japanese government has revisited the research behind the Kono statement and determined it was the result of diplomatic compromise, not historical research.¹⁵

¹² Ministry of Foreign Affairs of Japan, “Statement by the Chief Cabinet Secretary Yohei Kono on the result of the study on the issue of ‘comfort women.’” Online: <http://www.mofa.go.jp/policy/women/fund/state9308.html>

¹³ Asian Women’s Fund Online Museum, “Establishment of the AW Fund, and the basic nature of its projects.” Available at: <http://www.awf.or.jp/e2/foundation.html> Retrieved 19 Feb 2017.

¹⁴ Jun, Mamiya, “Editorial: ‘Asahi Shimbun’ Coverage of the Comfort Women Issue Through the Years,” Nippon.com, 1 May 2015. Online: <http://www.nippon.com/en/features/h00074/?pnum=1>

¹⁵ “Details of Exchanges Between Japan and the Republic of Korea (ROK) regarding the Comfort Women Issue-From the Drafting of the Kono Statement to the Asian Women’s Fund-”

The accord reached on December 28, 2015 was a landmark that purported to fully and finally resolve the debate over “Comfort Women” between Japan and South Korea.¹⁶ Recent events demonstrate how shaky that accord was, and the “Comfort Woman” monument and accusations levied by Glendale was a catalyst for it to break down.

The issue presented to the Court is timely, relevant, international, and pressing. The United States should speak with one voice in this delicate international diplomatic issue. The Court should grant *certiorari*.

B. The Historical Record Does Not Support Glendale’s Position on “Comfort Women”

Few English-speaking historians have examined the issue of “Comfort Women” carefully. One leading scholar in this area is C. Sarah Soh, a professor at San Francisco State University, who examines many perspectives on the issue in her book, The Comfort Women.¹⁷

(PDF). Prime Minister’s Official Residence (Japan). June 20, 2014. Online: http://japan.kantei.go.jp/96_abe/documents/2014/_icsFiles/afieldfile/2014/06/20/JPN_ROK_EXCHANGE.pdf

¹⁶ Ministry of Foreign Affairs of Japan, “Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion,” 28 Dec 2015. Online: http://www.mofa.go.jp/a_o/na/kr/page4e_000364.html

¹⁷ Soh, C. Sarah, The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan (University of Chicago Press, 2008).

Professor Soh carefully illustrates how a simplistic view of the phenomenon overlooks cultural influences, the diversity of women's experiences, the influence of historical factors and the role that Koreans and others played in causing women to become "Comfort Women."

Professor Soh explains how South Korean activists and their supporters have framed alleged human rights abuses as primarily a Japanese phenomenon, by attacking the Japanese military in World War II while ignoring the historical record concerning the widespread and grave human rights violations of women, especially those working in the sex industry in postcolonial South Korea.

1. Documentary Evidence Refutes Glendale's Narrative about "Comfort Women"

There is little documentation of the "Comfort Women," and the documentation that does exist does not support the narrative of history dictated by Glendale. Glendale, in its monument, asserts the following disputed claims: (a) these women were enslaved in violation of international law; (b) these women were forcibly abducted by the Japanese military; and (c) there were over 200,000 of these women.

Glendale's version of history is disputed. For example, in The Comfort Women, author C. Sarah Soh, Professor of Anthropology at San Francisco State University, has rigorously examined the evidence, and concluded that the "Comfort Women" were not typically kidnapped, (*Id.* at 3), that they

received advance payments when recruited, (*Id.* at 9), and that these women numbered 50,000 at most, not 200,000. (*Id.* at 24.) In fact, there is a vibrant historical debate among scholars.

The historical record supports Japan’s interpretation that these women were not enslaved

It is well-known and widely accepted historical fact that prostitution was a regulated, legal business in Japan at the time.¹⁸

On October 1, 1944, the United States issued a report titled, “Japanese Prisoners of War Interrogation on Prostitution Report No. 49” (“Report 49”), prepared by the U.S. Office of War Information, Psychological Warfare Team—which was attached to the U.S. Army Forces India-Burma Theater, APO 689. Report 49 is based on interrogations of alleged “Comfort Women” captured by the United States in Burma. The report concludes:

“A ‘comfort girl’ is nothing more than a prostitute or ‘professional camp follower[s]’ attached to the Japanese Army for the benefit of the soldiers.” (*Id.*, p.1).

A 1944 U.S. military investigation by the Office of War Information (“OWI”) in liberated territory concluded that the 20 Korean women it interviewed were “nothing but prostitutes,” who were reasonably

¹⁸ Fujime, Yuki. “The Licensed Prostitution System and the Prostitution Abolition Movement in Modern Japan.” Positions: East Asia Cultures Critique. Trans. Kerry Ross. Ed. Chungmoo Choi. 1st ed. Vol. 5. Durham, NC: Duke UP, 1997. 135-70. Print.

well fed and had “plenty of spending money.”¹⁹ The women would gross about 1,500 yen per month, but would turn over about half of her earnings to the “house master” depending on the amount of debt she had incurred in signing her contract.²⁰

The women had the prerogative of refusing a customer, for example, who was too drunk.²¹

The historical record supports Japan’s interpretation that these women were not abducted by the military

“Comfort Women” were sex workers at the start of the war, or found through advertisements and through local recruiters—private individuals—not systematic government action.²²

For example, primary documents show that the “Comfort Women” were recruited through advertisements in newspapers prepared by proprietors of

¹⁹ Yorichi, Alex. “Japanese Prisoner of War Interrogation Report No. 49,” United States Office of War Information, Psychological Warfare Team, Attached to the U.S. Army Forces India-Burma Theater, APO 689, (“OWI Report 49”) 1 Oct 1944. P. 1. Online at: https://commons.wikimedia.org/wiki/File:Japanese_Prisoner_of_War_Interrogation_Report_No._49_p1.png

²⁰ *Id.*, p. 3. Online at: https://commons.wikimedia.org/wiki/File:Japanese_Prisoner_of_War_Interrogation_Report_No._49_p2.png#/media/File:Japanese_Prisoner_of_War_Interrogation_Report_No._49_p3.png

²¹ *Id.*

²² Soh, The Comfort Women, p. 137-39.

brothels, employment agencies, panderers, and other private individuals.²³

Similarly, according to Report 49 of the U.S. Office of War Information, “Comfort Women” were recruited by private-sector agents for “comfort service,” which was a contract wherein the women or their families were paid in advance.²⁴ Testimonials of former “Comfort Women” have varied on this point as well. Professor Park Yuha of Sejong University in South Korea has analyzed these testimonials, and determined that the matter is far more complex.²⁵

Professor Park explains that some women were sex workers before the commencement of the war, and that any forcible recruiters were private individuals, not military personnel, stating “it is wrong to conclude that the military, as an organization, engaged in the deceit or forcible recruitment (through its involvement in the planning and the consistent system of directions).”²⁶ Lest there be any doubt regarding the

²³ Advertisement, “Urgent! Comfort Women Wanted,” Keijyo Nippo 26 July 1944 (Korean).

²⁴ OWI Report 49, p. 1, *see n. 19, supra*.

²⁵ Yuha Park, Jegukui Wianbu, *see n. 19, supra*. [Comfort Women of the Empire] (Seoul: Ppuriwaipari, 2013). Translation and summary by Korea Institute of History, “‘Comfort Women of the Empire’ by Professor Park Yuha,” 30 Apr 2016. Online: <http://scholarsinenglish.blogspot.com/2014/10/summary-of-professor-park-yuhas-book.html>.

²⁶ Park, Yu-Ha, “Official Summary of Comfort Women of the Empire: How We Should Consider the Comfort Women Issue Based on Discussions between Ikuhiko Hata and Yoshiaki Yoshimi,” 1 June 2013 Sejong University. Online: <http://parkyuha.org/archives/4368> Retrieved 20 Feb 2017.

intense politicization of the issue, Professor Park was sued for defamation in South Korea, based upon her scholarly work and careful scrutiny of “Comfort Women” narratives.^{27, 28}

Primary documents support this interpretation. According to the U.S. military interrogation report of prisoners of war, three Korean prisoners are recorded as having responded, “18. All Korean prostitutes that PoW have seen in the Pacific were volunteers or had been sold by their parents into prostitution. This is proper in the Korean way of thinking but direct conscription of women by the Japanese would be an outrage that the old and young alike would not tolerate. Men would rise up in a rage, killing Japanese no matter what consequence they might suffer.”²⁹

The historical record supports Japan’s interpretation that these women did not number 200,000.

²⁷ See also, Sang-Hun, Choe, “Disputing Korean Narrative on ‘Comfort Women,’ a Professor Draws Fierce Backlash,” The New York Times, 18 Dec 2015. Online: https://www.nytimes.com/2015/12/19/world/asia/south-korea-comfort-women-park-yu-ha.html?smid=tw-nytimes&smtyp=cur&_r=2

²⁸ Higashioka, Toru “S. Korean author not guilty of defaming former ‘comfort women”” Asahi Shimbun, 26 Jan 2017. Online: <http://www.asahi.com/ajw/articles/AJ201701260064.html>

²⁹ Military Intelligence Service, Captured Personnel & Material Branch, “Composite Report on Three Korean Navy Civilians, List No. 78, Dated 28 Mar 1945, re: ‘Special Questions on Koreans.” P. 3. Cited in “U.S. military documents featuring Korean POW testimony discovered at U.S. National Archives” The Mainichi, 10 Jun 2016, and available at: <http://cdn.mainichi.jp/vol1/2016/06/10/20160610p2a00m0na015000q/0.pdf> (emphasis added.)

There is no formal tally or record of the number of “Comfort Women,” and estimates range wildly, with the total number as low as 20,000.³⁰

According to Professor Soh, “figures asserted by Korean and Chinese researchers tend to be much larger than those estimated by the Japanese.”³¹ Because it is very difficult to estimate or ascertain the correct number, Professor Soh recommends assuming a base number of 50,000 in order to maintain impartiality.³²

Glendale asserts that there were 200,000 “Comfort Women,” when that number is far from established as historical fact. Indeed, this number reflects the continually increasing estimates that are touted in order to support Korea’s geopolitical objectives.³³

2. Narrative History of Alleged Former “Comfort Women” Is Questionable and Contradicted

Much of the historical record promoted by those who seek to censure Japan is based upon narratives of former “Comfort Women.” A Korean professor, Park Yuha, contends in her recent book, The Empire of Comfort Women, that Chong Dae Hyup, an organization located in South Korea has been actively coaching former “Comfort Women” to construct testimonies to attempt to shame Japan and the Japanese.

³⁰ See, Soh, The Comfort Women, p. 23-24.

³¹ *Id.*

³² *Id.*

³³ *See id.*

Contradictory narratives have been published as well. For example a former member of the Japanese Imperial military, Major Hayashi Inoue of the Infantry Division, states that prostitution was a legally accepted business in Japan during World War II.³⁴ Major Inouye states that brothels advanced alongside the military, like other businesses. Major Inouye specifically denies that any of the brothels were controlled or managed by the Japanese military.³⁵

Major Inouye emphatically denies that the Japanese military had any involvement in abductions. Instead, he observes that abductions were more likely the work of brothel and prostitution ring operators, not the Japanese military.³⁶ Moreover, Inouye contends, “if the issues with Japanese comfort women are raised there should also be an issue raised from a global and historical perspective about the atrocities and sexual crimes against women committed by the soldiers of the rest of the world.”³⁷

This is consistent with a collection of 33 testimonies of retired military persons and civilians published by the Japanese think-tank “Showashi Kenkyujo” from 1996 to 2007.

³⁴ Inouye, Hayashi, “Insights and Thoughts on Issues of Sex and the Military,” History of Showa Era Research Center, 10 September 2001.

³⁵ *Id.*, p. 2.

³⁶ *Id.*, p. 6-7.

³⁷ *Id.*, p. 8.

C. Japan has Explicitly Denied that the Then Japanese Military Instructed the Abduction and Enslavement of Comfort Women

On July 15, 2014, Japan delivered a statement before the U.N. Human Rights Committee, which implements the International Covenant on Civil and Political Rights, officially denying that its then military ordered the abduction and sexual enslavement of 200,000 women. This denial has been officially repeated by the Government of Japan before international bodies on at numerous occasions.^{38, 39, 40, 41}

³⁸ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee against Torture, “Concluding observations on the second periodic report of Japan, Addendum, Information received from Japan on follow-up to the concluding observations,” 22 April 2015, pp. 11-13.

³⁹ United Nations International Covenant on Civil and Political Rights, Human Rights Committee, 111th Session, “Summary Record (partial) of the 3082nd meeting” 16 July 2014, p. 2.

⁴⁰ Permanent Mission of Japan to the International Organizations in Geneva, “Comments by the Government of Japan on the Concluding Observations of the Human Rights Committee,” 31 Aug 2015. pp. 5-8.

⁴¹ United Nations Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination against Women, 63rd Session, “Summary record of the 1375th meeting: Consideration of reports submitted by States parties under article 18 of the Convention,” 22 Feb 2016. P. 3 & 9. (Noting that in December 2015 the Governments of Japan and the Republic of Korea had reached an agreement that would finally resolve the long-standing issues around the “Comfort Women,” but there was not a confirmation that women had been forcibly removed by the Japanese military,

D. Historians Are Actively Debating the Historical Record on “Comfort Women”

In 2014 and 2015, the government of Japan asked McGraw Hill Companies, publisher of a world history textbook, Traditions and Encounters: A Global Perspective on the Past, to correct portions of the textbook’s depiction of the “Comfort Women.” Ms. Alexis Dudden, a professor of history at the University of Connecticut, wrote a letter on behalf of 20 American historians to academic journal Perspectives on History, of the American Historical Association (AHA), “Standing with Historians of Japan,” to “express dismay,” and to “oppose the efforts of states or special interests to pressure publishers or historians to alter the results of their research for political purposes.”⁴²

In response, Perspectives on History accepted a rebuttal commentary by 50 Japanese historians in its December 2015 issue, entitled “On ‘Standing with Historians of Japan.’”⁴³ The Japanese historians

and that the number of 200,000 was a result of conflating the Women’s Volunteer Labor Corps with “Comfort Women.”)

⁴² Dudden, Alexis, “Standing with Historians of Japan,” Perspectives on History: The Newsmagazine of the American Historical Association, Mar 2015. Online: <https://www.historians.org/publications-and-directories/perspectives-on-history/march-2015/letter-to-the-editor-standing-with-historians-of-japan>.

⁴³ Multiple Authors, “On ‘Standing with Historians of Japan,’” Perspectives on History: The Newsmagazine of the American Historical Association, Dec 2015. Online: <https://www.historians.org/publications-and-directories/perspectives-on-history/december-2015/letter-to-the-editor-multiple-authors-on-standing-with-historians-of-japan>

identified 8 errors of fact in only 26 lines concerning “Comfort Women” described in the McGraw-Hill textbook, specifically taking issue with an assertion of enslavement, an accusation of mass murder of the “Comfort Women.”⁴⁴The Japanese historians cited the total failure by Dudden, et al., to consider the absence of factual support in the Interagency Working Group Report of 2007, which “was the result of very thorough research by the US National Archives and Records Administration (NARA). NARA identified 142,000 pages of Japanese-related classified documents held by the Office of Strategic Services (OSS), CIA, FBI, US Army Counterintelligence Corps (CIC), and others. This research task took 7 years and cost \$30 million.”⁴⁵

E. Glendale’s Monument Has Increased International Tensions

Tensions between Japan and South Korea have increased in response to the erection of the Monument in Glendale, including anti-Japanese protests around and incorporating the Monument. (App.123a, 125a) Indeed, there was significant international outcry from the highest levels of the Japanese government following Glendale’s installation of the Monument. In reaction to Glendale’s Monument,

⁴⁴ U.S. Nazi War Crimes and Japanese Imperial Government Record Interagency Working Group, *The Final Report*, 2007 at <https://www.archives.gov/iwg/reports/final-report-2007.html>. The report was the result of thorough research by the US National Archive and Records Administration (NARA). Cooperating with OSS, CIA, FBI, etc., taking 7 years and \$30 million investigating Japan and Nazi WWII war crimes. It contained no findings on the “Comfort Women.”

⁴⁵ *Id.*

Kuni Sato, the press secretary of the Japanese Ministry of Foreign Affairs, expressed Japan's official displeasure, remarking that installation of the Public Monument "does not coincide with our understanding" of the Comfort Women dispute." (App.49a ¶¶20, 24)

On July 31, 2013, Kenichiro Sasae, Japanese Ambassador to the United States, declared that Glendale's action is "irreconcilable" with the position of the Government of Japan and is "highly regrettable." (App. 53a ¶37) On August 13, 2013, Japanese Prime Minister Shinzo Abe stated that he was "extremely dissatisfied" with the installation of Glendale's Monument. (App. 54a ¶41)

The "Comfort Women" monuments have led to serious diplomatic conflict between Japan and South Korea. Glendale's decision to embrace a completely anti-Japanese view, based on questionable historical facts, affronts Japan here in the United States. Glendale espouses a distinctly different foreign policy than the neutrality preferred by the federal government, and risks alienating an important ally. Glendale's actions should be preempted.



CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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