

OCT 16 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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

Plaintiffs and

WENDELL MARUMOTO,

Plaintiff-intervenor-
Appellant,

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

No. 08-16668

D.C. No. 1:05-CV-00649-SOM-
BMK

MEMORANDUM *

*This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

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,

and

STATE OF HAWAII,

Defendant-intervenor -
Appellee.

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, Chief District Judge, Presiding

Submitted October 13, 2009**
Honolulu, Hawaii

Before: BEEZER, GRABER and FISHER, Circuit Judges.

Wendell Marumoto appeals from the district court's denial of his motion to intervene as of right under Federal Rule of Civil Procedure 24(a). We have

**The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291, we review de novo, *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 802 (9th Cir. 2002), and we affirm.

The district court properly denied Marumoto's motion to intervene because he does not establish that the disposition of the action may as a practical matter impair or impede his ability to protect his interests. *See United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004). He does not contend that he would be bound by any decision in this case or that, by virtue of stare decisis, a proper party would be precluded from raising his challenges to the State's actions in a separate action.

Marumoto lacks standing to appeal from the district court's summary judgment because he is not a party to this action, did not participate in the summary judgment proceedings in the district court and has not shown that the equities weigh in favor of permitting him to appeal. *See S. Cal. Edison Co.*, 307 F.3d at 804.

Marumoto's motion to supplement the record is denied.

AFFIRMED.