

IN THE

Supreme Court of the United States

No. 07-526

DONALD L. CARCIERI,
Governor of the State of Rhode Island et al.,

v.

DIRK KEMPTHORNE,
Secretary of the United States Department of the Interior, et al.

On Writ Of Certiorari
To The United States Court of Appeals
For the First Circuit

EMERGENCY MOTION FOR RECONSIDERATION
OF TOWN'S MOTION FOR DIVIDED ARGUMENT

The Town of Charlestown, Rhode Island (the "Town") moves for emergency reconsideration of its earlier motion to divide time equally with the State interests, which, along with the motion of co-petitioners the Governor and the Attorney General (the "State interests") to divide time equally between them, was previously denied by this Court. Two counsel of record: 1) Theodore Olson as counsel for the Governor; and 2) Joseph S. Larisa, Jr., as counsel for the Town, recently submitted oral argument forms to the Clerk to appear next Monday, November 3, 2008 at 1:00 p.m. to present oral argument in this case.

At this late date, the Town respectfully requests that the Court order a division of time between Mr. Olson and Mr. Larisa with respect to the two questions presented

and/or by minutes. In the alternative, the Town respectfully asks this Court to order a coin toss between counsel to determine who shall argue the entire case on Monday.

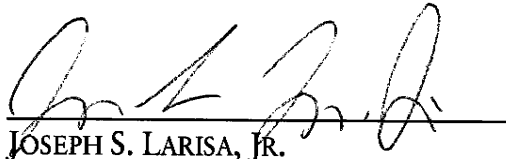
After the Court denied Petitioners' earlier motions for divided time, the Attorney General backed out of oral argument and sided with Mr. Olson. The Town, however, continued to support its counsel, and offered to participate in a moot court competition to decide on the merits between Mr. Olson and counsel for the Town. That overture was declined. The Town's request for a coin toss was also rejected. The only solution offered by the State interests to resolve the impasse since that date is for the Town to withdraw its counsel and support Mr. Olson.

While Mr. Olson is extremely well qualified to present oral argument, as shown in the Town's prior motion and opposition to the motion of the State interests:

- 1) Since its inception over a decade ago, counsel for the Town has been intimately involved in this case, first as Executive Counsel and later Chief of Staff to the previous Governor through early 2003, and then as counsel for the Town through present.
- 2) In the appellate proceedings below from 2004 through 2007, counsel for the Town lead briefing and oral argument and conducted reply argument on behalf of all three petitioners here. During that time, counsel was responsible for deriving the alternate legal theory that the Parcel may be taken into "restricted trust" only; that is, trust land that is subject fully to the civil and criminal laws and jurisdiction of the State and Town. That conclusion was ultimately adopted by the two dissenting judges in the First Circuit sitting en banc. 47 F.3d 15, 48-52 (1st Cir. 2007).
- 3) Counsel for the Town lead briefing in the joint petition for certiorari. In the separate briefing on the merits, the Town heavily concentrated on the second question upon which this Court granted certiorari, concerning the nature and effect of "aboriginal title" as the functional equivalent of "trust title."

Divided argument between an attorney for the Town and for the State in a trust case was recently allowed in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), where this Court allowed State amici to divide time with petitioner Town, with each taking different aspects of the questions presented. Here, with two very different questions presented, the Town respectfully asks the Court to allow Mr. Olson (Question 1) and counsel for the Town (Question 2) to split them. If not, the Town seeks a coin toss to determine which counsel shall present the entire case.

Respectfully Submitted,



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October 27, 2008

IN THE
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CERTIFICATE OF SERVICE

I hereby certify that I am a member in good standing of the bar of this Court and on this 27th day of October 2008, I caused one copy of the foregoing Emergency Motion for Reconsideration of Town's Motion for Divided Argument to be served by United States Postal Service 1st Class Mail and pdf email on the counsel identified below pursuant to Rule 29. All parties required to be served have been served.

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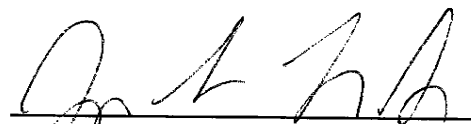
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