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S. 310, THE NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2007

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MAY 3, 2007

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S. 310, THE NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2007

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room 485, Senate Russell Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. I will call the hearing to order. This is a hearing of the United States Indian Affairs Committee.

Today, the Committee will hear testimony from witnesses on S. 310, the Native Hawaiian Government Reorganization Act. This legislation is intended to establish a process to reconstitute a Native Hawaiian government. My colleagues and good friends from Hawaii, Senators Inouye and Akaka, have introduced similar legislation since the 106th Congress. Each of these proposals has generated aggressive discussion here in the Senate and elsewhere and each time the Senators from Hawaii have reached out to the concerned parties to try and develop compromises.

Considerable compromises have been made and the bill that is before this Committee today contains all of those compromises. As with any compromise, neither side is completely satisfied, but the ultimate goal of establishing a process to reorganize a Native Hawaiian government is still achieved in this legislation.

I continue to support the efforts of my colleagues to reorganize a Native Hawaiian government. I think the process set forth in this bill is very reasonable and prudent. It allows for the Native Hawaiian people to once again have an opportunity at self-governance and self-determination.

The bill also enables Federal, State, and Native Hawaiian governments to develop a working relationship in order to address many longstanding issues such as the transfer of lands to Native Hawaiians, jurisdiction, governmental authority and other matters.

Native Hawaiians, just like Indian tribes, are the first Americans. They were here long before my ancestors showed up. They had their own governments and provided for the general welfare of their people. In fact, their governments worked so well that the founders of the United States modeled our Constitution after the governments of some of the first Americans.

But similar to our treatment of Indian tribes, the Federal Government's historical treatment of the Native Hawaiians is not a

proud moment in this Country's history. Before any Americans settled on the Hawaiian Islands, there existed a sovereign Native Hawaiian government. The United States recognized this sovereign native nation and negotiated four separate treaties with it.

Once non-Natives began settling in Hawaii, the Native Hawaiian government allowed them representation in their government. But the non-Natives wanted control of the Hawaiian government. In 1893, the United States minister utilized American soldiers to assist non-Native revolutionaries in overthrowing the Native Hawaiian government.

Although President Grover Cleveland urged the Congress to restore the Native Hawaiian Queen to power, the Senate Foreign Relations Committee ratified the actions of the non-Native revolutionaries. The Senate justified its ratification by describing the Native Hawaiian government as a domestic dependent nation, the same description given by the United States Supreme Court to Indian tribes in 1831.

Although the United States ratified the overthrow of the Native Hawaiian government, we have always recognized a special relationship with Native Hawaiians. I am sure that the Senators from Hawaii will describe this relationship in great detail, but suffice it to say that Congress has always recognized Native Hawaiians as the indigenous people of Hawaii with whom we have certain obligations.

As evidence of this relationship, the Congress has enacted over 150 statutes dealing with Native Hawaiians providing them with certain benefits. More, in 1993, Congress passed the Native Hawaiian Apology Resolution.

I strongly prefer that our indigenous groups go through the Federal acknowledgment process at the Department of the Interior in order to establish government-to-government relationships with the United States. However, that administrative process is not available to Native Hawaiians. The regulations governing the process state the process is available only to American Indian groups indigenous to the 48 States and Alaska. Native Hawaiians are therefore excluded.

The Ninth Circuit Court of Appeals has upheld the exclusion of Native Hawaiians from this process.

One can argue that the solution is to amend the Federal administrative process to allow the Native Hawaiians to participate, but that is a little like putting a square peg into a round hole in this circumstance. The Federal administrative process was not developed to evaluate indigenous groups like the Native Hawaiians. The process was designed to evaluate Indian groups that did not previously have a political relationship with the United States.

The Native Hawaiians clearly had a previous political relationship with the United States. The regulations also were not intended to cover indigenous groups who were the subject of congressional action or legislative termination. Numerous Indian tribes that were the subject of legislative termination had to come to Congress or the judiciary to be restored.

In the case of the Native Hawaiians, it was congressional approval of the illegal acts of others that led to the demise of the Native Hawaiian government. Thus, the administrative process can-

not adequately evaluate the status of Native Hawaiians. I regret that, but that is the case.

Finally, to the extent that people feel the Native Hawaiians should go through some sort of process in order to obtain a government-to-government relationship with the United States, they should take comfort in that S. 310 proposes to do exactly that, establish a process in which the Native Hawaiian people will work with the Federal and State governments to reconstitute Native Hawaiian government, a government that would continue to exist today had it not been for the illicit acts of the United States.

S. 310 does not recognize a Native Hawaiian government. Rather, it sets forth a process to allow Native Hawaiians to reorganize. Once that entity is reconstituted it will need to be certified by the Federal Government. Every step of the way, the Federal and State governments will be involved in the process.

I want to say to the Vice Chairman, Senator Thomas, and my two colleagues from Hawaii, we are having a cloture vote at 10:30 this morning on my amendment, the Dorgan amendment, and the one hour prior to the cloture vote is an hour devoted to debate on that amendment. So I regrettably, and it was not planned this way, but I have to be over to defend my amendment during this hour. So I am going to ask if Senator Akaka would chair the hearing. I apologize for having to go to the floor of the Senate, but that nonetheless is the procedure this morning for me.

I want to thank Vice Chairman Thomas for being with us as well. I want to call on Vice Chairman Thomas for any opening comment that he will have, and then I will ask, as I depart, for Senator Akaka to assume the role of the Chair.

Let me make one final point, if I might. This is not an issue without some controversy. I recognize that. It has been around a while. It has been debated. There is some controversy. But I do want to pay special attention to my two colleagues, Senator Akaka and Senator Inouye. They have worked long and hard on this issue. They feel passionately about it. They have worked very hard to address a lot of issues with a lot of different interests. I deeply admire what they have done. As a result of that, I have cosponsored the legislation today.

I recognize that there remain some areas of dispute and controversy, but I just wanted to make special note of the extraordinary work done by my two colleagues in order to bring this bill to the Senate Committee on Indian Affairs.

Senator Thomas, thank you for being here.

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Thank you very much, Mr. Chairman. I hope you do well on the floor.

I, too, want to recognize our two colleagues for all they have done. Versions of this bill have come before the Indian Affairs Committee in four previous Congresses, beginning in the 106th Congress. I appreciate this is a matter of considerable importance to the Senators and many Native Hawaiians as well. However, I have been an opponent of the early versions of this bill, most recently in the 109th Congress. I voted against cloture of S. 147 and was

prepared to vote against the bill on its merits if it had come to that.

Clearly, there are strong feelings about this initiative, both for it and against it. There are those who support or oppose it on policy grounds, and those who support or oppose it on legal and constitutional grounds. Whether a particular group should be recognized as an Indian tribe by the Federal Government involves difficult questions of historic, political and general geographics facts, and it requires a detailed scholarly inquiry. I do not think that it is appropriate to circumvent that inquiry and have Congress simply deem a group to be a tribe. In fact, I wonder if it might be preferable for this decision to be made by the Department of the Interior, following the regulatory process that is used in recognizing Indian tribes.

Nevertheless, I am looking forward to the witnesses today. I know how important this issue is, and I appreciate your being here and look forward to your remarks.

Thank you, sir.

STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. [Presiding.] I want to thank you very much, my good friend and colleague, Senator Thomas, for his statement.

And now I would like to call on Senator Inouye. I am so accustomed to the seniority, but Senator Inouye just waved me on. So let me proceed with my statement.

I want to thank Chairman Dorgan and Vice Chairman Thomas very, very much. I appreciate their having this hearing today. I also want to welcome all of our witnesses who are here to testify.

In Hawaii, we are blessed to have a diverse population representing many cultures. However, we cannot neglect and must not forget the indigenous culture and people of Hawaii, the Native Hawaiians. For the last seven years, I, along with Hawaii's congressional delegation, have worked to enact the Native Hawaiian Government Reorganization Act. My bill authorizes a process for the reorganization of a Native Hawaiian governing entity for the purposes of a federally recognized government-to-government relationship.

Why do we need to organize the entity? It is because the Native Hawaiian government was overthrown with the assistance of U.S. aid in 1893. As a result, Native Hawaiians were disenfranchised from their culture, land and way of life at the hands of foreigners committed exclusively to propagating Western values and conventions. The impacts of the overthrow continue as Native Hawaiians are at the lowest levels of achievement by all social and economic measures.

Following the overthrow, a republic was formed. Any reformation of a native governing entity was discouraged. Despite this fact, Native Hawaiians have established distinct communities and retained their language, culture and traditions. They have done so in a way that also allows other culture to flourish in Hawaii.

Since that time, Congress has explicitly recognized the existence of a special or trust relationship between the Native Hawaiian people and the United States. In 1921, the effort to rehabilitate them

by returning Native Hawaiians to the land led to the enactment of the Hawaiian Homes Commission Act. The Act sets aside approximately 203,500 acres of public lands for Native Hawaiian homesteading. As a condition of statehood in 1959, Congress required the State of Hawaii to adopt the HHCA and two, that public lands transferred to the State be held in trust for five purposes, including "the betterment of the conditions of Native Hawaiians."

In 1993, Public Law 103–150, commonly known as the Apology Resolution, was enacted. The Resolution acknowledges the history that happened, including "Congress apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893, with participation of agents and citizens of the United States, and the deprivation of rights of Native Hawaiians to self-determination."

Congress also committed itself to acknowledging the ramifications of the overthrow and supporting reconciliation efforts between Native Hawaiians and the United States. My bill is the next step in this reconciliation process.

While Congress has traditionally treated Native Hawaiians in a manner parallel to American Indians and Alaska Natives, the Federal policy of self-governance and self-determination has not been formally extended to Native Hawaiians. Many checks and balances exist in this process, which complies with Federal law and maintains the flexibility for Native Hawaiians to determine the outcome of this process.

Federal recognition of Native Hawaiians is supported by a majority of people in Hawaii, including the Governor of the State, the State legislature, the numerous Native and non-Native organizations. In Washington, D.C., S. 310 is a bipartisan bill, with the support of national organizations, including the American Bar Association, National Congress of American Indians, and Alaska Federation of Natives.

I look forward to building upon the established record as we embark on the ninth hearing this Committee has held on the issue of Native Hawaiian governance.

Senator Inouye?

STATEMENT OF HON. DANIEL K. INOUYE,
U.S. SENATOR FROM HAWAII

Senator INOUYE. I thank you, Mr. Chairman.

I thank Chairman Dorgan and Vice Chairman Thomas for scheduling this very important hearing. Senator Akaka and I have worked tirelessly for the past seven years. We have had eight days of hearings during the seven year period, covering 40 hours. This bill has been marked up five times, so it has a long history, and we have worked on it for a long time.

But before I proceed, Mr. Chairman, I note that Congresswoman Mazie Hirono is here with us, and I thank you for your demonstration of support. This encourages us.

This bill is important to all the citizens of the State. For those of who were born and raised in Hawaii, we have always understood that the indigenous people of Hawaii, Native Hawaiian people, have a status that is unique. This status is enshrined in our State Constitution. It is reflected in the laws of our State. It is found in

over 100 Federal laws, including the Hawaiian Admissions Act, as noted by Senator Akaka.

It is a status that reflects our deep gratitude to the Native people who first welcomed us on their shores and who gave us the opportunity to live in their traditional homelands.

Mr. Chairman, in my nearly 30 years of service on this Committee, I have been fortunate to learn a bit about the history of this Country and its relations with indigenous native people who occupied and exercised sovereignty on this continent. As a Nation, we have changed course many times in the policies governing our dealing with the native people. We began with treaties with native peoples, solemnly signed by the President of the United States. And then, notwithstanding these treaties, we turned to war and in some cases massacred the very tribes that we had treaties with.

Then we enacted laws recognizing native governments. Then we passed laws terminating our relationships with those governments. Then we had laws repudiating our termination policy and restored our relations with native governments.

Finally, for the past 37 years, we adopted a policy of recognizing and supporting the rights of this Nation's first Americans to self-determination and self-governance. We have been firm in our resolve to uphold that policy. Native Hawaiians have had a political and legal relationship with the United States for the past 140 years, as shown through the treaties with the United States and the scores of Federal statutes. But like the native people whose federally recognized status was terminated, the government of Hawaii that represented the Native Hawaiian people was overthrown with the assistance of U.S. troops on January 17, 1893.

Native Hawaiians seek full restoration of the government-to-government relationship they had with the United States. As one who has served the citizens of Hawaii for over 50 years, as both a member of Congress and in the territorial legislature, I believe that there is a broad-based support in our State for what the native people of Hawaii are seeking. The courts have concluded that termination can only be reversed by an act of Congress. In my view, I believe in the view of those I have place to represent. The time for reconciliation is long overdue, and the time for restoration is now.

I thank you, Mr. Chairman.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

I thank Chairman Dorgan and Vice Chairman Thomas for scheduling this important hearing today on a bill that Senator Akaka and I have worked tirelessly on for the past 7 years.

This bill is important to *all* of the citizens of the State of Hawaii. For those of us who were born and raised in Hawaii, as I was, we have always understood that the indigenous people of Hawaii—the Native Hawaiian people—have a status that is unique in our State.

This status is enshrined in our State Constitution, and it is reflected in the laws of our State. It is found in well over a hundred *Federal* statutes—including the Hawaii Admissions Act. It is a status that reflects our deep gratitude to the native people who first welcomed us to their shores and who gave us the opportunity to live in their traditional homelands.

Mr. Chairman, in my nearly 30 years of service on this committee, I have been fortunate to learn a bit about the history of this country and its relations with the indigenous, native people, who occupied and exercised sovereignty on this continent.

As a nation, we have changed course many times in the policies governing our dealings with the Native people. We began with treaties with the Native people, and then we turned to war. We enacted laws recognizing Native governments, and then we passed laws terminating our relationships with those governments. We repudiated our termination policy and restored our relationships with Native governments. Finally, for the last 37 years, we adopted a policy of recognizing and supporting the rights of this nation's First Americans to self-determination and self-governance. We have been firm in our resolve to uphold that policy.

Native Hawaiians have had a political and legal relationship with the United States for the past 140 years—as shown through treaties with the United States and in scores of Federal statutes. But like the Native people whose Federally-recognized status was terminated, the government of Hawaii that represented the Native Hawaiian people was overthrown with the assistance of U.S. troops on January 17, 1893.

Native Hawaiians seek the full restoration of the government-to-government relationship they had with the United States. As one who has served the citizens of the State of Hawaii for over 50 years, as both a member of Congress and the Territorial Legislature, I believe that there is broad-based support in our State for what the Native people of Hawaii are seeking. At this time, I would like to submit the following letter written by Linda Lingle, Governor of the State of Hawaii to Senator Lamar Alexander, which states that 84 percent of Hawaii adults are in favor of affording federal recognition to Native Hawaiians.

The courts have concluded that termination can only be reversed by an act of Congress. In my view, and I believe in the view of those I have pledged to represent, the time for reconciliation is long overdue—and the time for restoration is now. The Time to enact S. 310 is now.

As you know, Mr. Chairman, in the 109th session of the Congress, we debated an earlier version of the bill that is before us today on the Senate floor. At that time, statements were made part of the Congressional Record that reflect a misunderstanding of the discussions that took place between the United States and the political leaders of what was to become the new State of Hawaii. Because I participated in those discussions, I thought that it might be helpful to the Committee and to our colleagues in the Senate to know what was contemplated by the parties to the discussion at the time of statehood.

The historical record is clear. In an effort to return lands to the indigenous, native people of Hawaii, the Congress acted in 1920 to set aside land on each of the five principal islands, in what was then the Territory of Hawaii. This action was taken in response to well-documented evidence that Native Hawaiians had been displaced from their traditional homelands, moved into tenement dwellings, and suffered in large numbers from diseases that were rampant in the overcrowded tenement areas.

This Federal law, the Hawaiian Homes Commission Act, set aside approximately 203,500 acres of land from the inventory of lands in Hawaii that had been ceded to the United States to be held in trust for Native Hawaiians. While the law did not authorize appropriations for the development of infrastructure that would enable the habitability of the lands, the Act contained an authorization for the leasing of the lands so that revenues derived from leases could be dedicated to the development of infrastructure. As we approached the time of statehood, I recall that one of the principal concerns was that statehood should not effect another displacement of Native Hawaiians from the lands that had been set aside under the Hawaiian Homes Commission Act.

Until that time, the administration of the Act had been challenging. Here were lands that were located thousands of miles from the nation's capital, but were nonetheless lands that the United States held in trust. Transferring the lands to what would become the new State of Hawaii held the potential to facilitate the implementation of the Act and to increase the numbers of Native Hawaiians who could be relocated onto the homelands.

As a condition of its admission into the Union, Hawaii accepted the terms the United States put forth—namely, that the homelands would be transferred to the new State, but that those lands would be held in trust for Native Hawaiians by the State. In addition, the United States sought, and those representing the new State agreed, to incorporate the provisions of the Hawaiian Homes Commission Act into the new State's Constitution.

However, the United States did not cut all of its ties to the Native Hawaiian people or to the homelands. The U.S. retained the authority to bring an enforcement action should there be any breach of the homelands trust by the State of Hawaii, and further insisted that any material amendments to the Act adopted by the State legislature that would affect either the eligibility of those entitled to live on the

homelands or the corpus of the trust—would have to be approved and ratified by the U.S. Congress.

There was also the matter of the other lands in Hawaii that had been ceded to the United States. While there was general agreement that all of the lands that were not to be retained by the United States for military or other Federal purposes would be transferred to the new State, it was also understood that there would be revenues derived from the use of those ceded lands.

Here again, there is clear evidence that the framers of the Statehood Act did not intend that Native Hawaiians would be subsumed into the larger body politic of the new State, but rather, that Native Hawaiians would retain their historically-distinct status.

Accordingly, we are able to look to section 5(f) of Hawaii's Admissions Act, which provides that the lands transferred to the new State are to be held in a public trust by the State, and that the revenues derived from the ceded lands are to be used for five purposes, one of which is the betterment of the conditions of Native Hawaiians.

The delegation of authority by the United States to the State of Hawaii to administer lands held in trust for Native Hawaiians and to use the revenues derived from lands ceded by the United States to the State of Hawaii for the betterment of the conditions of Native Hawaiians is unmistakably clear and explicit. It is contained in Federal law—the Hawaii Admission Act—and is reflected in provisions of the Constitution of the State of Hawaii as well as in Hawaii State implementing statutes.

Finally, I believe it may be useful to address those provisions of S. 310 that grew out of negotiations that took place subsequent to this Committee's report of S. 147, the Native Hawaiian Government Reorganization Act, to the full Senate in the 109th session of the Congress. Those negotiations involved representatives of the White House, the Office of Management and Budget, the Department of Justice, the State of Hawaii, and the members of Hawaii's congressional delegation, and the provisions of the bill resulting from the negotiations were incorporated into S. 3064, which was essentially an amendment in the nature of a substitute to S. 147 that was introduced by Senator Akaka in 2006.

On July 13, 2005, Assistant Attorney General William E. Moschella, signed a letter from the Department of Justice to Senator John McCain, who was at the time Chairman of the Senate Indian Affairs Committee. Mr. Moschella's letter sets forth four principal points of concern about the Native Hawaiian Government Reorganization Act of 2005—each of which was subsequently addressed in the negotiations I have referenced.

Accordingly, there are provisions of S. 310 that address the Department's concerns about potential claims against the United States, the consultation process as it relates to the operation of U.S. military facilities in Hawaii or military readiness, the allocation and exercise of criminal jurisdiction among the three governments (the United States, the State of Hawaii, and the Native Hawaiian government), and the application of the Indian Gaming Regulatory Act. The Department's additional concern about the composition of the Commission is also addressed in the provisions of S. 310. As Mr. Moschella's letter indicates, the U.S. Supreme Court did not address Congress' constitutional authority to enact legislation for the benefit of Native Hawaiians in the Court's ruling in *Rice v. Cayetano.*

The 160 Federal statutes that the Congress has enacted since 1910 which are designed to address the conditions of Native Hawaiians were not at issue in the *Rice* case.

As members of Congress who take an oath of office to uphold the U.S. Constitution, every legislative action that we take is informed by our understanding of the authority that is delegated to the legislative branch of government in the Constitution. History informs us that because the U.S. Supreme Court does not have occasion to rule on the constitutionality of every Federal statute, most of the time we must act on the advice of legal counsel and our best judgment. The experts in this field of law assure us—and the Supreme Court has so held—that the power that the Constitution delegates to the Congress to conduct relations with the indigenous, native people of America is plenary.

Again, as one who has served in the U.S. Congress for the past 48 years, I believe that it is wise and prudent to premise our actions on this constitutional foundation and historical experience rather than constrain our actions on speculation or conjecture.

Senator AKAKA. Thank you very much, Senator Inouye.

Senator Murkowski?

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

I appreciated hearing the remarks of both of our distinguished leaders from Hawaii.

I want to welcome those from the State of Hawaii that have traveled to be with us today. I know that we often have visitors from the Office of Hawaiian Affairs travel to the State of Alaska, working with and visiting with our friends over at the Alaska Federation of Natives. Sometimes you have come when it is cold. Sometimes we go and visit you when it is warm, and I am sure who gets the better part of the deal, but we do enjoy the relationship that we have with one another.

In June of 2006, I went to the Senate floor to speak in support of Senator Akaka's Native Hawaiian recognition legislation. Mr. Chairman, I would ask that my floor statement be included in the record of today's hearing.

Senator AKAKA. Without objection.*

Senator MURKOWSKI. The question at that time was whether or not the Senate was going to invoke cloture to end the filibuster that prevented the consideration of the Akaka bill on its merits. Ultimately, there were 56 Senators, both Republicans and Democrats, who voted to debate the bill, four short of the number that we needed to break that filibuster. Many of the views expressed in the testimony to be offered by the Justice Department witnesses, some of those expressed in Mr. Burgess's prepared testimony, were explore in the debate that preceded that vote. But the 56 bipartisan votes cast in favor of the Akaka bill suggest that it stands very much in the mainstream of political and constitutional thought.

Attorney General Bennett and Mr. Dinh were pivotal in helping many of our colleagues evaluate the arguments that were advanced by those who opposed Senator Akaka's legislation. I welcome them to the Committee this morning and look forward to their testimony as well.

I would also note, and you have mentioned, Senator Akaka, that this legislation enjoys the support of your Governor, Governor Lingle, and also the support of the major newspapers in the State of Hawaii, the National Congress of American Indians, and the Alaska Federation of Natives.

While much is made of the U.S. Civil Rights Commission's views on the Akaka bill, it bears noting that the only American Indian on the Commission dissented from the majority's conclusion.

I want to take just a moment here this morning to kind of break practice in order to comment on the prepared statement submitted by the Department of Justice. I have to say that the language and the tone in the prepared statement do not leave a favorable impression on this Senator. I am referring to language like favored treatment, class of favored persons, secession, balkanization, racially isolated government, preferential treatment, differential treatment, separatist government, and corrosive effect.

The statement uses I believe harsh and divisive words to draw many conclusions about the distinctions between Native Hawaiians

*The information referred to is printed in the Appendix.

on the one hand, and American Indians and Alaska Natives on the other. Yet nowhere in the statement do I find any historical or anthropological references to support these conclusions. The Apology Resolution is never once discussed in the statement.

I am left to wonder whether the distinctions between Native Hawaiians and American Indians are truly distinctions without a difference.

I feel compelled to call the Committee's attention to the suggestion on page four of the prepared statement that this legislation grants, "a broad group of citizens defined by race and ancestry the right to declare their independence and secede from the United States." I don't see anything on the face of S. 310 that gives anyone the right to declare independence and secede from the United States.

I question the credibility of the statement that the legislation grants, "sweeping powers to the proposed Native Hawaiian organizations described in the bill." What it does do is give the Native Hawaiian governing entity a seat at the negotiating table. The State of Hawaii and the Federal Government hold the other seats. As I said on the floor last year, this Senator is not about to presume the outcome of these negotiations.

Now, of all the troublesome language in the prepared statement, I find the passages that suggest that "Indian tribes enjoy favored treatment and that the Akaka bill would create a class of favored persons afforded different rights and privileges from those afforded to his or her neighbors." I find this very troubling.

The suggestion is that if Native Hawaiians are regarded as American Indians, they become favored persons. I believe that these are words that provoke resentment. They are inflammatory and I fully believe that they are uncalled for. Language like this is used frequently by those who would have the United States end its financial support for Indian health and Indian housing programs. I don't use this language and I don't think our President has ever used it either to describe our Nation's relationship with native people. If you doubt this, I would suggest that you look at the President's Native American Heritage Month proclamations on the White House web site.

Mr. Chairman, I spend a lot of time with native people who live in rural Alaska who subsist off the land and the living resources as much as their ancestors did. I can tell you that nobody I know feels privileged to live in third world conditions without indoor plumbing or substandard housing as the price they pay for remaining in their traditional communities.

Federal Indian programs compensate our native peoples for the loss of their land, and I think the record will bear out that Native Hawaiian people are similarly situated to Alaska Natives and American Indians in this regard. Reasonable people can civilly debate the question of whether recognition of Native Hawaiians falls within the ambit of Congress's broad powers under the Indian Commerce Clause. Citing two law review articles, one pro and one con, the majority opinion in *Rice v. Cayetano* noted, "it is a matter of some dispute whether Congress may treat the Native Hawaiians as it does the Indian tribes." The majority then stated emphatically, "We can stay far off that difficult terrain, however."

But however difficult the terrain, I would suggest that the time has come for Congress to address the question. Congress has recognized the Native Hawaiians perhaps 100 times in designating eligibility for the same types of programs and services afforded to American Indians because of their status as Indians. I am speaking of the health programs and the housing programs. I fear that if Congress remains silent on whether Native Hawaiians are to be treated as American Indians, the legal challenges to these programs will continue and the intent of Congress, as reflected in those laws, may be frustrated.

I thank the Chairman for the time this morning and the opportunity to make these comments, and look forward to the testimony from the witnesses this morning.

Senator AKAKA. Thank you very much, Senator Murkowski.

I want to welcome the first panel this morning. I would like to introduce them. Again, I want to reiterate what the Chairman mentioned, that we may be having at 10:30 a.m. a vote on the floor of the House. As a result, we will have the first panel testify first.

Mr. Gregory Katsas is Principal Deputy Associate Attorney General, United States Department of Justice. The Department of Justice was invited to testify at the hearing because the department had issued a letter in 2005 opposing several aspects of reorganizing the Native Hawaiian government. Mr. Katsas will testify on the department's current views on S. 310.

Mr. Mark Bennett is Attorney General of the State of Hawaii, who is accompanied by Micah Kane, Chairman of the Hawaiian Homes Commission. Mr. Bennett will be testifying as a representative for the Honorable Linda Lingle, Governor of the State of Hawaii. He will testify about the State of Hawaii's support for S. 310, Congress's authority to develop a political relationship with a Native Hawaiian government and the constitutionality of S. 310.

Ms. Haunani Apoliona is Chairperson of the Board of Trustees of the Office of Hawaiian Affairs, who is accompanied by William Meheula, Legal Counsel. The Office of Hawaiian Affairs is an office of the State of Hawaii that was established in 1978 by the Hawaii State Constitution. The mission of the office is to protect and assist Native Hawaiian people. Chairperson Apoliona will testify about the history of the Native Hawaiian government, the history of the Office of Hawaiian Affairs, and the need to further the self- determination and self-governance of the Native Hawaiian people.

I would like the witnesses to know that your full statements will be made a part of the record.

Senator THOMAS. Mr. Chairman, Dr. Coburn may not be here. He would like to have his statement and questions be made part of the record.

Senator AKAKA. Thank you very much. That will be included in the record.

Mr. Katsas, you may now begin with your opening statement.

STATEMENT OF GREGORY G. KATSAS, PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. KATSAS. Thank you, Senator Akaka and Senator Thomas, for inviting me here to testify on the proposed S. 310. I know that this bill has a long history and is very personal to many. The Depart-

ment appreciates that many of the concerns identified in previous versions of the bill were resolved after lengthy meetings between your staff and ours. However, other concerns still remain.

The bill would create a new government based on suspect lines of race and ethnicity. The Administration strongly opposes this well-intentioned, but misguided attempt to divide sovereign power along such lines. The President has said that we must honor the great American tradition of the melting pot, which has made us one Nation out of many peoples. That sentiment is further reflected in our national motto, e pluribus unum, out of many, one.

This bill would undercut that principle. The bill broadly defines a separate class of Native Hawaiians to include all living descendants of the original Polynesian inhabitants of what is now modern-day Hawaii. Members of this class need not have any geographic, political or cultural connection to Hawaii, much less to some discrete Native Hawaiian community. In fact, the class encompasses about 400,000 individuals, including 160,000 who do not live in Hawaii, but are scattered throughout each of the 49 other States in the Union.

Members of the class are now diverse—racially, ethnically, and culturally. They are said to be the subjects of a government that has not existed since the late-1800s. They are afforded the privilege of forming a separate government, not because of actual membership in a discrete native community, but because they have at least trace elements of Polynesian blood.

The bill would grant broad governmental powers to this racially-defined group. In essence, Native Hawaiians would be authorized to conduct a constitutional convention. Through referenda, they would decide who may become a citizen in the new government, what powers the government may exercise, and what civil rights it must protect. They would also elect officers in the new government.

Once constituted, the new government would be authorized to negotiate with the United States over such matters as the transfer of land and natural resources, the exercise of civil and criminal jurisdiction, and the redress of claims against the United States. According to some supporters of the bill, the new government would even be able, on behalf of its constituents, to seek free association or total independence from the United States.

This drive toward separatism is troubling. It is wrong on its own terms, and it seeks to change settled understandings underlying the admission of Hawaii into the Union. In 1950, citizens of Hawaii voted overwhelmingly for statehood. Native Hawaiians supported statehood by a margin of two-to-one. Over the next decade, they and others advocated for statehood based on the premise that Hawaii had become, in the words of one member of Congress at the time, "a melting pot from which has been produced a common nationality, a common patriotism, a common faith in freedom and in the institutions of America."

After a decade-long campaign, Congress accepted that view, admitted Hawaii into the Union and, in contrast to what it had done in admitting other States, set aside no land for reservations.

The bill also raises troubling constitutional questions. The Supreme Court has made clear that classifications based on race and ethnicity receive the highest level of judicial scrutiny. To diminish

such scrutiny, supporters of the bill contend that Congress may permissibly recognize Native Hawaiians as an Indian tribe. Supreme Court precedent makes clear that the power to recognize Indian tribes, although broad, is not unlimited, and that courts will strike down any inappropriate extension of that power.

In *Rice v. Cayetano,* the Supreme Court identified the specific question of whether Congress may treat Native Hawaiians as an Indian tribe as one of considerable moment and difficulty. Two concurring Justices went farther and concluded that a State cannot permissibly treat as an Indian tribe the class at issue here, of Native Hawaiians broadly defined to include all descendants of Hawaii's original settlers.

The question whether Congress may define Native Hawaiians as an Indian tribe entitled to their own separate government raises serious constitutional concerns. But whatever the constitutionality of S. 310, the Administration as a policy matter strongly opposes any provision that would divide American sovereignty along lines of race and ethnicity.

Thank you for your attention. I would be pleased to address any questions.

[The prepared statement of Mr. Katsas follows:]

PREPARED STATEMENT OF GREGORY G. KATSAS, PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Thank you, Mr. Chairman and Mr. Vice Chairman, for inviting me here today to comment on S. 310, the proposed Native Hawaiian Government Reorganization Act of 2007. I would like to begin by acknowledging that many native Hawaiians, like many Americans of various other backgrounds, place great importance on maintaining their ancestral culture. The Administration strongly supports that laudable goal. However, this bill raises the question whether Congress can and should pursue that goal by providing for a separate government to be organized by, and presumably run for, only individuals of a specified race and ancestry. The Administration strongly opposes that proposal because we think it wrong to balkanize the governing institutions of this country along racial and ancestral lines, and because doing so would give rise to constitutional questions recently described by the Supreme Court as "difficult" and "considerable."

I. Policy Concerns

In July 2005, the Department of Justice conveyed to this Committee several concerns with S. 147, a prior version of what is now S. 310. We recognize that S. 310, as revised, addresses many of our concerns. Specifically, we noted that the prior bill might have created sweeping new trust or mismanagement claims against the United States, interfered with important military operations in Hawaii, caused confusion from overlapping and possibly conflicting jurisdiction, and effectively overridden a state-law prohibition on gaming. The current bill addresses each of these concerns, and we appreciate the Committee's efforts in this regard. Nonetheless, S. 310 continues to present the broader policy and constitutional concerns identified in our letters of June 13, 2005, and June 7, 2006. I will address the constitutional concerns below, and the policy concerns here.

After its hearing on the prior S. 147, the United States Commission on Civil Rights concluded that the bill, if enacted, "would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded varying degrees of privilege." *The Native Hawaiian Government Reorganization Act of 2005, A Briefing Before the United States Commission on Civil Rights, Briefing Report 15.* The government-sponsored division of Americans into such "discrete subgroups" is contrary to the goals of this Administration and, indeed, contrary to the very principle reflected in our national motto *E Pluribus Unum.* As President Bush has stated, we must "honor the great American tradition of the melting pot, which has made us one nation out of many peoples." The White House, President George W. Bush, *President Bush Addresses the Nation on Immigration Reform,* May 15, 2006, *http://www.whitehouse.gov/news/releases/2006/05/20060515-8.html.* By dividing government power along racial and ancestral lines, S.

310 would represent a significant step backwards in American history and would create far greater problems than those it might purport to solve. For these reasons, the Administration strongly opposes passage of S. 310.

Let me elaborate upon some of our policy concerns. First, in attempting to treat native Hawaiians as if they constituted an Indian tribe, the bill defines "Native Hawaiian," along explicitly racial and ancestral lines, to encompass a vast group of some 400,000 individuals scattered throughout the United States. Moreover, the bill does so regardless of whether such individuals have any connection at all to Hawaii, to other Hawaiians, to native Hawaiian culture, or to any territory (Hawaiian or otherwise) remotely resembling an Indian reservation. Such an expansive definition is unlike any other previously used to describe a federally-recognized Indian tribe. In other instances, Congress has either allowed tribes to define their own membership or, alternatively, has itself specified a limited initial definition, thus ensuring that members maintain a strong connection to the tribal entity. This bill requires virtually no such connection between putative tribal members and any present or past tribal entity. Moreover, in determining who may participate in establishing the new government proposed by S. 310, the Federal Government would itself be discriminating based on race and ancestry, rather than based on any discernible nexus of individuals to a tribe-like entity. Such discrimination, in determining who may participate in the public function of creating a new government, should be highly disfavored.

Second, S. 310 would grant sweeping powers to the proposed Native Hawaiian governing entity, and to the proposed Native Hawaiian Council charged with creating that entity. Section 7(c)(2)(B)(iii) of the bill provides that the Council may conduct a referendum regarding (1) "the proposed criteria for citizenship of the Native Hawaiian governing entity," (2) "the proposed powers and authorities to be exercised by the native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native American governing entity," (3) the "proposed civil rights and protection of the rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity," and (4) "other issues determined appropriate by the Council." In contrast, Indian tribes, by terms of the Indian Civil Rights Act, must generally respect the civil rights of their members as specified by Congress. *See* 25 U.S.C. §§ 1301–03. Even worse, the state Office of Hawaiian Affairs contends that this scheme would give native Hawaiians, as subjects of the new governing entity, "their right to self-determination by selecting another form of government including free association or total independence." See State of Hawaii's Office of Hawaiian Affairs, *Questions and Answers, http://www.nativehawaiians.com/questions/SlideQuestions.html.* For good reason, no other legislation has ever granted any state or Indian tribe—much less any broad group of citizens defined by race and ancestry—the right to declare their independence and secede from the United States. Indeed, the Nation endured a Civil War to prevent such secession.

The breadth of S. 310 is particularly problematic given the distinctive history of Hawaii itself. The Ninth Circuit has explained that "Congress has evidenced an intent to treat Hawaiian natives differently from other indigenous groups," because "the history of the indigenous Hawaiians, who were once subject to a government that was treated as a co-equal sovereign alongside the United States until the governance over internal affairs was entirely assumed by the United States, is fundamentally different from that of indigenous groups and federally-recognized Indian Tribes in the continental United States." *Kahawaiolaa v. Norton,* 386 F.3d 1271, 1281–82 (9th Cir. 2004).

Moreover, S. 310 effectively seeks to undo the political bargain through which Hawaii secured its admission into the Union in 1959. On November 7, 1950, *all* citizens of the Hawaiian Territory—including native Hawaiians—voted to seek admission to the United States. *See, e.g.,* Pub. L. No. 86–3, 73 Stat. 4. By a decisive 2–1 margin, native Hawaiians themselves voted for statehood, thus voluntarily and democratically relinquishing any residual sovereignty to the United States. *See* Slade Gorton & Hank Brown, Wall Street J., A–16 (Aug. 16, 2005); S. 147/H.R. 309: Process for Federal Recognition of a Native Hawaiian Governmental Entity, CRS Report for Congress, at CRS–25 n.111 (Sept. 27, 2005). And when Hawaii became a state in 1959, there was a broad nationwide consensus that native Hawaiians would *not* be treated as a separate racial group or transformed into an Indian tribe. Indeed, far from creating any guardian-ward relationship between the Federal Government and native Hawaiians, the 1959 Admission Act eliminated federal ownership over lands subject to the Hawaii Homes Commission Act of 1920, and it ceded other lands to Hawaii for the benefit of *all* of its citizens. *See* Pub. L. No. 86–3, § 5, 73 Stat. 4. Thus, the push to establish a native Hawaiian tribe as a distinct political

entity is of recent historical vintage. There was no such effort even at the time of annexation in 1898, much less at the time of statehood in 1959.

To the contrary, during the extensive statehood debates of the 1950s, advocates repeatedly emphasized that the Hawaiian Territory was a "melting pot" without significant racial divisiveness. For example, Senator Herbert Lehman (D–NY) noted that "Hawaii is America in a microcosm—a melting pot of many racial and national origins, from which has been produced a common nationality, a common patriotism, a common faith in freedom and in the institutions of America." Congressional Record at 4325 (Apr. 1, 1954). Senator Wallace Bennett (R–UT) recognized that, "[w]hile it was originally inhabited by Polynesians, and its present population contains substantial numbers of citizens of oriental ancestry, the economy of the islands began 100 years ago to develop in the American pattern, and the government of the islands took on an actual American form 50 years ago. Therefore, today Hawaii is literally an American outpost in the Pacific, completely reflecting the American scene, with its religious variations, its cultural, business, and agricultural customs, and its politics." Congressional Record at 2983 (Mar. 10, 1954). And Senator Clair Engle (D–CA) stated that, "[t]here is no mistaking the American culture and philosophy that dominates the lives of Hawaii's polyglot mixture." Testimony, Subcommittee on Territories and Insular Affairs of the Senate Committee on the Interior and Insular Affairs (Feb. 25, 1959).

These statements confirm that Hawaiians sought and obtained statehood as a single people determined to become citizens, not of any racially isolated government for "Native Hawaiians," but of the United States. S. 310 inappropriately seeks to undo the specific political arrangements secured with respect to statehood—to say nothing of the broader national ideal that, by virtue of the American melting pot, the United States should become one Nation from many, not many nations from one.

Third, for many of the reasons already discussed, S. 310 would encourage other indigenous groups to seek favorable treatment by attempting to reconstitute themselves as Indian tribes—and thereby to segregate themselves, at least in part, from the United States and its government. Under the logic of this bill, favored treatment as an "Indian tribe" would become potentially available to groups that, although defined by race and ancient ancestry, might today consist of racially and culturally diverse persons with no single distinct community, no distinct territory under control of that group, and no distinct leadership or government—a combination of features that sets native Hawaiians apart from traditional Indian tribes and native Alaskan groups. This new template could potentially be used by several other indigenous groups living in the United States, such as the native Tejano community in Texas, the native Californio community of California, or the Acadians of Louisiana—all of which could argue that they are entitled to preferential treatment and even a separatist government, no matter how integrated they have become into the American mainstream. *See Amicus curiae* brief, Campaign for a Color-Blind America, Americans Against Discrimination and Preferences, and the United States Justice Foundation, filed in *Rice v. Cayetano,* No. 98–818, at 19–25 (available at 1999 WL 374577). Indeed, one such Mexican-American organization, the Movimiento Estudiantil Chicano de Aztlan (MEChA), even seeks to reclaim Aztlan land from nine western states. *See* Statement of Bruce Fein on the Constitutionality of Creating a Race-Based Native Hawaiian Government (H.R. 309) Before the House Judiciary Subcommittee on the Constitution (July 19, 2005). Whatever might be said about past injustices, generations of Americans have fought and died to achieve a single, indivisible country that respects the freedom, equality, and heritage of all of its citizens. Congress should avoid a path that will lead to its balkanization.

Finally, S. 310 would create a race-based government offensive to our Nation's commitment to equal justice and the elimination of racial distinctions in the law. Section 3(10) of the bill defines the term "Native Hawaiian" as "the indigenous, native people of Hawaii" who are the "direct lineal descendant[s] of the aboriginal, indigenous, native people who . . . resided in the islands that now comprise the State of Hawaii on or before January 1, 1893." That definition incorporates elements of two highly odious classifications—race (by reference to the "indigenous" Polynesian inhabitants of what is now Hawaii) and ancestry (by reference to the "lineal descendant[s]" of such individuals)—without any redeeming connection to any present or past political entity that even remotely resembles an Indian tribe. In short, the bill classifies people not based on a political relationship like citizenship in a foreign country, or membership in a quasi-sovereign Indian tribe, but rather based purely on race and ancestry.

The corrosive effect of S. 310 is particularly acute given the geographic dispersion of its favored class of "Native Hawaiians." As noted above, such individuals need not have any political, geographic, or cultural connection to Hawaii at all—and in

fact live in each of the 50 states of the Union. Under this bill, throughout the United States, each of those favored persons would be afforded different rights and privileges from those afforded to his or her neighbors, based solely on race and ancestry classifications. Such differential treatment can be expected to encourage significant litigation and, much worse, to tear at the very fabric that makes us one Nation.

II. Constitutional Concerns

Beyond these fundamental policy concerns, we note that S. 310 directly and unavoidably engages constitutional questions that the Supreme Court has described as being of "considerable moment and difficulty."

Unless S. 310 can be justified as an exercise of Congress's unique constitutional power with respect to Indian tribes, its creation of a separate governing body for native Hawaiians would be subject to (and would almost surely fail) strict scrutiny under the equal protection component of the Fifth Amendment, because it singles persons out for distinct treatment based on their ancestry and race. *See Rice v. Cayetano,* 528 U.S. 495, 512–20 (2000). The Supreme Court has already held that separate legal classifications for native Hawaiians can run afoul of constitutional constraints. In Rice, the Court considered a Hawaii provision that limited the right to vote to trustees of the state Office of Hawaiian Affairs (OHA) to descendents of people who inhabited the Hawaiian Islands in 1778. *Id.* at 499. The Court held that this provision was "a clear violation of the Fifteenth Amendment," which prohibits the federal and state governments from denying the right to vote on account of race. *Id.* In reaching this conclusion, the Court rejected Hawaii's argument that the restriction was not a suspect classification subject to strict scrutiny, explaining that "[a]ncestry can be a proxy for race [and] is that proxy here." *Id.* at 514.

In further seeking to avoid strict scrutiny, Hawaii sought to rely on a prior Supreme Court decision that permitted certain tribal classifications in federal law. In *Morton v. Mancari,* 417 U.S. 535, 553–55 (1974), the Court rejected an equal protection challenge to an employment preference in the Bureau of Indian Affairs for members of federally-recognized Indian tribes. The Court concluded that, in light of "the unique legal status of Indian tribes under federal law," such a provision would be sustained if it was "reasonably related to fulfillment of Congress's unique obligation to the Indians." *Id.* at 551, 555. The Court stressed that the preference at issue was "not directed towards a 'racial' group consisting of 'Indians,'" but rather "applie[d] only to members of 'federally recognized' tribes," and was therefore "political rather than racial in nature." *Id.* at 554, n.24. Congress's power with respect to groups appropriately regarded as Indian tribes includes the establishment of a mechanism for the tribe to assume a greater degree of self-government, as Congress did when it enacted the Indian Reorganization Act of 1934. *See* 25 U.S.C. § 461 *et seq.* The question concerning the constitutionality of S. 310 thus becomes whether Congress could permissibly recognize native Hawaiians as one of "the Indian Tribes" referred to in the Constitution.

Relying on *Mancari,* Hawaii argued in *Rice* that, because native Hawaiians constituted the legal equivalent of an Indian tribe, the voting restriction at issue should be subjected only to rationalbasis review as a "political" classification. In framing that argument, the Court described as "a matter of some dispute"—and a question "of considerable moment and difficulty"—"whether Congress may treat the native Hawaiians as it does the Indian tribes." *Id.* at 519. The Court decided to "stay far off that difficult terrain." *Id.* at 519. Instead, it concluded that *Mancari* represents a "limited exception" to strict scrutiny of classifications based in part on race or ancestry, because the hiring preferences in *Mancari* involved the "political" status of recognized Indian Tribes and the "*sui generis*" nature of the BIA. *Id.* at 520. For these reasons, the Court explained that "sustain[ing] Hawaii's [voting] restriction under *Mancari*" would "require[] [the Court] to accept some beginning premises not yet established in our case law." *Id.* at 518.

Ultimately, the majority in *Rice* concluded that, "even if we were to take the substantial step of finding authority in Congress, delegated to the State, to treat Hawaiians or native Hawaiians as Tribes, Congress may not authorize a State to create a voting scheme of this sort." *Id.* at 519. In so doing, the Court stressed: "To extend *Mancari* to this context would be to permit a State, by racial classification, to fence out whole classes of its citizens from decisionmaking in critical state affairs." *Id.* at 522. The Court likewise emphatically rejected Hawaii's contention that the franchise could be restricted to native Hawaiians on the theory that the state OHA addressed only the interests of native Hawaiians. In response, the Court concluded that Hawaii's position "rests, in the end, on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain

matters. That reasoning attacks the central meaning of the Fifteenth Amendment." *Id.* at 523.

Justice Breyer, joined by Justice Souter, concurred in this result, but would have rejected Hawaii's argument in favor of the voting restriction at issue on the grounds that: "(1) there is no "trust" for native Hawaiians, and (2) OHA's electorate, as defined in the statute, does not sufficiently resemble an Indian tribe." *Rice,* 528 U.S. at 525 (Breyer, J., concurring). On the latter point, Justice Breyer opined that, by including "individuals with less than 1/500th native Hawaiian blood," the State's definition of the restricted electorate was "not like any actual membership classification created by any actual tribe" and went "well beyond any reasonable limit" that could be imposed to define tribal membership. *Id.* at 526–27.

The present bill, which purports to recognize a certain group of native Hawaiians as the equivalent of a federally-recognized Indian tribe, directly implicates the "difficult" constitutional question that the Supreme Court identified in *Rice*—whether Congress may constitutionally recognize native Hawaiians as an Indian tribe, thus rendering strict scrutiny inapplicable to preferences benefiting that racial and ancestral group. The bill also raises the further constitutional question addressed in Justice Breyer's concurring opinion—whether Congress may create a sweeping definition of membership depending only on lineal descent over the course of centuries.

The Supreme Court has long recognized the unique legal status of Indian tribes under federal law and the "special relationship" between the Federal Government and the Indian tribes. *Mancari,* 417 U.S. at 551–52. The primary source of Congressional authority to recognize Indian tribes is the Indian Commerce Clause of the Constitution, which states that "Congress shall have the Power . . . To regulate Commerce with . . . the Indian Tribes," just as it has power to regulate commerce among the States and with foreign nations. *See, e.g., McClanahan v. State Tax Comm'n,* 411 U.S. 164, 172, n.7 (1973.) The Court also has identified the Constitution's Treaty Clause, which authorizes the President, with the consent of the Senate, to enter into treaties, as a source of federal authority to recognize and deal with Tribes. *See Id.* The Federal Government's authority in this area is thus grounded in two constitutional provisions that recognize "the Indian Tribes" as political entities capable of engaging in commerce and making treaties. Indeed, the Court has explained that federally-recognized Indian tribes are political entities that retain some of their original sovereignty over their internal affairs. *United States v. Wheeler,* 435 U.S. 313, 322 (1978) ("The powers of Indian tribes are, in general, 'inherent powers of a limited sovereignty which has never been extinguished.' ") (citation omitted).

Although the Supreme Court has consistently acknowledged Congress' broad power to determine when and how to recognize and deal with Indian tribes, it has also observed that a predicate for the exercise of this power is the existence of a "distinctly Indian communit[y]." *United States v. Sandoval,* 231 U.S. 28, 45–46 (1913). Moreover, the Court has cautioned that Congress may not "bring a community or body of people within the range of this power by arbitrarily calling them an Indian Tribe," *Id.* at 46, and that the courts may strike down "any heedless extension of that label" as a "manifestly unauthorized exercise of that power," *Baker v. Carr,* 369 U.S. 186, 215–17 (1962).

The Supreme Court has looked to various factors in determining what constitutes an Indian Tribe within Congress's power to recognize. *Compare Worcester v. Georgia,* 31 U.S. 515, 557–59 (1832) (describing the "Indian nations" as distinct and self-governing political communities, "'a people distinct from others'"), *with Montoya v. United States,* 180 U.S. 261, 266 (1901) (describing a "Tribe" as "a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory"). The decision in *Rice v. Cayetano,* moreover, makes it uncertain how the Supreme Court would analyze the particular context of Native Hawaiians. On such uncertain legal terrain, it is the Administration's position that it is ill-advised to proceed with this legislation—particularly where, as here, there are strong policy reasons for not doing so.

Given the substantial historical, structural and cultural differences between native Hawaiians as a group and recognized federal Indian tribes, the Administration believes that tribal recognition is inappropriate and unwise for native Hawaiians. We are strongly opposed to a bill that would formally divide governmental power along lines of race and ethnicity.

Senator AKAKA. Thank you very much, Mr. Katsas.

Now, we will hear from Attorney General Mark Bennett.

STATEMENT OF MARK J. BENNETT, ATTORNEY GENERAL, STATE OF HAWAII; ACCOMPANIED BY MICAH KANE, CHAIRMAN, HAWAIIAN HOMES COMMISSION

Mr. BENNETT. Thank you, Mr. Akaka, Senator Thomas, Senator Inouye, Senator Murkowski. Thank you very much for inviting me here to express my and Governor Linda Lingle's strong support for S. 310.

We believe that this bill is fair, equitable, just, constitutional and, with respect, long overdue. This bill enjoys strong bipartisan support in the State of Hawaii, including from the Governor, the State Legislature, our elected Mayors, and County Councils.

I start my analysis of this bill as Hawaii's chief legal officer with the organic document admitting Hawaii to the Union, the Admissions Act, which contains within it specifically identified fiscal and trust obligations to Native Hawaiians imposed upon the State of Hawaii by this very Congress.

Congress could not, would not and did not condition Hawaii's entry into the Union upon Hawaii's perpetuating unceasing violations of the 14th Amendment. The very concept is anathema to Hawaii's admission to the Union. Nor has the Congress acted unconstitutionally for almost a century in passing more than 100 acts for the benefit of Native Hawaiians.

The legal premise underlying the Department of Justice's testimony casts doubt on the constitutionality of all of these acts, all of which have been defended when challenged by the Department of Justice. Never in the more than two centuries of this republic has the Supreme Court of the United States struck down the recognition of an aboriginal people by the Congress pursuant to the Congress's authority under the Indian Commerce Clause of the Constitution.

The Supreme Court has stated that in affording recognition, the Congress must act rationally. Indeed, given the recognition that the Congress has afforded all of America's other native peoples; given that the framers of the Constitution itself would have described the aboriginal inhabitants of the Hawaiian archipelago as Indians; given that the very crew members of Captain Cook who made the first Western contact with Hawaii described the inhabitants of the Hawaiian archipelago as Indians, a strong argument could be made that it would be irrational for the Congress not to recognize Native Hawaiians.

The Supreme Court has specifically stated that the recognition afforded to our native peoples is political and not racial. This bill specifically states that the recognition afforded Native Hawaiians is of a type and nature of the relationship the United States has with the several federally recognized Indian tribes, and indeed the specificity with which this recognition is described in the bill, no more and no less, is based on suggestions made in negotiations over the language of this bill by the Department of Justice.

If there were any doubt as to the constitutionality of the Akaka bill, I would respectfully suggest that that doubt was resolved by the recent United States Supreme Court decision in the *Lara* case. I find it curious that there is no citation to the *Lara* case in the Department of Justice's written testimony. In *Lara*, the Supreme Court described the powers of this Congress of recognition as "ple-

nary and exclusive." The Court also said: "The Constitution does not suggest that the Court should second guess the political branches' own determinations."

As for *Rice v. Cayetano,* it was dealing with 15th Amendment questions, not the question of the power of the Congress to afford recognition under the Indian Commerce Clause. Indeed, I would suggest respectfully that the Congress should not let fears of judicial activism or overreaching deter it from fulfilling an obligation to the last remaining one of our Nation's native peoples not yet recognized.

As the Chair pointed out, we engaged in extensive negotiations with the Administration, the Department of Justice, the Department of Interior, and the Department of Defense over non-constitutional objections to the Akaka bill. All of those objections were resolved. The language in the Akaka bill today recognizes and addresses those objections. There can be no claims against the United States. The Native Hawaiian Governing Entity must recognize the civil rights of the citizens of the Native Hawaiian Governing Entity, and indeed there is nothing in this bill to suggest the possibility of secession or separatism.

Native Hawaiians, Mr. Chairman, do not seek special or privileged treatment. Like our Nation's other patriotic native peoples, Native Hawaiians have fought in wars and died for our Country for almost 100 years, including today in Iraq and Afghanistan. Native Hawaiians seek only treatment equal to that afforded to other Native Americans. The Akaka bill affords Native Hawaiians that treatment, and I respectfully ask that you pass the Akaka bill.

Thank you.

[The prepared statement of Mr. Bennett follows:]

PREPARED STATEMENT OF MARK J. BENNETT, ATTORNEY GENERAL, STATE OF HAWAII

Good morning Chairman Dorgan, Vice Chairman Thomas, and members of the United States Senate Committee on Indian Affairs. Thank you for giving me the opportunity to address this very important bill.

This legislation, which I will refer to as the "Akaka Bill," in honor of its chief author and this body's only Native Hawaiian Senator, simply put, provides long overdue federal recognition to Native Hawaiians, a recognition that has been extended for decades to other Native Americans and Alaska Natives. It provides Native Hawaiians with a limited self-governing structure designed to restore a small measure of self-determination. American Indians and Alaska Natives have long maintained a significant degree of self-governing power over their affairs, and the Akaka Bill simply extends that long overdue privilege to Native Hawaiians.

The notion of critics that S. 310 creates some sort of unique race-based government at odds with our constitutional and congressional heritage contradicts Congress' longstanding recognition of other native peoples, including American Indians, and Alaska Natives, and the Supreme Court's virtually complete deference to Congress's decisions on such matters. It is for this Congress to exercise its best judgment on matters of recognition of native peoples. Although some have expressed constitutional concerns, those fears are unjustified. Congress should not let unwarranted fears of judicial overreaching curb its desire, and responsibility, to fulfill its unique obligation to this country's native peoples.

Native Hawaiians are not asking for privileged treatment—they are simply asking to be treated the same way all other native indigenous Americans are treated in this country. Congress has recognized the great suffering American Indians and Alaska Natives have endured upon losing control of their native lands, and has, as a consequence, provided formal recognition to those native peoples. Native Hawaiians are simply asking for similar recognition, as the native indigenous peoples of the Hawaiian Islands who have suffered comparable hardships, and who today continue to be at the bottom in most socioeconomic statistics.

The Constitution gives Congress broad latitude to recognize native groups, and the Supreme Court has declared that it is for Congress, and not the courts, to decide which native peoples will be recognized, and to what extent. The only limitation is that Congress may not act "arbitrarily" in recognizing an Indian tribe. *United States v. Sandoval.*[1] Because Native Hawaiians, like other Native Americans and Alaska Natives, are the indigenous aboriginal people of land ultimately subsumed within the expanding U.S. frontier, it cannot possibly be arbitrary to provide recognition to Native Hawaiians. Indeed, because Native Hawaiians are not only indigenous, but also share with other Native Americans a similar history of dispossession, cultural disruption, and loss of full self-determination, it would be "arbitrary," in a logical sense, to *not* recognize Native Hawaiians.

The Supreme Court has never in its history struck down any decision by the Congress to recognize a native people. And the Akaka Bill certainly gives the Court no reason to depart from that uniform jurisprudential deference to Congress's decisions over Indian affairs. The Supreme Court long ago stated that "Congress possesses the broad power of legislating for the protection of the Indians *wherever* they may be," *United States v. McGowan*,[2] "whether within its original territory or *territory subsequently acquired*." *Sandoval,* 231 U.S. at 46.

Critics, including some in the Justice Department,[3] wrongly contend that the Akaka Bill creates a race-based government. In fact, the fundamental criterion for participation in the Native Hawaiian Governing Entity is being a descendant of the native indigenous people of the Hawaiian Islands, a status Congress has itself characterized as being non-racial. For example, Congress has expressly stated that in establishing the many existing benefit programs for Native Hawaiians it was "*not* extend[ing] services to Native Hawaiians *because of their race,* but because of their unique status as the *indigenous people . . . as to whom the United States has established a trust relationship.*"[4] Thus, Congress does not view programs for Native Hawaiians as being "race-based" at all. Accordingly, a Native Hawaiian Governing Entity by and for Native Hawaiians would similarly not constitute a "race-based" government.

This is not just clever word play, but is rooted in decades of consistent United States Supreme Court precedent. The key difference between the category Native Hawaiians and other racial groups, is that Native Hawaiians, like Native Americans and Alaska Natives, are the aboriginal indigenous people of their geographic region. All other racial groups in this country are simply not native to this country. And because of their native indigenous status, and the power granted the Congress under the Indian Commerce Clause, Native Hawaiians, like Native Americans and Alaska Natives, have been recognized by Congress as having a special *political* relationship with the United States.

Those who contend that the Supreme Court in *Rice v. Cayetano*[5] found the category consisting of Native Hawaiians to be "race-based" under the Fourteenth Amendment and unconstitutional are simply wrong. The Supreme Court's decision was confined to the limited and special context of *Fifteenth* Amendment voting rights, and made no distinction whatsoever between Native Hawaiians and other Native Americans.

Furthermore, Congress has *already* recognized Native Hawaiians to a large degree, by not only repeatedly singling out Native Hawaiians for special treatment, either uniquely, or in concert with other Native Americans, but by acknowledging on many occasions a "special relationship" with, and trust obligation to, Native Hawaiians. In fact, Congress has already expressly stated that "the political status of Native Hawaiians is comparable to that of American Indians."[6] The Akaka Bill sim-

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[1] 231 U.S. 28, 46 (1913).

[2] 302 U.S. 535, 539 (1938).

[3] The Justice Department had other "non-constitutional" objections to or concerns with a previous draft of the bill, which were expressed in a July 13, 2005 letter from Assistant Attorney General William Moschella to Senator John McCain. Among the objections and concerns were that the then-bill did not include language explicitly precluding certain claims, that the bill needed to make clear that military facilities and military readiness would not be affected, that the bill need to specify the entity or entities that would have certain criminal jurisdiction, and that the bill needed to explicitly state that the Indian Gaming Regulatory Act would not apply and that the Native Hawaiian Governing Entity would not have gaming rights. Through negotiations which included the Indian Affairs Committee, Hawaii's Senators, the White House, the Justice Department, the Defense Department, and the State of Hawaii, all of these "non-constitutional" objections and concerns were resolved by new language which is preserved in S. 310.

[4] *See, e.g.,* Hawaiian Homelands Homeownership Act of 2000, Pub. L. No. 106–568, Section 202 (13) (B).

[5] 528 U.S. 495 (2000).

[6] *See, e.g.,* Native Hawaiian Education Act, 20 U.S.C. § 7512(D); Hawaiian Homelands Homeownership Act of 2000, Pub. L. No. 106–568, Section 202 (13)(D).

ply takes this recognition one step further, by providing Native Hawaiians with the means to reorganize a formal self-governing entity, something Native Americans and Native Alaskans have had for decades.

Importantly, when Congress admitted Hawaii to the Union in 1959, it expressly imposed upon the State of Hawaii as a condition of its admission two separate obligations to native Hawaiians. First, it required that Hawaii adopt as part of its Constitution the federal Hawaiian Homes Commission Act, providing homesteads (for a nominal rent) to native Hawaiians.[7] Second, Congress required that the public lands therein granted to the State of Hawaii be held in public trust for five purposes, including "the betterment of the conditions of native Hawaiians."[8] In admitting Hawaii on such terms, Congress obviously did not believe it was creating an improper racial state government, in violation of the Fourteenth Amendment, or any other constitutional command. Likewise, Congress should have no constitutional concern as to this bill, which simply (but importantly) formalizes the United States's longstanding special political relationship with the Native Hawaiian people.

Some opponents of the bill have noted that Native Hawaiians no longer have an existing governmental structure with which to engage in a formal government-to-government relationship with the United States. That objection is not only misguided and self-contradictory, but directly refuted by the Supreme Court's *Lara* decision[9] just 3 years ago. It is misguided because Native Hawaiians do not have a self-governing structure today only because the United States participated in the elimination of that governing entity, by helping to facilitate the overthrow of the Hawaiian Kingdom, and later annexing the Hawaiian Islands. Unlike other Native Americans who were allowed to retain some measure of sovereignty, Congress did not leave Native Hawaiians with any sovereignty whatsoever. It cannot be that the United States's complete destruction of Hawaiian self-governance would be the reason Congress would be precluded from ameliorating the consequences of its own actions by trying to restore a small measure of sovereignty to the Native Hawaiian people.

The objection is also self-contradictory because one of the very purposes and objects of the Akaka Bill is to allow Native Hawaiians to reform the governmental structure they earlier lost. Thus, once the bill is passed, and the Native Hawaiian Governing Entity formed, the United States *would* be able to have a government-to-government relationship with that entity.

Finally, and perhaps most importantly, the objection violates the Supreme Court's recent *Lara* decision, in which the Court acknowledged Congress' ability to "restorer[] previously extinguished tribal status—by re-recognizing a Tribe whose tribal existence it previously had terminated."[10] Indeed, *Lara* single-handedly eliminates this constitutional objection to the Akaka Bill, by recognizing Congress' ability to restore tribal status to a people who had been entirely stripped of their self-governing structure.

Those who say that Native Hawaiians do not fall within Congress' power to deal specially with "Indian Tribes" because Native Hawaiians are not "Indian Tribes," are simply wrong. For the term "Indian," at the time of the framing of the Constitution, simply referred to the aboriginal "inhabitants of our Frontiers."[11] And the term "tribe" at that time simply meant "a distinct body of people as divided by family or fortune, or any other characteristic."[12] Native Hawaiians easily fit within both definitions.[13]

Finally, some opponents of the bill contend that because the government of the Kingdom of Hawaii was itself *not* racially exclusive, that it would be inappropriate to recognize a governing entity limited to Native Hawaiians. This objection is absurd. The fact that Native Hawaiians over one hundred years ago, whether by

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[7] The Admission Act, Pub. L. No. 86–3, 73 Stat. 4 (1959), Section 4.

[8] *Id.,* Section 5.

[9] *United States v. Lara,* 541 U.S. 193 (2004).

[10] 541 U.S. at 203.

[11] *Declaration of Independence* paragraph 29 (1776); *see also* Thomas Jefferson, *Notes on the State of Virginia* 100 (William Peden ed. 1955) (1789) (referring to Indians as "aboriginal inhabitants of America"). Indeed, Captain Cook and his crew called the Hawaiian Islanders who greeted their ships in 1778 "Indians." *See* 1 Ralph S. Kuykendall, *The Hawaiian Kingdom* at 14 (1968) (quoting officer journal).

[12] Thomas Sheridan, *A Complete Dictionary of the English Language* (2d ed. 1789).

[13] Some opponents of the Akaka Bill argue that including all Native Hawaiians, regardless of blood quantum, is unconstitutional, citing the concurring opinion of Justices Breyer and Souter in *Rice v. Cayetano.* 528 U.S. at 524. But that opinion did *not* find constitutional fault with including all Native Hawaiians of any blood quantum *provided that was the choice of the tribe,* and not the state. *Id.* at 527. Because the Akaka Bill gives Native Hawaiians the ability to select *for themselves* the membership criteria for "citizenship" within the Native Hawaiian government, no constitutional problem arises.

choice or coercion, maintained a government that was open to participation by non-Hawaiians, should not deprive Native Hawaiians today of the recognition they deserve. Indeed, it is quite ironic that those who oppose the Akaka Bill because they believe it contradicts our nation's commitment to equal rights and racial harmony would use the historical inclusiveness of the Kingdom of Hawaii, allowing non-Hawaiians to participate in their government, as a reason to deny Native Hawaiians the recognition other native groups receive.[14]

In short, there is simply no legal distinction between Native Hawaiians and American Indians or Alaska Natives, that would justify denying Native Hawaiians the same treatment other Native American groups in this country currently enjoy.

The Akaka Bill, under any reasonable reading of the Constitution and decisions of the Supreme Court, is constitutional, just as is the Alaska Native Claims Settlement Act for Alaska Natives, and the Indian Reorganization Act for American Indian tribes—both of which assured their respective native peoples some degree of self-governance. The Supreme Court, as noted earlier, has made clear that Congress's power to recognize native peoples is virtually unreviewable.

At the very least, Congress should not refrain from exercising its authority and obligation to recognize native people because of a mere theoretical possibility the judicial branch could cast aside centuries of uniform precedent to assert judicial supremacy. Congress ought to act when it believes that what it is doing is just and right and within its constitutional authority. It should not allow unfounded fears of judicial activism to hamstring its responsibility to do the right thing.

And so I emphasize and repeat, that Native Hawaiians are not asking for privileged treatment—they are simply asking to be treated the same way all other native indigenous Americans are treated in this country. Congress long ago afforded American Indians and Alaska Natives formal recognition. The Akaka Bill would simply provide Native Hawaiians comparable recognition, as the indigenous peoples of the Hawaiian Islands. Formal recognition will help preserve the language, identity, and culture of Native Hawaiians, just as it has for American Indians throughout the past century, and Alaska Natives for decades. To use the poignant words Justice Jackson employed 60 years ago: "The generations of [Native people] who suffered the privations, indignities, and brutalities of the westward march . . . have gone . . . , and nothing that we can do can square the account with them. Whatever survives is a moral obligation . . . to do for the descendants of the [Native people] what in the conditions of this twentieth century is the decent thing."[15]

The Akaka Bill does *not* permit secession; it will *not* subject the United States or Hawaii to greater potential legal liability; and it does *not* allow gambling. Nor would passage of the bill reduce funding for other native groups, who, it should be noted, overwhelmingly support the bill. Instead, the Akaka Bill will finally give official and long overdue recognition to Native Hawaiians' inherent right of self-determination, and help them overcome, as the United States Supreme Court in *Rice* put it, their loss of a "culture and way of life." The Akaka Bill would yield equality for all of this great country's native peoples, and in the process ensure justice for all.

As the Attorney General of Hawaii, I humbly and respectfully ask that you support this important legislation.

Senator AKAKA. Thank you very much, Mr. Bennett.

Now, we will hear from Ms. Apoliona.

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[14] The same irony underlies the objection that Native Hawaiians should not be given recognition because they are not a fully segregated group within the Hawaiian Islands but are often integrated within Hawaii society at large, and sometimes marry outside their race. Those concerned about promoting racial equality and harmony should be rewarding Native Hawaiians for such inclusive behavior, or as we say in Hawaii, their "aloha" for people of all races, rather than using it against them. In any event, American Indians, too, have intermarried—at rates as high as 50 percent or more—and often venture beyond reservation borders, and yet those facts do not prevent them or their descendants from receiving federal recognition.

[15] *Northwestern Bands of Shoshone Indians v. United States,* 324 U.S. 335, 355 (1945) (Jackson, J., concurring).

STATEMENT OF HAUNANI APOLIONA, CHAIRPERSON, BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS; ACCOMPANIED BY WILLIAM MEHEULA, LEGAL COUNSEL TO THE OFFICE OF HAWAIIAN AFFAIRS

Ms. APOLIONA. Senator Akaka, Senator Thomas, Senator Inouye, Senator Murkowski, and all present, on behalf of the indigenous native people of Hawaii, I extend our aloha.

I am Haunani Apoliona. I serve as Chairperson of the Board of Trustees of the Office of Hawaiian Affairs. Seated behind me are Trustees Akana, Mossman and Stender. To my right is William Meheula, Counsel to the Board of Trustees.

The Office of Hawaiian Affairs was established in 1978 when the citizens of Hawaii participated in a statewide referendum to ratify amendments to the Hawaii State Constitution. The record of proceedings of this 1978 constitutional convention is clear that the Office of Hawaiian Affairs was established in order to provide the native people of Hawaii with the means by which to give expression to their rights under Federal policy to self-determination and self-governance.

In 1849, the government that represented the Native Hawaiian people entered into a treaty of friendship, commerce and navigation with the United States. In 1893, our native government was removed from power by force, but the United States Congress did not abandon us. One hundred years later, the Congress adopted a resolution extending an apology to the Native Hawaiian people for the United States' involvement in the overthrow of our native government.

In the intervening years, the Congress enacted well over 150 statutes that defined the contours of our political and legal relationship with the United States. Today, we, the indigenous native people of Hawaii seek enactment of S. 310. We do so in recognition of the fundamental principle that the Federal policy of self-determination and self-governance is intended to assure that the three groups of America's indigenous native people—American Indians, Alaska Natives, and Native Hawaiians—have an equal status under Federal law.

Mr. Meheula will continue with our comments.

Mr. MEHEULA. Good morning, Mr. Chairman, Mr. Vice Chairman, members of the Committee. After reading many, many cases concerning this issue, learning the history of Hawaii and the history of American Indians and Alaska Natives, and reading the many statutes that concern this issue, these are the five reasons why the Akaka bill is constitutional and not race-based.

The first one is, Native Hawaiians are the first aboriginal peoples of Hawaii. Number two, the Hawaiian Kingdom was an indigenous government that had treaties with the United States. Number three, the United States, by threat of force, overthrew the Hawaiian Kingdom, and the Hawaiian Kingdom lands were turned over to the United States. Number four, since annexation, there have been over 150 acts of Congress that have recognized the political status of Native Hawaiians, including the Admission Act. And number five, the Apology Resolution stated that Native Hawaiians have never relinquished their claims to their inherent sovereignty.

If you take all of those five factors and apply it to any of the cases, it says that Congress has the power to pass the Akaka bill and it will not be struck down in a court of law. A court of law will not second guess Congress on this issue.

Thank you very much.

Senator AKAKA. Thank you very much, Mr. Meheula.

[The prepared statement of Ms. Apoliona follows:]

STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
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WRITTEN TESTIMONY

Trustee Haunani Apoliona
Chairperson, Board of Trustees
Office of Hawaiian Affairs

U.S. Senate Committee on Indian Affairs
Hearing on S. 310,
The Native Hawaiian Government Reorganization Act
Thursday, May 3, 2007

Nā'Ōiwi 'Ōlino

E ō e nā 'Ōiwi 'Ōlino 'eā
Nā pulapula a Hāloa 'eā
Mai Hawai'i a Ni'ihau 'eā
A puni ke ao mālamalama 'eā ē

Ku'ē au i ka hewa, ku'ē!
Kū au i ka pono, kū!
Ku'ē au i ka hewa, ku'ē!
Kū au i ka pono, kū!

Answer, O Natives, those who seek knowledge
The descendants of Hāloa
From Hawai'i island in the east to Ni'ihau in the west
And around this brilliant world

I resist injustice, resist!
I stand for righteousness, stand!
I resist injustice, resist!
I stand for righteousness, stand!

INTRODUCTION

E nāalaka'i a me nā lālā o kēia Kōmike o nā Kuleana o ka 'Aha'ōlelo Nui o 'Amelika Hui Pū ia, aloha mai kākou. He loa ke ala i hele 'ia e mākou, nā 'Ōiwi 'ōlino o Hawai'i, a he ala i hehi mua 'ia e nā ali'i o mākou, e la'a, 'o ka Mō 'ī Kalākaua, ke Kamali'iwahine Ka'iulani, a me ka Mō'īwahine hope o ke Aupuni Mō'ī Hawai'i, 'o ia ko mākou ali'i i aloha nui 'o Lili'uokalani. A he nui no ho'i nā Hawai'i kūnou mai ai i mua o 'oukou e nānā pono mai i ke kulana o ka 'ōiwi Hawai'i, kona nohona, kona olakino, ka ho'onaauao a pēlāwale aku.

Ua pono ka helena hou a mākou nei a loa'a ka pono o ka 'āina, ke kulaiwi pa'a mau o ka lāhui 'ōiwi o Hawai'i pae'āina, 'o ia wale nō ka Hawai'i. No laila, eia hou no ka 'ōiwi Hawai'i, he alo a he alo, me ka 'Aha'ōlelo Nui.

ALOHA

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee on Indian Affairs, my name is Haunani Apoliona and I serve as the Chairperson of the Board of Trustees for the Office of Hawaiian Affairs (OHA), a body corporate established in 1978 by the Hawai'i State Constitution and implementing statutes.

The mission of OHA is to protect and assist Native Hawaiian people and to hold title to all real and personal property in trust for the Native Hawaiian people.

OHA is working to bring meaningful self-determination and self-governance to the Native Hawaiian people, through the restoration of our government-to-government relationship with the United States.

I testify today in support of enactment of S. 310 and its companion legislation in the House of Representatives, H.R. 505.

Federal Policy of Self-Determination and Self-Governance

On July 8, 1970, President Richard M. Nixon, announced that from that day forward, the policy of the United States would recognize and support the rights of America's indigenous, native people to self-determination and self-governance. In the ensuing 37 years, each succeeding U.S. President has formally reaffirmed this policy as the fundamental basis upon which Federal law and Federal actions affecting this nation's First Americans would be premised.

In carrying out this Federal policy, six U.S. Presidents have assured that there will be equal status and equal treatment under Federal law accorded to the three groups that make up this nation's population of indigenous, native people – American Indians, Alaska Natives and Native Hawaiians.

The Evolution of Self-Determination and Self-Governance Policy in the State of Hawai'i

In 1978, the citizens of the State of Hawai'i went to the polls to participate in an historic statewide referendum in which they voted to amend the Constitution of the State of Hawai'i to provide for the establishment of the Office of Hawaiian Affairs, as a means for Native Hawaiians to give expression to their rights – as one of these three groups of America's indigenous, native people – to self-determination and self-governance.

This State Constitutional amendment was ratified by all voters in Hawai'i. The action taken by the citizens of Hawai'i was a natural outgrowth of the responsibilities assumed by the State of Hawai'i upon its admission into the Union of States.

Specifically, as a condition of admission, the United States called upon the new State to accept, in trust, the transfer of lands set aside under Federal law for Native Hawaiians, the Hawaiian Homes Commission Act of 1920 – lands which had, up until that time, been held in trust for Native Hawaiians by the United States. In addition, the United States retained the exclusive authority to take enforcement action should there be any breach of the homelands trust. The provisions of the Act were incorporated into the State's Constitution.

The United States also ceded to the State of Hawai'i lands that had been previously transferred to the U.S., and imposed upon the State a requirement that those lands be held in a public trust for Native Hawaiians and the general public,

and further provided that the revenues derived from those lands be used for five authorized purposes, one of which was the betterment of the conditions of Native Hawaiians.

Less than twenty years later, the 1978 amendments to the State's Constitution establishing the Office of Hawaiian Affairs, authorized the Office of Hawaiian Affairs to hold title to all real and personal property then or thereafter set aside or conveyed to it and required that the property be held in trust for Native Hawaiians.

The Constitutional amendments further provided for a nine-member Board of Trustees that would be responsible for the management and administration of the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for the benefit of Native Hawaiians, including all income and proceeds from the pro rata portion of the public trust, as well as control over real and personal property set aside by state, federal or private sources and transferred to the Board for the benefit of Native Hawaiians.

Finally, the 1978 amendments to the State Constitution charged the Board of Trustees of the Office of Hawaiian Affairs with the formulation of policy relating to the affairs of Native Hawaiians. The amendments also reaffirmed the State's commitment to protect all rights, customarily and traditionally exercised by Native Hawaiians for subsistence, cultural and religious purposes and which were possessed by those Native Hawaiians who were descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778 – which was the date of the first recorded European contact with the aboriginal, indigenous, native people of Hawai'i – subject to the right of the State to regulate those rights.

Later, statutory provisions were enacted into law to implement the State's constitutional amendments which provided that:

> "**Declaration of Purpose.** (a) The people of the State of Hawai'i and the United States of America as set forth and approved in the Admission Act, established a public trust which includes among other responsibilities, betterment of conditions for native Hawaiians. The people of the State of Hawai'i reaffirmed their solemn trust obligation and responsibility to native Hawaiians and further declared in the state constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawai'i."

The duties of the Board of Trustees of the Office of Hawaiian Affairs, as defined by statute are extensive, and over the past nearly 30 years of its existence, the Office has been recognized not only within the State of Hawai'i, but nationally and internationally, as the principal governmental voice of the Native Hawaiian people.

Dismantling of the Original Native Hawaiian Government

For nearly a century before the forced annexation of the Kingdom of Hawai'i in 1898, the United States, Great Britain and France were amongst the many nations that recognized the Native Hawaiian government as sovereign, and entered into treaties and agreements with the Native Hawaiian government. Later, those who engineered the overthrow of the government of the Kingdom of Hawai'i, engaged in a systematic effort to dismantle the native government, and by their actions, severely compromised the ability of Native Hawaiians to manage their own affairs.

Notwithstanding the illegal overthrow of their government, Native Hawaiians steadfastly resisted the efforts to divest them of their rights to self-determination, and when the Provisional Government and its successor, the Republic of Hawai'i, sought the United States' annexation of Hawai'i – Native Hawaiians turned out in large numbers to register their opposition to annexation through petitions signed by hundreds of thousands of Native Hawaiians. (***See*** The Hui Aloha Aina Anti-Annexation Petitions, 1897 - 1898, compiled by Nalani Minton and Noenoe K. Silva (UHM Library KZ245.H3 M56 (1998)).

Within a little over 20 years of annexation, the Native Hawaiian population had been decimated. Native Hawaiians had been wrenched from their traditional lands, compelled to abandon their agrarian and subsistence ways of life, forced into rat-infested tenement dwellings, and were dying in large numbers. Those who survived disease and pestilence never gave up their quest for self-determination, and sought, through their delegate to the U.S. Congress, the enactment of a law that would enable them to be returned to their lands.

That law, the Hawaiian Homes Commission Act of 1920, set aside approximately 203,500 acres of land on the five principal islands comprising the Territory of Hawai'i, for homesteading and farming and the raising of livestock by Native Hawaiians. Upon statehood, the Hawaiian homelands that were held in trust by the United States for Native Hawaiians, were transferred to the State of

Hawai'i, and a provision of the compact between the United States and the State of Hawai'i required that the State assume a trust responsibility for the homelands.

Since 1921, the Hawaiian Homes Commission Act and the lands set aside under the Act have been administered by the Hawaiian Homes Commission, whose board is composed of predominantly Native Hawaiian commission members, and an agency of the State of Hawai'i, the Department of Hawaiian Homelands.

In 1993, the United States Congress adopted a joint resolution, extending an apology to the Native Hawaiian people for the United States' involvement in the overthrow of the Kingdom of Hawai'i, and acknowledging that the United States' annexation of Hawai'i in 1898 resulted in the "deprivation of the rights of Native Hawaiians to self-determination." (***See*** Apology Resolution, Public Law No. 103-150, 107 Stat. 1510 (1993), ***see also*** Robert N. Clinton, Arizona State Law Journal, "There is Not Federal Supremacy Clause for Indian Tribes," *Symposium on Cultural Sovereignty,* Spring 2002, 34 Ariz. St. L. J. 113, 165.)

Also acknowledging the impact of annexation on Native Hawaiian self-determination, the U.S. Departments of Justice and Interior called upon the Congress to "enact further legislation to clarify Native Hawaiians' political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body." U.S. Depts. of Justice and Interior, ***From Mauka to Makai: The River of Justice Must Flow Freely*** at 4 (Report on the Reconciliation Process Between the Federal Government and Native Hawaiians, Oct. 23, 2000).

Since the time of the overthrow of the Kingdom of Hawai'i, Native Hawaiians have given expression to their political leadership through organizations like the Royal Societies. Royal societies have continued to function from their founding to the present day and wield considerable political and cultural influence in the Native Hawaiian community. These royal societies formally link the modern day Native Hawaiian community with the Kingdom of Hawai'i. There are four societies -- the Royal Order of Kamehameha; 'Ahahui Ka'ahumanu; Hale O Nā Ali'i O Hawai'i; and Māmakakaua, Daughters and Sons of Hawaiian Warriors.

While each of the four has their own history and role, they share certain traits. All have royal origins, which are reflected in unique insignia and regalia; these unique insignia and regalia remain in use today and distinguish the four societies to Native Hawaiians. Each is also led by descendants of the royalty and chiefs who served at the society's founding and each currently has members and

active chapters statewide. Formal leadership resides in these modern day successors to the royal families and chiefs.

In yet another effort to maintain a distinct Native Hawaiian role in the evolution of Hawai'i's society, in December of 1917, Hawai'i's delegate to the U.S. Congress and a Native Hawaiian, Prince Jonah Kūhio Kalaniana'ole, initiated the establishment of a Hawaiian Civic Club in Honolulu, dedicated to the education of Native Hawaiians, the elevation of their social, economic and intellectual status as they promote principles of good government, outstanding citizenship and civic pride in the inherent progress of Hawai'i and all of her people.

Today, there are 52 Hawaiian Civic Clubs across the United States through which Native Hawaiians actively contribute to the civic, economic, health and social welfare of the Native Hawaiian community, support programs of benefit to the people of Hawaiian ancestry, provide a forum for full discussion of all matters of public interest, honor, fulfill, protect, preserve and cherish all sources, customs, rights and records of the Native Hawaiian ancient traditions, cemetery areas and the historic sites of Native Hawaiians. One of the Hawaiian Civic Clubs, Ke Ali'i Maka'āinana, is named in honor of Prince Jonah Kūhio Kalaniana'ole, and is primarily composed of members from Virginia, Maryland and the District of Columbia.

Another manifestation of Native Hawaiian self-determination is found in the State Council of Hawaiian Homestead Associations, which was established in 1987 to provide a means of expressing the collective voice of those Native Hawaiians residing on the homelands so that they might address issues common to all homesteaders and to make their concerns known to the Department of Hawaiian Homelands. The State Council is made up of 24 organizations representing over 30,000 Native Hawaiian homesteaders.

As the instrument of self-determination and self-governance that the citizens established it to be, the Office of Hawaiian Affairs is still the largest governmental entity representing the interests and needs of Native Hawaiians, which U.S. Census figures indicate include 401,102 Native Hawaiians residing in Hawai'i and the continental United States.

Restoration of the Native Hawaiian Government

Like our brothers and sisters in Indian country whose Federally-recognized tribal status was being terminated at the very time our State was being admitted to the Union of States, we seek Congress' action in restoring to the Native Hawaiian people that which the Congress has restored to the so-called "terminated" tribes – the Federal recognition of our governmental status, and a reaffirmation of the continuing political and legal relationship we have with the United States of America.

It is well documented that throughout the United States, Native governments are best suited to ensure the perpetuation of their people and their cultures through the development of educational and language programs, culturally-sensitive social services, and the preservation of traditional cultural practices. In Hawai'i, where our native culture is the primary attraction in a tourist industry that fuels the State's economy, preservation of Native Hawaiian culture is an economic imperative.

We believe that the restoration of our Native government will provide the Native Hawaiian people with the tools we need to achieve self-sufficiency, economic security, and provide for the health and welfare of our people.

Political and Legal Relationship with the United States

As Native Hawaiians, we believe that our continuing legal and political relationship with the United States is not in doubt. It is manifested in treaties and given expression in well over one hundred Federal laws.

Since 1910, the United States Congress has enacted over 160 Federal statutes that are designed to address the conditions of Native Hawaiians. As we have described, the Hawaiian Homes Commission Act of 1920 set aside over 200,000 acres of land in our traditional homeland – the Islands of Hawai'i – so that we might return to the land, build homes, grow our traditional foods, raise livestock and cattle, and teach our children the values that are so closely tied to our respect for the ***'āina***, and our desire to care for the land, ***mālama 'āina***.

The Act by which Hawai'i gained its admission into the Union of States is, of course, a Federal law – a compact between the United States of America and the

State of Hawai'i – which explicitly recognizes the distinct status of Native Hawaiians under both Federal and State law and the State's constitution, and which expressly provides for the protection of the Native Hawaiian people and the preservation of resources to provide for the betterment of the conditions of Native Hawaiians. No other group of citizens in the State of Hawai'i has this unique status.

The Hawaiian Homes Commission Act and the Hawai'i Admissions Act are but two of the Federal statutes that serve to define the contours of the political and legal relationship that Native Hawaiians have with the United States.

There is the Native Hawaiian Education Act, first enacted into law by the Congress, in 1988. It authorizes funding for preschool through university educational programs, including programs for the gifted and talented, and Native Hawaiian language immersion instruction and curricula – all of which have contributed to the improvement in educational performance and achievement of Native Hawaiian students, and the reduction of school drop-out rates.

There is the Native Hawaiian Health Care Improvement Act, also enacted by the Congress in 1988, which provides support to the Native Hawaiian health care systems that oversee the operation of clinics and outpatient facilities serving predominantly Native Hawaiian communities on the five principal islands of Hawai'i.

Title VIII of the Native American Housing Assistance and Self-Determination Act authorizes funding for the construction of housing for low-income Native Hawaiian families who are eligible to reside on the Hawaiian homelands and Federal loan guarantees for the development of housing projects on the homelands.

The Native Hawaiian Homelands Recovery Act enables the Department of Hawaiian Homelands to reclaim lands that become surplus to the needs of the United States and add them to the inventory of lands set aside for Native Hawaiians under the authority of the Hawaiian Homes Commission Act.

Nationwide, the Comprehensive Employment and Training Act has had its most successful implementation through a statewide nonprofit Native Hawaiian organization known as ALU LIKE, Inc., and other employment and training initiatives administered by the U.S. Department of Labor have helped to reduce the still high unemployment rates amongst Native Hawaiians.

The Native American Veterans' Housing Act provides support to Native Hawaiian veterans in enhancing homeownership opportunities.

Under the authority of the National Museum of the American Indian Act, Native Hawaiians were the first group of Native Americans to repatriate the human remains of their ancestors from the Smithsonian Institution.

The Native American Graves Protection and Repatriation Act provided the authorization necessary for Native Hawaiians to repatriate human remains from military installations in Hawai'i and to reacquire precious Native Hawaiian artifacts from museums and scientific institutions across the country and in Europe.

The Native American Languages Act was one of the first sources of Federal funding for the Native Hawaiian language immersion education programs that now serve as the basis not only for language immersion programs in Hawai'i's public schools but also as a national model for Native language instruction, curriculum development, and Native language preservation across the United States.

The Native American Programs Act and the support it provides through the Administration for Native Americans for the social and economic development of Native communities has enabled Native Hawaiian farmers to recapture the large-scale practice of growing taro root – an integral staple of the traditional Native Hawaiian subsistence diet. As Native Hawaiians have been able to return to their native foods, rates of diabetes, hypertension, heart disease and cancer have plummeted. This Act has also served as a principle impetus for the start-up of small Native Hawaiian businesses, particularly in rural areas of Hawai'i, where development capital and financial institutions are scarce.

The establishment of the Office of Native Hawaiian Relations in the U.S. Department of the Interior is one of the first institutional steps the Federal

government has taken in fulfilling the mission of the Apology Resolution to effect a reconciliation between the United States and the Native Hawaiian people.

And years ago, the Congress anticipated the restoration of the Native Hawaiian government when it enacted legislation to transfer an island in Hawai'i, Kaho'olawe, that had previously been used by the U.S. for military practice as a bombing range, to the State of Hawai'i. Pursuant to State statute, upon the reorganization of the Native Hawaiian governing entity, the Island of Kaho'olawe will be transferred to the Native Hawaiian government.

Conclusion

Across this great world of ours, there is a common history that the aboriginal, indigenous, native people and their descendants share. It is a history of conquest and domination over the lives of native people – it is a history of disenfranchisement and forced assimilation. It has resulted in the demoralization of native people and fostered a dependence on government that is alien to the natural ways of native people, regardless of where they reside.

What history has also shown is that given the opportunity, native people will readily and willingly cast aside the shackles of dependence and seize the initiative to take care of themselves and their families and their communities.

Some who have not experienced a similar history or the same hardships question why native people seek the right to shape their own destinies, control their own institutions, care for their children and provide for their future generations through the restoration and recognition of their governments. Perhaps they take these rights for granted and assume that all Americans enjoy the same opportunities. Sadly, they do not.

Through the enactment into law of S. 310, the Native Hawaiian people seek the restoration of their government, because they know and have witnessed how the Federal policy of self-determination and self-governance has not only had a dramatic impact on the ability of Native communities to take their rightful place in the American family of governments, but also how that policy has enabled Native people to grow and thrive.

The Native Hawaiian people want to assure a brighter future for their children, and the opportunity to participate in the larger society on the equal footing that better health care, access to quality education, safe communities, and preservation of their institutions and traditional cultural values affords.

Senator AKAKA. Mr. Katsas, doesn't the Department of Justice have to defend the constitutionality of any law that Congress enacts?

Mr. KATSAS. Senator, the Department will defend the constitutionality of any law you enact, subject to two exceptions. One is if there is no reasonable argument in favor of constitutionality. The

other is if there is a conflict between the legislative and executive branches. The second exception is not at issue here.

I can't speak for the Solicitor General. I can tell you that if he concludes that the constitutional questions here are close and difficult ones, I assume that applying that standard, he would defend the law. But the question whether the department would defend the law in litigation is different from the question of whether, in our best judgment, it raises tough constitutional issues, and also different from our policy judgment about whether or not it is an appropriate exercise of the Congress' power.

Senator AKAKA. In your testimony, Mr. Katsas, you reference a January, 2006 briefing report by the United States Commission on Civil Rights.

Mr. KATSAS. Yes.

Senator AKAKA. Given that the Department of Accountability published a May, 2006 report titled United States Commission on Civil Rights: The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its State Advisory Committees. During that briefing, was the Hawaii State Advisory Committee allowed to contribute to the briefing?

Mr. KATSAS. I don't know the answer to that. I think we sight the Commission on Civil Rights' report as evidence of the strong feelings on the other side of this question. We recognize there are strong disagreements and strong feelings on both sides.

Senator AKAKA. Let me ask you, do you know whether there were any dissenting views on the USCCR briefing report?

Mr. KATSAS. I believe there were.

Senator AKAKA. Well, I have a May 2, 2006 press release where the HICAC condemns the USCCR for planning and implementing its briefing without seeking or obtaining input from HICAC or acknowledging the past three HICAC reports on issues affecting Native Hawaiians. Do you know about that?

Mr. KATSAS. I am not familiar with the press release.

Senator AKAKA. It is my understanding that there were, and you did say there were dissenting views by Commissioners Melendez and Yaki, and that both raised grave concerns about the recent USCCR report opposing the bill, without listing findings or having a factual analysis.

My final question to you is, would you support a report that did not include findings or having factual analysis?

Mr. KATSAS. Obviously, Senator, the more analysis, the better. We are willing to have our constitutional and policy objections reviewed on the merits, and I am here to present them on the merits without any particular deference to the processes of one of many groups that have looked at this.

Senator AKAKA. Thank you.

Mr. Mark Bennett, does this bill create a race-based government?

Mr. BENNETT. No, Senator, absolutely not. If one accept the premise of the Supreme Court in *Morton v. Mancari,* which I believe we all must, that recognition afforded to aboriginal groups is based upon a political recognition, rather than a racial recognition. That is why Congress's judgments are reviewed under the rational basis test, rather than any other, and the recognition afforded here, which the bill explicitly states is of a type and nature of the rec-

ognition afforded American Indians, then clearly this is not racial recognition, but political.

Senator AKAKA. How will the bill affect personal property, social services and citizenship rights?

Mr. BENNETT. Senator, what the bill first expressly provides is that unless and until there are negotiations between the three governments, the status quo is completely maintained. The bill makes that clear in a number of different areas. This was, again, part of our negotiations with the Department of Justice and the Administration.

One of their textual objections to the bill was it didn't make clear what powers were and were not transferred upon recognition. The bill now makes absolutely clear that the status quo is absolutely maintained, except for the recognition, unless and until there is implementing legislation by the Congress.

The bill also makes clear that nothing in the recognition can affect land title or can give rise to any particular claim that didn't exist prior to the passage of the bill. Indeed, at the request of the Department of Justice, the bill even extinguishes for a period of time until further negotiations any extant claims that Native Hawaiians might have had against the Department of Justice. So at the Department of Justice's request, the bill improves the position of the United States vis-a-vis possible claimants.

So the short answer, which I recognize I haven't given, is that the status quo is maintained.

Senator AKAKA. Let me be more specific and ask, would this bill allow Native Hawaiians to bring action against private landowners?

Mr. BENNETT. Absolutely not.

Senator AKAKA. There are some claims that extending Federal recognition to Native Hawaiians will result in neighbors in Hawaii being subject to different civil and criminal laws. Would that be the case?

Mr. BENNETT. Well, the bill itself provides, again Senator, that the status quo as to jurisdiction is maintained. It is possible that the negotiations between the three governments could provide, for example, that similar to some type of tribal autonomy that Indian tribes have over their own members or other Indians on reservation land, that it is possible that negotiations could provide for jurisdiction over Native Hawaiians with regard to some matters similar to the type of jurisdiction that Native Americans exercise over their members, but there is no preordination of that. There is no requirement of that, and the bill contemplates that that could only come into place after negotiations between the Native Hawaiian governing entity, the United States and the State of Hawaii.

Senator AKAKA. Thank you.

Senator Thomas?

Senator THOMAS. Okay. Mr. Katsas, in your testimony, you cited cases suggesting Congress might not have the authority to recognize Native Americans as proposed here. The other witnesses, of course, have suggested it does have the authority. You seem both to rely on the Rice case. Is the Rice case about a Native Hawaiian organization like this one contemplated in S. 310?

Mr. KATSAS. Senator, it is about a classification like the one at issue here, namely a scheme in which there is a distinction in the law made with respect to all descendants of the original settlers of Hawaii. There are several aspects of *Rice* that raise constitutional questions.

The Supreme Court, looking at that kind of distinction, a majority of the Supreme Court concluded that it was race and ethnicity based. It sets up the tribal principles that General Bennett referred to under *Morton v. Mancari* as a limited exception to the fundamental constitutional norms preventing discrimination based on race and ancestry.

It makes clear that the Mancari principle may be less favored where issues of voting come into play, as they do here. And with respect to the exact question that we are discussing, whether Congress can mitigate these problems by recognizing Native Hawaiians as a tribe, a majority of the Supreme Court says that is a close and difficult question, and two concurring Justices, Justice Breyer and Justice Souter, addressed that question and concluded that a broad definition of Native Hawaiians, like the one at issue in Rice and like the one at issue here, is impermissible. It is too broad to encompass the constitutional notion of an Indian tribe.

Senator THOMAS. Okay. You indicated, and tell me very briefly, the number of authorities that you cite that would go to the Native Hawaiians under this arrangement. You listed a number of things in your statement.

Mr. KATSAS. Right.

Senator THOMAS. Like what?

Mr. KATSAS. I am sorry. Authorities that can be exercised by the government?

Senator THOMAS. No, by the Native Hawaiians, challenges to do things there, if they were given this authority.

Mr. KATSAS. I think General Bennett is exactly right that the final configuration of this government remains unknown and would need further implementing legislation to effect. Our point in citing both what is decided by referendum at the initial constitutional convention stage, and then what the governing entity can negotiate with the United States, our point in citing all of those things is that sovereignty is on the table. What is contemplated under this bill is the creation of a separate government. The department's concern is that goes substantially beyond a program providing a discrete benefit like access to land or health care. When you create a discrete government along these problematic lines, we start to have real policy concerns, as well as constitutional concerns.

Senator THOMAS. Okay, very quickly, Mr. Bennett, who currently own the lands conveyed to the Hawaii Homes Commission Act? Would these lands become Native Hawaiian reservations?

Mr. BENNETT. The State of Hawaii holds the fee title in trust for the benefit of Native Hawaiians of a particular blood quantum as required by the Admissions Act. The United States holds the right to enforce the trust obligations against the State of Hawaii. This is an asset that theoretically could be conveyed to the Native Hawaiian governing entity, but it would require substantial changes in Federal law and the Hawaii Constitution after negotiations. So

the transfer of that asset is possible, but it would require changes to Hawaii's organic law and to the Federal statutes.

Senator THOMAS. How would this legislation determine whose is a Native Hawaiian? It doesn't mention limits. What would the membership be? What standards do you have regarding blood quantum or residential requirements or any of those things?

Mr. BENNETT. Senator, what the bill does is it provides who initially can vote, in determining, among other things, the requirements for being a member of the entity. So this bill does not predetermine who can be a member of the Native Hawaiian governing entity, as I would respectfully say it shouldn't. That should be up to the people who will be voting, and they are people with a particular blood quantum who can trace their ancestry to the original aboriginal inhabitants of the Hawaiian archipelago.

So they will define who is a member of the Native Hawaiian governing entity. If I may add, that is why I would respectfully say Mr. Katsas's comment about Justice Souter's and Breyer's concurrence is inapt because what they were talking about are Government-imposed membership criteria. There is nothing in their concurrence, I would respectfully suggest, that would say that there is a problem if it is the members themselves of the entity who define the criteria in that way.

Senator THOMAS. So they can expand it wherever they chose?

Mr. BENNETT. I would suggest that if they were to expand it to beyond shared racial characteristics of Native Hawaiians, that it would likely not be constitutional, but they could certainly contract is to a subset of that.

Senator THOMAS. Thank you.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you very much, Senator Thomas.

Senator Inouye?

Senator INOUYE. Mr. Katsas, are you really serious that if this bill passes and the process is carried out, that the people in this entity would seek independence and practice separatism?

Mr. KATSAS. I hope that is not likely, Senator.

Senator INOUYE. But you mentioned that.

Mr. KATSAS. Well, we mention that because for some supporters of the bill, that is an issue that is up for grabs.

Senator INOUYE. There are a few people who might say that, but this nation went to war and killed thousands of people. Just recently, we shot up a family in the mountains because they refused to abide by the laws of the land. Do you think this Congress and our President would tolerate any move like this seriously?

Mr. KATSAS. I hope not, Senator, but the point is that the bill puts sovereignty on the table. Whether it is the more temperate version of some supporters who seek to preserve particular programs, or the more extreme version of some supporters who seek a high degree of independence, it is sovereignty on the table. The people eligible to engage in this government-forming process are defined by reference to race and ancestry.

Senator INOUYE. Don't you agree that every step in this process involves the Justice Department and the State?

Mr. KATSAS. I would agree that there are checks and balances as the process goes forward, but again, number one, sovereignty is on

the table; and number two, our constitutional and policy concerns really go to what happens at the front end.

Senator INOUYE. At best, it is limited sovereignty, isn't it? No Indian tribe has the right to have coins and currency. No Indian tribes may declare war. No Indian tribes may have ambassadors sent to other countries. It is a limited sovereignty. In fact, most Indian tribes even don't have police departments.

Mr. KATSAS. I would hope that the product of the negotiations would not put anything like that on the table. But whether it is a broader or narrower notion of sovereignty, we still are talking about a separate government, and we still are talking about a process where the people who get to design the government are defined by reference to race and ancestry.

Senator INOUYE. So in the negotiations, you would not recognize or approve separatism or the right to issue coins, or the right to send ambassadors, the right to have uniformed forces and declare war, would you?

Mr. KATSAS. I would hope not, but again, the negotiations encompass sovereignty issues like land transfers, like the exercise of civil and criminal jurisdiction, and like the redress of historic wrongs. It is an open-ended category. But our constitutional position, I want to be clear, does not depend on where the negotiations end up at the end of the process.

Senator INOUYE. You have indicated that you are against this because it covers Hawaiians who do not live in Hawaii.

Mr. KATSAS. It defines a class of people that is broader in its geographic dispersion, in its racial and cultural diversity, and in its lack of connection to an actual or de facto self-governing process.

Senator INOUYE. So if I am a Navajo and I want to be a part of the Navajo Nation, I must live in Navajo lands. Is that what you are saying?

Mr. KATSAS. No, that is not what we are saying. What we are saying is when you look at this particular class, and you look at all of the indicia of discreteness suggested in the Supreme Court cases, which are cultural, geographic, and political, this definition seems to us broader than all others, and that was the conclusion of Justice Breyer and Justice Souter speaking on the Supreme Court.

Senator INOUYE. Do you believe that the sovereignty of Indian nations is based on race?

Mr. KATSAS. I think when the Federal Government has relations with an existing tribe, or recognizes a tribe qua tribe as a political entity, the Supreme Court has said that is a political classification.

Senator INOUYE. Why can't that apply to Hawaiians?

Mr. KATSAS. Because the Supreme Court has also said that there are judicially enforceable limits on Congress's power to recognize tribes and the Supreme Court has made quite clear that if the case of Hawaii falls outside the scope of those limits, then we are left with a naked classification based on race and ancestry.

Senator INOUYE. The activity we are embarking on at this moment is unconstitutional?

Mr. KATSAS. It raises serious constitutional questions.

Senator INOUYE. The Administration is telling us that this is unconstitutional?

Mr. KATSAS. We are telling you that we think the constitutional questions are close. We think there is a litigation risk. The same considerations that make this a close constitutional question also cause us to oppose the bill on policy grounds, those considerations that the Federal Government should not seek to divide sovereignty on lines of race and ethnicity.

Senator INOUYE. General Bennett, do you agree in your responses?

Mr. BENNETT. No. I don't. I certainly couldn't dispute that there is a constitutional issue here, but it strikes me that in a circumstance where the court has never overturned the Congress' recognition of an aboriginal entity, that the conservative viewpoint on this is that it should be up to the particular political branch at issue, the Congress, to first define the limits of its authority, and it should not be deterred from that because of the possibility that a court, for the first time in our Nation's history, might overrule the political branch's exercise of its authority, especially given the *Lara* case in which the Supreme Court went to great lengths to talk about the plenary nature of the Congress' authority.

It is, of course, always possible that a court could rule that an action by a political branch is outside the limits of the Constitution, but the mere possibility that the court could do that, I would respectfully say, should not deter one of the political branches from acting. I don't believe it has deterred the political branches from acting to the limits of their authority in the court of our Nation's history, given again that there has never been the overturning of a determination by Congress, given the Supreme Court's recent discussion of the Menominee Restoration Act, that Congress has the power to recognize, to un-recognize, and then to recognize again.

And given at least the philosophical similarity of that situation to the instant situation, I would urge the Congress to act to do what it believes is right, and to let the court case sort itself out when it comes.

Senator INOUYE. Thank you very much, sir.

Senator AKAKA. Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman. I know we have a vote underway, so I will try to make my questions brief.

Mr. Katsas, I guess I am listening to your responses to Senator Inouye about sovereignty and the sovereignty issue being on the table. This is where the concern is coming from from the Department of Justice.

We certainly heard this in Alaska when we were dealing with our Alaska Native Land Claims Settlement. You know, we are going to have all these independent nations up there and the world as we knew it was going to come to an end. It was a cast of horribles. I think we look to what has happened in Alaska and how the Alaska Natives have truly demonstrated through their form of governments a model.

I think for the Department of Justice to say, well, for policy reasons, because this small aspect may be on the table, and to kind of inflame the issue, I think, by suggesting that we are going to have a separatist entity. We are going to see this factionalism, I think is doing an injustice to the argument from the get-go.

Several times now in the questioning, we have referred back to *Rice v. Cayetano.* I guess my question to you will be simple because it will require a yes or a no response. But do you believe that the Supreme Court holding in Rice expressly deprives Congress of the ability to determine that the Native Hawaiians fall within the ambit of the Indian Commerce Clause?

Mr. KATSAS. The one-word answer is no. The qualification is that although Rice has no explicit holding to that effect, it does have analysis that underscores our concerns.

Senator MURKOWSKI. You know that case well, but in Rice, the majority expressly states we are going to stay far away from that difficult terrain, and that was a comment that I had made in my opening as well.

Mr. Bennett, let me ask you, you have mentioned several times that the Department of Justice has apparently neglected to mention the *Lara* case. I will admit that I am not familiar with that holding, but based on what you have given the Committee this morning, I guess we have not yet specifically concluded, either from *Rice,* or perhaps you find greater assurances in the *Lara* case, that in fact the constitutional issue that is being raised here is one that, in your opinion, is not as problematic as Justice is laying it out at this point.

Mr. BENNETT. Yes. I think that even the concurrence and the difficult terrain comment in *Rice* has to be viewed through the lens of *Lara*, where the court went to great pains to discuss the plenary authority of Congress, where it even said we are not going to suggest what the metes and bounds are of the Congress' authority.

I think that that is part of the philosophy that underlay *Morton v. Mancari,* that when you were talking about the Congress exercising its constitutional right to develop political relationships, that those are determinations uniquely suited to the political branches of government, and not to the courts. I believe that that was the point made by the majority in *Lara*, that these kinds of political decisions ought to be left to the political branches.

Senator MURKOWSKI. In the statement provided by the Department of Justice, it suggests that the State of Hawaii is somehow or other backing out on the bargain by which Hawaii was granted statehood, just by the nature of this Akaka bill. Was there any such bargain? I believe your statement initially was that you couldn't and there were no conditions such as this to statehood. But I would just like you to repeat that again.

Mr. KATSAS. Is that for me?

Senator MURKOWSKI. No, that is for Mr. Bennett.

Mr. BENNETT. I would say two things. First of all, I find in this regard the department's comments ironic because the Admissions Act specifically requires fiscal and trust obligations by the State of Hawaii toward Native Hawaiians. What underlays the department's testimony that benefits for Native Hawaiians are perhaps unconstitutionally racial in nature, that it is part of the bargain that the State of Hawaii must fulfill these obligations. If they are somehow illegal under the 14th Amendment, then I find the comments about the breaking a political bargain ironic.

But putting that aside, there is nothing in the Admissions Act or the debate preceding the Admissions Act which suggests that

the type of recognition afforded other Native Americans could not be afforded at sometime in the future to Native Hawaiians, that that somehow is breaking the bargain either philosophically, legally, or in some other sense. There is no historic basis for that. America is a great melting pot and there is nothing about that that is inconsistent with affording recognition to Alaska Natives, to American Indians, or to Native Hawaiians.

Senator MURKOWSKI. And then just to quickly follow up on that, Ms. Apoliona, it has been suggested that Native Hawaiians have somehow or other chosen to abandon their distinct culture and community and truly their ways at the time of Statehood in order to become Americans. I look at our situation in Alaska, and just because you are an Eskimo does not mean that you are not an American.

I guess the question to you is whether or not you believe that Native Hawaiians have sought to retain their very distinct culture since the overthrow of the monarchy, or whether, as the Department of Justice insists, that you are completely assimilated?

Ms. APOLIONA. We are not completely assimilated. Since the overthrow, Native Hawaiians have continued to assert our culture and our traditions by practice, by continuation of our language. The Native Hawaiians have continued their bridge from governance from a traditional time to the present time, through our royal societies. There is a continuing effort by Native Hawaiians, through the organization of our civic clubs, Hawaiian civic clubs that continue to today. There are homesteaders who continue to assert their role and their traditions and practices as well.

And even at the time of the overthrow, Native Hawaiians asserted opposition to the annexation and it is documented. We have continued to carry our traditions and our ancestors forward with us, even to today. We certainly are not assimilated. I am an example sitting before you today of the Office of Hawaiian Affairs, and our efforts to continue to advocate for Native Hawaiians going forward for continuing benefits and the well-being of our native people.

Senator MURKOWSKI. Thank you.

Thank you, Mr. Chairman.

Senator AKAKA. Thank you, Senator Murkowski.

We have a vote here on the Floor. We can have a second round after this recess. I would like at this time for this Committee to stand in recess until the vote is concluded.

[Recess.]

Senator AKAKA. The Committee will be in order. We will resume questioning of the first panel.

Mr. Meheula, we recognize that some in the native community seek independence from the United States, while others prefer to seek Federal recognition. From your point of view, do you think that Native Hawaiian supporters of this bill seek to secede from this Union?

Mr. MEHEULA. No, Senator Akaka. There is a loud small minority that sometimes voices independence, but they do not support the bill. The supporters of the bill want to work within the Indian Commerce Clause power. The way the bill is set up, it provides that before there is even an election of officers for the Native Ha-

waiian Governing Entity, that the Department of Interior has to certify the organic documents. One of the criteria that they have to satisfy themselves of is that the organic documents are consistent with applicable Federal law, which of course would not allow independence.

I think the other way to look at that issue is that the majority, in fact about 75 out of 77 State Senators and Representatives in our State support the Akaka bill. A poll was taken that showed that 84 percent of the Hawaii residents support Federal recognition for Native Hawaiians. That would not be the case if they thought that there was even a small possibility of independence.

Senator AKAKA. Along the line of the native peoples, I would like to ask Mr. Micah Kane a question, and give you an opportunity to answer Senator Mikulski's question. My question to you is, are the Native Hawaiians assimilated?

Mr. KANE. I think the irony of that question is that in Hawaii, Americans have assimilated to Hawaiians. Hawaiians have not assimilated to Americans. You have seen in the cultural practices of our hula, where non-Hawaiians, thousands of them, participate in hula festivals practicing our cultural hula. It is seen in the thousands of non-Hawaiians who practice in our language in our charter schools and in our immersion schools. It is seen in the practices of our cultural practices on a family basis, in celebrating a child's one year luau, where non-Hawaiians practice that.

So it is quite ironic where the question is posed in a way where are Hawaiians assimilating to American, when in Hawaii is it non-Hawaiians who have assimilated to our culture and the value set of welcoming people to our lands.

Taking it one step further, that value set of welcoming others as a melting pot in Hawaii has brought us to defending our trust in Hawaii in Hawaiian lands. I find that quite ironic.

Senator AKAKA. Mr. Kane, what is your feeling about the Akaka bill and what significance it has for the Native Hawaiians?

Mr. KANE. As the Chairman of the Hawaiian Homelands Commission, we spend an inordinate amount of time defending our right to exist as a native trust in Hawaii. We spend millions of dollars defending our right to exist, when our efforts should be put in fulfilling the fiduciary responsibilities that are stated in the Hawaiian Homes Commission Act.

So this Act has a tremendous impact on our ability to continue to serve the Hawaiian people and to serve the State of Hawaii. Today, the Hawaiian Homes Commission and the Department of Hawaiian Homelands is the largest residential developer in the State of Hawaii. One hundred percent of the homes that we build are affordable. We are part of the fabric of Hawaii. We are part of the success of Hawaii, and we are part of helping our State address many of the crisis issues that are important to us, like housing.

Our lands in many ways are used to generate revenue that provide us with a self-sufficient opportunity to operate. Many of our non-Native family members use our lands in order to work. We manage over 400 different land dispositions that provide employment to companies throughout our State. It generates millions of Federal tax dollars and State tax dollars.

So this bill is critical to allowing our department to exist as it does today. The issue at hand today and the consideration by Congress by some, especially by people in Justice, may seem like a quantum leap for them, but for us in Hawaii it is just a natural progression. People in Hawaii see the operation of the Department of Hawaiian Homelands. They embrace it. They see the operation of the Office of Hawaiian Affairs. They embrace it. And for those reasons, they embrace this Act.

Senator AKAKA. Thank you very much, Mr. Kane.

Senator Inouye?

Senator INOUYE. I thank you very much, Mr. Chairman.

I just wanted to provide a few statistics. During the Vietnam War, only one National Guard infantry brigade was sent to Vietnam. That brigade was the Hawaii National Guard. Many were wounded. Many were killed. We did not complain. A disproportionately large number of the members of that Guard were Native Hawaiians.

At this moment, we have National Guard members from Hawaii in Iraq. A disproportionately large number of members of that brigade are from the Native Hawaiian community. They are just as American as anyone else and to suggest that they may involve themselves in separatist movements I think is an insult to them.

As for involvement in our government, they are in the highest leadership position in every category. The last Governor of the Territory of Hawaii was a distinguished member of the Native Hawaiian community. One of the first governors of Hawaii was a distinguished Native Hawaiian. We have an abundance of Native Hawaiians in the legislature, as mayors. Right now, the Mayor of Honolulu and the Mayor of Maui are all Polynesians.

So I am certain that the Native Hawaiian community in Hawaii is well prepared to run a very responsible government entity. We are looking forward to that, sir.

Thank you.

Senator AKAKA. I want to thank you all for the questions. I want to thank our first panel for being here today and for your responses. I want to thank those who have come so far to attend this hearing. As you know, this hearing has been focused on the legal aspects of the bill. I want to thank all of your for contributing towards that for the Committee. It may well be very helpful.

So mahalo noeloa. Thank you very much.

Now, I would like to have our second panel come forward.

Mr. William Burgess represents Aloha for All. Mr. Burgess is a retired attorney who now advocates against the reorganization of a Native Hawaiian government. Mr. Burgess will testify in opposition to S. 310, raising various concerns, including his concern that the bill would divide the State into separate racial jurisdictions and violate the equal protection of the laws.

Mr. Viet Dinh is a professor of law at Georgetown University Law Center. Professor Dinh will testify about Congress's authority to establish a process for the reorganization of a Native Hawaiian entity. Mr. Dinh is one of the authors of a recent paper on this matter.

Mr. Burgess, will you please proceed with your statement?

STATEMENT OF H. WILLIAM BURGESS, ALOHA FOR ALL

Mr. BURGESS. Aloha and thank you.

Senator AKAKA. Aloha.

Mr. BURGESS. Mr. Chairman, thank you.

S. 310 would be the first step in the breakup of the United States. Its premise is that Hawaii needs two governments, one in which everyone can vote and that government must become smaller and weaker; and one in which only Native Hawaiians can vote, and that one must become bigger and stronger as the other government becomes smaller and weaker.

In the negotiation process called for by S. 310, transfers go only one way. Those transfers are unlimited in scope and in duration. It can and very likely will, that process of negotiation, continue slice by slice, year after year, until the State of Hawaii is all gone.

But even then, the process won't be over because there are today living descendants of the indigenous people of every State in the Union. Surely, they will take notice and demand their own governments.

In 1778 when Captain Cook's ships happened upon the Hawaiian Islands, they found the most stratified of the Polynesian chiefdoms. They found a system that was referred to as the kapu system, in which high rank holds the rule and possesses the land title. Commoners were landless and subject.

At that very time in history, when Captain Cook's ships arrived in Hawaii, the people of the United States were engaged in a rebellion against a monarchy which attempted to subjugate them. They were in the process of creating on that continent a new Nation conceived in liberty and dedicated to the principle that all men are created equal.

Pretty soon after that, the histories of the Kingdom of Hawaii and the people of Hawaii and the people of the United States intertwined, not by conquest, but by trade, by mutual exchanges between people that were mutually beneficial. Soon, Hawaiians themselves liked the new system. They liked being part of the world trade because it brought them benefits. In 1840, Hawaii adopted its first constitution. That constitution began with a preamble that said God hath made of one blood all nations of men to dwell on the earth in unity and blessedness. God hath also bestowed certain rights alike on all men and all chiefs and all people of all lands.

Since that time, the people of Hawaii began progressing from the harsh kapu system and moved slowly and inexorably toward freedom and liberty and equality.

And then that process at some point reversed itself. I believe the time at which that reversal of direction took place was in 1921. Ironically, it happened because of the Congress of the United States adopting the Hawaiian Homes Commission Act. For the first time in Hawaii, and for the first time in the United States, explicit race was used and imposed on the people of Hawaii and on the people, indirectly, of the United States. It said that the beneficiaries of the Hawaiian Homes Commission Act were those of not less than one half part of the races that inhabited the Hawaiian Islands previous to 1778.

Since that time, the people of Hawaii have been going back down the dark path toward racial supremacy and separatism. Today, the

control of the State of Hawaii is not in the people. Sovereignty of the people has been eroding, and today, because as we have seen from the Broken Trust article recently and the book that was recently published, the book by several distinguished citizens of Hawaiian ancestry, including Sam King, the senior Federal judge, and the other distinguished Hawaiian people who wrote that Broken Trust article, the government of the State of Hawaii has been compromised. The separation of powers has been erased in Hawaii. It is not the people who rule.

But now the Akaka bill would polish it off. It would be the end of Hawaii as being governed by the people of Hawaii, and it would reimpose the dark rule that existed before and the dark rule that has existed everywhere in the world in which racial governments have held the rule.

Hawaiians don't need it. The census 2000 showed, and an even more recent survey last year showed, and particularly in the example of California, where people of Hawaiian ancestry, that is the largest population of Hawaiians outside of the State of Hawaii, with 60,000 at that time and slightly more estimated now. It happens that in the recent survey by the census, that the sample of people of Hawaiian ancestry happened to be almost exactly similar to the age of the sample population of the entire State of California.

The demographics showed that Hawaiians are fully capable without governmental assistance, without the Akaka bill, of succeeding in free enterprise under the regime of equality, because their family incomes and their household incomes exceeded that of the median population of California, and the ages were similar.

The people of Hawaii don't want the Akaka bill. The vote that was taken in the 1959 plebiscite was 94 percent in favor of statehood. That means that at least two our of three of every Native Hawaiian that voted in 1959 said yes for statehood. They said yes for the State boundaries. In the two more recent comprehensive polls, the answers were by all the people of Hawaii, including Native Hawaiians, the answers were two to one no to the question of, do you want Congress to pass the Akaka bill.

With all due respect to our distinguished Senators, I would respectfully submit that the best system for Hawaiians and for all the rest of us is one in which like, as in sports, everyone plays the game by the same rules. I ask you to resoundingly and finally and firmly say no to this bill.

[The prepared statement of Mr. Burgess follows:]

PREPARED STATEMENT OF H. WILLIAM BURGESS, ALOHA FOR ALL [1]

Aloha and thank you for inviting me to testify about this bill which would brush aside core underpinnings of the United States itself.

Two years and three months ago, Sen. Inouye, in his remarks on introduction of the then-version of the Akaka bill (S. 147) at 151 Congressional Record 450 (Senate,

[1] Aloha for All, is a multi-ethnic group of men and women, all residents, taxpayers and property owners in Hawaii. We believe that Aloha is for everyone; every citizen is entitled to the equal protection of the laws without regard to her or his ancestry.

For further information about the Akaka bill see: *http://www.aloha4all.org* (click on Q&A's) and *http://www.angelfire.com/hi2/hawaiiansovereignty/OpposeAkakaBill.html* or email *hwburgess@hawaii.rr.com.*

Tuesday, January 25, 2005) conceded that *federal Indian law does not provide the authority for Congress to create a Native Hawaiian governing entity.*

"Because the Native Hawaiian government is not an Indian tribe, the body of Federal Indian law that would otherwise customarily apply when the United States extends Federal recognition to an Indian tribal group does not apply."

"That is why concerns which are premised on the manner in which Federal Indian law provides for the respective governmental authorities of the state governments and Indian tribal governments simply don't apply in Hawaii."

There being no tribe, the Constitution applies. The Akaka bill stumbles over the Constitution virtually every step it takes.

- As soon as the bill is enacted, *a privileged class would be created in America.* §§2(3) & (22)(D) and §§3(1) & (8) would "find" a "special political and legal relationship" between the United States and anyone with at least one ancestor indigenous to lands now part of the U.S. that "arises out of their status as aboriginal, indigenous, native people of the United States." Creation of a hereditary aristocracy with a special legal and political relationship with the United States is forbidden by the Anti-Titles of Nobility clause of the Constitution.

This "sleeper" provision would also have profound *international and domestic consequences for the United States.* For over 20 years, a draft Declaration of Indigenous Rights has circulated in the United Nations. The U.S. and other major nations have opposed it because it challenges the current global system of states; is "inconsistent with international law"; ignores reality by appearing to require recognition to lands now lawfully owned by other citizens." In November 2006, a subsidiary body of the U.N. General Assembly rejected the draft declaration proposing more time for further review. Enactment of the Akaka bill would undo 20 years of careful diplomatic protection of property rights of American citizens abroad and at home.

- Also immediately upon enactment, *superior political rights are granted to Native Hawaiians,* defined by ancestry: §7(a) The U.S. is deemed to have recognized the right of Native Hawaiians to form their own new government and to adopt its organic governing documents. No one else in the United States has that right. This creates a hereditary aristocracy in violation of Article I, Sec. 9, U.S. Const. "No Title of Nobility shall be granted by the United States."
- Also, under §8(a) upon enactment, the delegation by the U.S. of authority to the State of Hawaii to "address the conditions of the indigenous, native people of Hawaii" in the Admission Act "is reaffirmed." This delegation to the State of authority to *single out one ancestral group for special privilege* would also seem to violate the prohibition against hereditary aristocracy. The Constitution forbids the United States from *granting titles of nobility* itself and also precludes the United States from authorizing states to bestow hereditary privilege.
- §7(b)(2)(A)&(B) Requires the Secretary of the DOI to appoint a commission of 9 members who "shall demonstrate . . . not less than 10 years of experience in Native Hawaiian genealogy; and . . . ability to read and translate English documents written in the Hawaiian language," This thinly disguised intent to restrict the commission to Native Hawaiians would likely violate the Equal Protection clause of the Fifth Amendment, among other laws, and would *require the Secretary to violate his oath to uphold the Constitution.*
- §7(c)(1)(E) & (F) require the Commission to prepare a roll of adult Native Hawaiians and the Secretary to publish the racially restricted roll in the Federal Register and thereafter update it. Since the purpose of the roll is to *deny or abridge on account of race the right of citizens of the United States to vote,* requiring the Secretary to publish it in the Federal Register would cause the Secretary to violate the Fifteenth Amendment and other laws.
- §7(c)(2) Persons on the roll may develop the criteria and structure of an Interim Governing Council and elect members from the roll to that Council. *Racial restrictions on electors and upon candidates both violate the Fifteenth Amendment and the Voting Rights Act.*
- §7(c)(2)(B)(iii)(I) The Council may conduct a referendum among those on the roll to determine the proposed elements of the organic governing documents of the Native Hawaiian governing entity. Racial restrictions on persons allowed to *vote in the referendum would violate the 15th Amendment and the Voting Rights Act.*
- §7(c)(2)(B)(iii)(IV) Based on the referendum, the Council may develop proposed organic documents and hold elections by persons on the roll to ratify them. This would be the *third racially restricted election and third violation of the 15th Amendment and the Voting Rights Act.*

- § 7(c)(4)(A) Requires the Secretary to certify that the organic governing documents comply with 7 listed requirements. Use of the roll to make the certification would violate the Equal Protection clause of the Fifth Amendment, among other laws, and would, again, require the Secretary to violate his oath to uphold the Constitution.
- § 7(c)(5) Once the Secretary issues the certification, the Council may hold elections of the officers of the new government. (If these elections restrict the right to vote based on race, as seems very likely) they would violate the 15th Amendment and the Voting Rights Act.)
- § 7(c)(6) Upon the election of the officers, the U.S., without any further action of Congress or the Executive branch, "reaffirms the political and legal relationship between the U.S. and the Native Hawaiian governing entity" and recognizes the Native Hawaiian governing body as the "representative governing body of the Native Hawaiian people." This would violate the Equal Protection clause of the 5th and 14th Amendments by giving one racial group political power and status and their own sovereign government. These special relationships with the United States are denied to any other citizens.
- § 8(b) The 3 governments may then negotiate an agreement for:

  transfer of lands, natural resources & other assets; and delegation of governmental power & authority to the new government; and exercise of civil & criminal jurisdiction by the new government; and "residual responsibilities" of the U.S. & State of Hawaii to the new government.

This *carte blanche grant of authority* to officials of the State and Federal governments to agree to give away public lands, natural resources and other assets to the new government, without receiving anything in return, is beyond all existing constitutional limitations on the power of the Federal and State of Hawaii executive branches. *Even more extreme is the authority to surrender the sovereignty and jurisdiction of the State of Hawaii over some or all of the lands and surrounding waters of some or all of the islands of the State of Hawaii and over some or all of the people of Hawaii.* Likewise, the general power to commit the Federal and State governments to "residual responsibilities" to the new Native Hawaiian government.

- § 8(b)(2) The 3 governments may, but are not required to, submit to Congress and to the Hawaii State Governor and legislature, amendments to federal and state laws that will enable implementation of the agreement. Treaties with foreign governments require the approval of ⅔ of the Senate. Constitutional amendments require the consent of the citizens. But the Akaka bill does not require the consent of the citizens of Hawaii or of Congress or of the State of Hawaii legislature to the terms of the agreement. Under the bill, the only mention is that the parties *may* recommend amendments to implement the terms they have agreed to.

Given the *dynamics at the bargaining table created by the bill:* where the State officials are driven by the same urge they now exhibit, to curry favor with what they view as the "swing" vote; and Federal officials are perhaps constrained with a similar inclination; and the new Native Hawaiian government officials have the duty to their constituents to demand the maximum; *it is not likely that the agreement reached will be moderate or that any review by Congress or the Hawaii legislature will be sought if it can be avoided.* More likely is that the State will proceed under the authority of the Akaka bill to promptly implement whatever deal has been made.

The myth of past injustices and economic deprivations. Contrary to the claims of the bill supporters, the U.S. took no lands from Hawaiians at the time of the 1893 revolution or the 1898 Annexation (or at any other time) and it did not deprive them of sovereignty. As part of the Annexation Act, the U.S. provided compensation by assuming the debts of about $4 million which had been incurred by the Kingdom. The lands ceded to the U.S. were government lands under the Kingdom held for the benefit of all citizens without regard to race. They still are. Private land titles were unaffected by the overthrow or annexation. Upon annexation, ordinary Hawaiians became full citizens of the U.S. with more freedom, security, opportunity for prosperity and sovereignty than they ever had under the Kingdom.

The political and economic power of Hawaiians increased dramatically once Hawaii became a Territory. University of Hawaii Political Science Professor Robert Stauffer wrote:

It was a marvelous time to be Hawaiian. They flexed their muscle in the first territorial elections in 1900, electing their own third-party candidates over the haole Democrats and Republicans . . . The governor-controlled bureaucracy also opened up to Hawaiians once they began to vote Republican.

By the 1920s and 1930s, Hawaiians had gained a position of political power, office and influence never before—nor since—held by a native people in the United States.

Hawaiians were local judges, attorneys, board and commission members, and nearly all of the civil service. With 70 percent of the electorate—but denied the vote under federal law—the Japanese found themselves utterly shut out. Even by the late 1930s, they comprised only just over 1 percent of the civil service.

This was "democracy" in a classic sense: the spoils going to the electoral victors.

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Higher-paying professions were often barred to the disenfranchised Asian Americans. Haoles or Hawaiians got these. The lower ethnic classes (Chinese, Japanese and later the Filipinos) dominated the lower-paying professions.

But even here an ethnic-wage system prevailed. Doing the same work, a Hawaiian got paid more per hour than a Portuguese, a Chinese, a Japanese or a Filipino—and each of them, in turn, got paid more than the ethnic group below them.

Robert Stauffer, "Real Politics", Honolulu Weekly, October 19, 1994 at page 4.

The alliance between Hawaiians, with a clear majority of voters through the 1922 election, and more than any other group until 1938, and the Republican party is described in more depth in *Fuchs, Hawaii Pono: A Social History,* Harcourt, Brace & World, Inc., 1961, at 158–161.

Hawaiians prosper without "entitlements" or the Akaka bill

The 2005 American Community Survey (ACS) for California, recently released by the U.S. Census Bureau, confirms Native Hawaiians' ability to prosper without special government programs. The estimated 65,000 Native Hawaiian residents of California, with no Office of Hawaiian Affairs or Hawaiian Homes or other such race-based entitlements, enjoyed higher median household ($55,610) and family ($62,019) incomes, relative to the total California population ($53,629 and $61,476 respectively) despite having smaller median household and family sizes. California is particularly appropriate for comparing earning power, because California has the greatest Native Hawaiian population outside of Hawaii; and it happens that the median age of Native Hawaiians residing in California (33.7 years) is almost identical to that of the general population of California (33.4 years).

The fact that Native Hawaiians are quite capable of making it on their own was suggested by Census 2000 which showed the then-60,000 Native Hawaiian residents of California enjoyed comparable relative median household and family incomes despite their 5 year younger median age.

See Jere Krischel, Census: *Native Hawaiians Do Better When Treated Equally,* CERA Journal Special Akaka Bill Edition included in our packets for Committee members.*

Hawaiians today are no different, in any constitutionally significant way, from any other ethnic group in Hawaii's multi-ethnic, intermarried, integrated society. Like all the rest of us, some do well, some don't and most are somewhere in between.

The people of Hawaii don't want the Akaka bill

Grassroot Institute of Hawaii commissioned two comprehensive automated surveys of every household in the telephone universe of the State of Hawaii, one in July 2005 and the second in May 2006. Of the 20,426 live answers to the question, two to one consistently answered "No" when asked, "Do you want Congress to pass the Akaka bill?"

In 1959, in the Hawaii statehood plebiscite, over 94 percent voted "Yes" for Statehood.

Racial Tensions are simmering in Hawaii's melting pot

So said the headline on the first page of USA Today 3/7/07 describing the attack Feb. 19th 2007 in the parking lot of the Waikele mall on Oahu, when a Hawaiian family beat a young soldier and his wife unconscious while their three year old son sat in the back seat of their car. The attack, "unusual for its brutality," sparked impassioned public debate.

Tenured University of Hawaii Professor Haunani Kay Trask's picture is displayed in the USA today article and the caption quotes her, "Secession? God I would love it. I hate the United States of America."

The USA Today article and related links may be found at *http://tinyurl.com/2jle2e.* See also, The Gathering Storm, Chapter 1 of *Hawaiian Apartheid: Racial*

* The information referred to has been retained in Committee files.

Separatism and Ethnic Nationalism in the Aloha State by Kenneth R. Conklin, Ph.D. *http://tinyurl.com/2f7p8b.*

The brutality at Waikele mall is a flashing red light. Over 1 million American citizens in Hawaii are under siege by what can fairly be called an evil empire dedicated to Native Hawaiian Supremacy.

Red shirted protesters march often and anti-American signs are regularly posted along King Street on the Grounds of Iolani Palace. Our Governor wears the red protest shirts and tells them she supports their cause. Last August at a statehood day celebration at Iolani Palace, thugs with bull horns in the faces of the high school band members there to play patriotic music, drove them away.

Passage of the Akaka bill would encourage the Hawaiian Supremacists. Even if the bill is declared unconstitutional after a year or two or more of litigation, it may well be too late to put the Aloha State back together again.

A firm rejection of the Akaka bill by this Committee would reassure the people of Hawaii that racial supremacy and separatism are not acceptable. That, in the eyes of government, there is only one race here. It is American.

Mahalo.

Senator AKAKA. Thank you, Mr. Burgess.

At this time, I would like to ask for the testimony of Viet Dinh.

Before you begin, I am going to ask Senator Inouye to take the Chair for a few minutes. Thank you.

Senator INOUYE. [Presiding.] Professor Dinh?

STATEMENT OF VIET D. DINH, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER AND BANCROFT ASSOCIATES, PLLC

Mr. DINH. Thank you very much, Mr. Chairman and members of the Committee. Thank you for the opportunity, indeed the honor and privilege, to be here today.

I would note that, as the Chairman has noted earlier, Neil Katyal, Chris Bartolomucci and I prepared a formal legal opinion on the question before us today, and submitted it to the State of Hawaii and the Office of Hawaiian Affairs earlier this year. Our joint opinion forms much of the basis for my testimony here today.

Like the Native American tribes that once covered the continental United States, Native Hawaiians were a sovereign people for hundreds of years, until a U.S. military-aided uprising overthrew the Hawaiian monarchy in 1893, and a subsequent government acceded to U.S. annexation.

A century later, as so many members of this Committee have noted, in 1993 Congress formally apologized to the Hawaiian people for U.S. involvement in this regime change.

S. 310, the Native Hawaiian Government Reorganization Act of 2007, would establish a commission to certify a roll of Native Hawaiians willing to participate in the reorganization of the Native Hawaiian Government Entity. Those Native Hawaiians would set up an interim governing council which in turn would hold elections and referenda among Native Hawaiians to draw up the governing documents and elect officers for their native government. That entity, eventually, would be recognized by the United States as a domestic dependent sovereign government, similar to the government of an Indian tribe.

Mr. Chairman, based on the constitutional text and judicial precedent that we have studied, I firmly believe that the Supreme Court would uphold the Congressional authority under the Constitution to enact S. 310 and recognize a Native Hawaiian government entity as a dependent sovereign government within the

United States. In other words, to treat Native Hawaiians just as Congress treats continental natives and Alaska Natives.

First, there is little question that Congress has the power to recognize and to restore the sovereignty of Native American tribes. The Supreme Court has acknowledged Congress' "plenary and exclusive power," power that is inherent in the Constitution and explicit in the Indian Commerce Clause and the Treaty Clause of our Constitution. More importantly, Congress has used that power to restore the relationship with tribal governments that were previously terminated by the United States.

For example, in 1954, Congress terminated by legislation the Menominee Tribe in Wisconsin. Two decades later, in 1973, Congress reversed course and enacted a restoration in the Menominee Restoration Act, restoring the Federal relationship with the tribe and assisting in its reorganization. This is the process that the court cited with approval in the *United States v. Lara* case that General Bennett has cited earlier. The bill before Congress is patterned after the Menominee Restoration Act and would do for Native Hawaiians exactly that which Congress did for the Menominees in 1973.

Second, Congress has the power to treat Native Hawaiians just as it treats other Native Americans. This is because Congress' decision to treat a group of people as a native group and to use its broad Indian affairs powers to pass legislation regarding that group, is a political decision, one the courts are not likely to second guess. Indeed, the Supreme Court has said that so long as Congress's decision is not "arbitrary," the courts have no further say in the matter.

S. 310 passes that test. Congress has long considered, for example, Alaska Natives to be Native Americans and recognized Native Alaskan governing bodies even though Alaska Natives differ from Native Americans in the continent historically and culturally. The Supreme Court has not questioned Congress's power to so treat the Alaska Natives. If Congress may treat Alaska Natives as an dependent sovereign people, it follows that Congress may do the same for Native Hawaiians.

It seems to me that the principal constitutional objection to S. 310, that it impermissibly classifies on the basis of race, fails fundamentally to recognize that congressional legislation dealing with indigenous groups is a political, not racial, decision, and therefore is neither discriminatory nor unconstitutional. *Rice v. Cayetano,* of course, specifically declined to address whether "Native Hawaiians have a status like that of Indians in organized tribes," and "whether Congress may treat the Native Hawaiians as it does the Indian tribes."

On those specific questions, these questions that Congress must grapple with in enacting S. 310, the court has spoken clearly in other contexts. For example, in *United States v. Antelope,* 430, U.S. 645, a case decided in 1977, and I quote here at length: "The decisions of this court leave no doubt that Federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and sup-

ported by the ensuing history of the Federal Government's relations with Indians."

Mr. Katsas has pointed to Justices Breyer and Souter's concurring opinion, casting doubt as to whether or not the class of people at issue in *Rice v. Cayetano* would legitimately constitute under our Constitution an Indian tribe. General Bennett has pointed out one way to distinguish that analysis, given the fact that the Act here only establishes the process and the membership of the tribe is ultimately to be determined by the Native Hawaiians themselves.

However, I would like to point out further that at issue in *Rice v. Cayetano* is a completely different class of people, and the specific quote that Mr. Katsas and others have pointed to as casting doubt on that broad class of people as not legitimately constituting a tribe, differs significantly from the definition of Native Hawaiians under Section 310 of this legislation.

For example, and here allow me again to read the class that Justice Breyer and Justice Souter objected to: "But the statute does not limit the electorate to Native Hawaiians. Rather, it adds to approximately 80,000 Hawaiians, about 130,000 additional Hawaiians, defined as including anyone with one ancestor who lived in Hawaii prior to 1778, thereby including individuals who are less than 1/50th original Hawaiian, assuming nine generations since 1778 and the present.

That was the class of people that Justice Breyer and Justice Souter expressed doubt that could constitute an Indian tribe. If you read carefully Section 310 of the legislation at issue, S. 310 defines the class of Native Hawaiians as those persons who are lineally descendant from Native Hawaiians in existence at the time of 1873. So it is a much more significantly limited class and one that traces direct legal descendants from the Native Hawaiian tribes directly.

So I think that on its own facts, Justice Breyer's and Justice Souter's concurrence and objections thereto would not apply. Given these facts, one does not know how they would vote in this regard.

One other point that has been made that I want to address here very briefly is the continuity aspects of Federal recognition of sovereignty. Aside from the legal point, which I will address in a moment, it strikes me as supreme and somewhat tragic irony that the actions of the United States military, and by extrapolation the United States Government, in dispossessing a person of their sovereignty and culture and self-determination, would then become the basis to deprive the United States Government of the authority to restore that sovereignty and self-determination.

The D.C. Circuit has a quite famous doctrine called the Chutzpa doctrine, that is, you kill your father and mother and beg leniency for being an orphan. It seems to me that it is a tragic irony that the argument that there has not been a continuous self-representing people and sovereignty, when we have dispossessed by our own action those very characteristics, is now being used in order to argue that Congress does not have the authority to restore them.

Aside from that, as a legal matter, it is of very little purchase. I have already recounted the history of the Menominees and the courts have upheld that restoration power in Congress. More importantly in a case called *United States v. John,* the court faced

this question precisely with respect to the Choctaw Indians originally of Mississippi. After the Congress failed to recognize them, the Choctaw Indians dispersed throughout the United States and only remnants are in Mississippi. The United States Supreme Court says clearly that that dispersal does not deprive Congress of the ability to treat the Choctaw as sovereign within Mississippi and to define their status as Indian Country.

I think this question without doubt has been decided and therefore is of little constitutional moment.

Mr. Chairman, members of this Committee and this body will undoubtedly debate whether, as a policy matter, Congress should recognize Native Hawaiians as a dependent sovereignty and facilitate the reorganization of their government. This is a legitimate and important debate, one in which there are many views, but I think the Constitution already answers the legal question. Congress has the power to help restore and recognize Native Hawaiian sovereignty.

Thank you very much.

[The prepared statement of Mr. Dinh follows:]

PREPARED STATEMENT OF VIET D. DINH, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY LAW CENTER AND BANCROFT ASSOCIATES, PLLC

Mr. Chairman, Mr. Vice-Chairman, and distinguished Members of the Committee, thank you for the opportunity to testify before you today on S. 310, *the Native Hawaiian Government Reorganization Act of 2007*. It is privilege to be here. This testimony is based upon a legal opinion that I co-authored with Neal K. Katyal and H. Christopher Bartolomucci for the Office of Hawaiian Affairs, State of Hawaii on February 26, 2007 titled *The Authority of Congress to Establish a Process for Recognizing a Reconstituted Native Hawaiian Governing Entity*.

EXECUTIVE SUMMARY

Like the Native American tribes that once covered the continental United States, Native Hawaiians were a sovereign people for hundreds of years until a U.S. military-aided uprising overthrew the recognized Hawaiian monarchy in 1893 and a subsequent government acceded to U.S. annexation. A century later, in 1993, Congress formally apologized to the Hawaiian people for the U.S. involvement in this regime change.

The U.S. Congress is now considering legislation establishing a process by which Native Hawaiians would reconstitute the indigenous government they lost to foreign intervention. The proposed Native Hawaiian Government Reorganization Act of 2007 ("NHGRA"), S. 310/H.R. 505, would establish a commission to certify a roll of Native Hawaiians wishing to participate in the reorganization of the Native Hawaiian governing entity. Those Native Hawaiians would set up an interim governing council, which in turn would hold elections and referenda among Native Hawaiians to draw up governing documents and elect officers for the native government. That entity eventually would be recognized by the United States as a domestic, dependent sovereign government, similar to the government of an Indian tribe.

Congress has the constitutional authority to enact the NHGRA and to recognize a Native Hawaiian governing entity as a dependent sovereign government within the United States – in other words, to treat Native Hawaiians just as it treats Native Americans and Alaska Natives.

First, there is no question that Congress has the power to recognize, and restore the sovereignty of, Native American tribes. The Supreme Court has acknowledged Congress' plenary power – inherent in the Constitution and explicit in the Indian Commerce Clause, art. I, § 8, cl. 3, and Treaty Clause, art. II, § 2, cl. 2 – to legislate regarding Native American affairs, and Congress has used that power to restore the relationship with tribal governments terminated by the United States. In 1954, Congress terminated the Menominee tribe in Wisconsin. In 1973, Congress enacted a law restoring the federal relationship with the Menominee and assisting in its reorganization. The bill before Congress is patterned after that law and would do for Native Hawaiians what Congress did for the Menominee.

Second, Congress has the power to treat Native Hawaiians just as it treats Native Americans. This is because Congress' decision to treat a group of people as a native group, and to use its broad Indian affairs power to pass legislation regarding that group, is a political decision – one that courts are not likely to second-guess. Indeed, the Supreme Court has said that so long as Congress' decision to treat a native people as a group of Native Americans is not "arbitrary," the courts have no say in the matter. The NHGRA passes that legal test. Furthermore, Congress has long considered Alaska Natives to be Native Americans and recognized Native Alaskan governing bodies, even though Alaska Natives differ from American Indians historically and culturally. The Supreme Court has not questioned Congress' power to do so. If Congress may treat Alaska Natives as a dependent sovereign people, it follows that Congress may do the same for Native Hawaiians.

The principal constitutional objection to the NHGRA – that it impermissibly classifies on the basis of race – fails to recognize that congressional legislation dealing with indigenous groups is political, not racial, in character and therefore is neither discriminatory nor unconstitutional. *Rice* v. *Cayetano*, 528 U.S. 495 (2000), specifically declined to address whether "native Hawaiians have a status like that of Indians in organized tribes" and "whether Congress may treat the native Hawaiians as it does the Indian tribes." *Id.* at 518. On those specific questions posed by the NHGRA, the Court could not be more clear or supportive of Congressional power to reaffirm the status of Native Hawaiians as an indigenous, self-governing people and reestablish a government-to-government relationship:

> The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians.

United States v. *Antelope*, 430 U.S. 641, 645 (1977). To be sure, there are non-legal, policy arguments that can be voiced against the NHGRA, but if the Congress of the United States decides that the NHGRA is good policy, we believe that there is no constitutional barrier to Congress' enactment of the legislation.

I. THE NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT

The stated purpose of the NHGRA is "to provide a process for the reorganization of the single Native Hawaiian governing entity and the reaffirmation of the special political and legal relationship between the United States and that Native Hawaiian governing entity for purposes of continuing a government-to-government relationship." NHGRA § 4(b). To that end, the NHGRA authorizes the Secretary of the Interior to establish a Commission that will certify and maintain a roll of Native Hawaiians wishing to participate in the reorganization of the Native Hawaiian governing entity. *Id.* § 7(b). For the purpose of establishing the roll, the NHGRA defines the term "Native Hawaiian" as:

> (i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who (I) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and (II) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or (ii) an individual who is 1 of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendant of that individual.

Id. § 3(10).

Through the certification and maintenance of the roll of Native Hawaiians, the Commission will launch the process by which Native Hawaiians will set up a Native Hawaiian Interim Governing Council called for by the NHGRA. *Id.* § 7(c)(2). Native Hawaiians listed on the roll may develop criteria for candidates to be elected to serve on the Council, determine the Council's structure, and elect members of the Council from enrolled Native Hawaiians. *Id.* § 7(c)(2)(A).

The NHGRA provides that the Council may conduct a referendum among enrolled Native Hawaiians "for the purpose of determining the proposed elements of the organic

governing documents of the Native Hawaiian governing entity." *Id.* § 7(c)(2)(B)(iii)(I). Thereafter, the Council may hold elections for the purpose of ratifying the proposed organic governing documents and electing the officers of the Native Hawaiian governing entity. *Id.* § 7(c)(2)(B)(iii)(IV).

II. CONGRESS' AUTHORITY TO ENACT THE NHGRA

Congressional authority to enact S. 310/H.R. 505 encompasses two subordinate questions: First, would Congress have the power to adopt such legislation for members of a Native American tribe in the contiguous 48 states? Second, does such power extend to Native Hawaiians? The answer to both questions is yes.

A. Congress' Broad Power to Deal with Indians Includes the Power to Restore Sovereignty to, and Reorganize the Government of, Indian Tribes.

There is little question that Congress has the power to recognize Indian tribes. As the Supreme Court has explained, "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as 'plenary and exclusive.'" *United States* v. *Lara*, 541 U.S. 193, 200 (2004). *See also South Dakota* v. *Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998) ("Congress possesses plenary power over Indian affairs"); *Alaska* v. *Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 531 n.6 (1998) (same); 20 U.S.C. § 4101(3) (finding that the Constitution "invests the Congress with plenary power over the field of Indian affairs"). The NHGRA expressly recites and invokes this constitutional authority. *See* NHGRA § 2(1) ("The Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States."); *id.* § 4(a)(3).

This broad congressional power derives from a number of constitutional provisions, including the Indian Commerce Clause, art. I, § 8, cl. 3, which grants Congress the

power to "regulate Commerce * * * with the Indian Tribes," as well as the Treaty Clause, art. II, § 2, cl. 2. *See Lara*, 541 U.S. at 200-201; *Morton* v. *Mancari*, 417 U.S. 535, 552 (1974). The Property Clause, art. IV, § 3, cl. 2, is also a source of congressional authority. *See Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78, 87-88 (1918); *see also Alabama* v. *Texas*, 347 U.S. 272, 273 (1954) (per curiam) ("The power * * * to dispose of any kind of property belonging to the United States is vested in Congress without limitation.") (internal quotation marks omitted). 1/

Congress' legislative authority with respect to Indians also rests in part "upon the Constitution's adoption of preconstitutional powers necessarily inherent in any Federal Government, namely powers that this Court has described as 'necessary concomitants of nationality.'" *Lara*, 541 U.S. at 201 (citing, *inter alia*, *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 315-322 (1936)). *See also Mancari*, 417 U.S. at 551-552 ("The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself.").

Plenary congressional authority to recognize Indian tribes extends to the restoration of the federal relationship with Native governments and reorganization of those governments. In *Lara*, the Court held that Congress' broad authority with respect to Indians includes the power to enact legislation designed to "relax restrictions" on "tribal sovereign authority." 541 U.S. at 196, 202. "From the Nation's beginning," the Court said, "Congress' need for such legislative power would have seemed obvious." *Id.* at 202. The Court explained that "the Government's Indian policies, applicable to numerous tribes with diverse cultures, affecting billions of acres of land, of necessity would fluctuate dramatically as the needs of the

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1/ As discussed herein, *see infra* at 16, Congress in 1921 reserved some 200,000 acres of public land for the benefit of Native Hawaiians. The NHGRA is related to, and would help to realize the purpose of, that exercise of the Property Clause power by commencing a process that would result in the identification of the proper beneficiaries of Congress' 1921 decision.

Nation and those of the tribes changed over time," and "[s]uch major policy changes inevitably involve major changes in the metes and bounds of tribal sovereignty." *Id.* The Court noted that today congressional policy "seeks greater tribal autonomy within the framework of a 'government-to-government' relationship with federal agencies." *Id.* (quoting 59 Fed. Reg. 22,951 (1994)).

Of particular significance to the present analysis, the Court in *Lara* specifically recognized Congress' power to *restore* previously extinguished sovereign relations with Indian tribes. The Court observed that "Congress has restored previously extinguished tribal status – by re-recognizing a Tribe whose tribal existence it previously had terminated." *Id.* (citing Congress' restoration of the Menominee tribe in 25 U.S.C. §§ 903-903f). And the Court cited the 1898 annexation of Hawaii as an example of Congress' power "to modify the degree of autonomy enjoyed by a dependent sovereign that is not a State." *Id.* Thus, when it comes to the sovereignty of Indian tribes or other "domestic dependent nations," *Cherokee Nation* v. *Georgia,* 30 U.S. 1, 17 (1831), the Constitution does not "prohibit Congress from changing the relevant legal circumstances, *i.e.*, from taking actions that modify or adjust the tribes' status." *Lara,* 541 U.S. at 205. Indeed, the Supreme Court has gone so far as to hold that it is not for the federal judiciary to "*second-guess the political branches' own determinations*" in such circumstances. *Id.* (emphasis added).

United States v. *John*, 437 U.S. 634 (1978), further supports congressional authority to recognize reconstituted tribal governments and to re-establish sovereign relations with them. There, Congress' power to legislate with respect to the Choctaw Indians of Mississippi was challenged on grounds that "since 1830 the Choctaw residing in Mississippi have become fully assimilated into the political and social life of the State" and that "the Federal

Government long ago abandoned its supervisory authority over these Indians." *Id.* at 652. It was thus urged that to "recognize the Choctaws in Mississippi as Indians over whom special federal power may be exercised would be anomalous and arbitrary." *Id.* The Court unanimously rejected the argument. "[W]e do not agree that Congress and the Executive Branch have less power to deal with the affairs of the Mississippi Choctaw than with the affairs of other Indian groups." *Id.* at 652-653. The "fact that federal supervision over them has not been continuous," according to the Court, does not "destroy[ ] the federal power to deal with them." *Id.* at 653.

Congress exercised this established authority to restore the government-to-government relationship with the Menominee Indian tribe of Wisconsin, *see Lara*, 541 U.S. at 203-204, and it can do the same here. Indeed, the NHGRA government reorganization process closely resembles that prescribed by the Menominee Restoration Act, 25 U.S.C. §§ 903-903f.

In 1954, Congress adopted the Menominee Indian Termination Act, 25 U.S.C. §§ 891-902, which terminated the government-to-government relationship with the tribe, ended federal supervision over it, closed its membership roll, and provided that "the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction." *Menominee Tribe of Indians* v. *United States*, 391 U.S. 404, 407-410 (1968). In 1973, Congress reversed course and adopted the Menominee Restoration Act, which repealed the Termination Act, restored the sovereign relationship with the tribe, reinstated the tribe's rights and privileges under federal law, and reopened its membership roll. 25 U.S.C. §§ 903a(b), 903b(c).

The Menominee Restoration Act established a process for reconstituting the Menominee tribal leadership and organic documents under the direction of the Secretary of the Interior. The Restoration Act directed the Secretary (a) to announce the date of a general council

meeting of the tribe to nominate candidates for election to a newly-created, nine-member Menominee Restoration Committee; (b) to hold an election to select the members of the Committee; and (c) to approve the Committee so elected if the Restoration Act's nomination and election requirements were met. *Id.* § 903b(a). Just so with S. 310/H.R. 505. The NHGRA authorizes the Secretary of the Interior to establish a Commission that will prepare and maintain a roll of Native Hawaiians wishing to participate in the reorganization of the Native Hawaiian governing entity. NHGRA § 7(b). The legislation also provides for the establishment of a Native Hawaiian Interim Governing Council. *Id.* § 7(c)(2). Native Hawaiians listed on the roll may develop criteria for candidates to be elected to serve on the Council; determine the Council's structure; and elect members of the Council from enrolled Native Hawaiians. *Id.* § 7(c)(2)(A).

The Menominee Restoration Act provided that, following the election of the Menominee Restoration Committee, and at the Committee's request, the Secretary was to conduct an election "for the purpose of determining the tribe's constitution and bylaws." 25 U.S.C. § 903c(a). After the adoption of such documents, the Committee was to hold an election "for the purpose of determining the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws." *Id.* § 903c(c). Likewise, the NHGRA provides that the Native Hawaiian Interim Governing Council may conduct a referendum among enrolled Native Hawaiians "for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity." NHGRA § 7(c)(2)(B)(iii)(I). Thereafter, the Council may hold elections for the purpose of ratifying the proposed organic governing documents and electing the officers of the Native Hawaiian governing entity. *Id.* § 7(c)(2)(B)(iii)(IV).

The courts have approved the process set forth in the Menominee Restoration Act to restore sovereignty to the Menominee Indians. *See Lara,* 541 U.S. at 203 (citing the Restoration Act as an example where Congress "restored previously extinguished tribal rights"); *United States* v. *Long*, 324 F.3d 475, 483 (7th Cir. 2003) (concluding that Congress had the power to "restor[e] to the Menominee the inherent sovereign power that it took from them in 1954"), *cert. denied*, 540 U.S. 822 (2003). The teachings of these cases would apply to validate the similar process set forth in NHGRA.

B. Congress' Power to Enact Special Legislation with Respect to Indians Extends to Native Hawaiians.

The inquiry, therefore, turns to whether Congress has the same authority to deal with Native Hawaiians as it does with other Native Americans in the contiguous 48 states. Congress has determined – and would determine again in passing the NHGRA – that it has such authority. *See* 42 U.S.C. § 11701(17) ("The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii."); NHGRA § 4(a)(3) (finding that "Congress possesses the authority under the Constitution, including but not limited to Article I, section 8, clause 3, to enact legislation to address the conditions of Native Hawaiians").

We conclude that courts will likely affirm these assertions of congressional authority. 2/ As we explain below, court review of congressional decisions recognizing native groups *qua* native groups is extraordinarily deferential: The courts may interfere with such a

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2/ The Supreme Court has not decided this question. Rather, its last pronouncement on the issue, in *Rice* v. *Cayetano*, expressly declined to answer whether "native Hawaiians have a status like that of Indians in organized tribes" and "whether Congress may treat the native Hawaiians as it does the Indian tribes." 528 U.S. at 518. *See infra* at 24-25.

determination only if it is "arbitrary." And a congressional decision through the NHGRA to recognize Native Hawaiians in the same way it has recognized other indigenous groups cannot fairly be said to be arbitrary. To the contrary, it is supported not just by extensive congressional fact-finding (which standing alone would suffice to insulate the statute from court review for arbitrariness), but also by numerous other factors, including the parallels between the United States' historical treatment of Native Hawaiians and its treatment of other Native Americans.

i. Courts review a congressional decision to recognize a native group only for arbitrariness.

Under *United States* v. *Sandoval*, 231 U.S. 28 (1913), Congress has the authority to recognize and deal with native groups pursuant to its Indian affairs power, and courts possess only a very limited role in reviewing the exercise of such congressional authority. In *Sandoval*, the Supreme Court rejected the argument that Congress lacked authority to treat the Pueblos of New Mexico as Indians and that the Pueblos were "beyond the range of congressional power under the Constitution." *Id.* at 49.

The Court first observed:

> Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States * * * the power and duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a state.

Id. at 45-46. The Court went on to say that, although "it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe," nevertheless, "the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts." *Id.* at 46.

Applying those principles, the Supreme Court concluded that Congress' "assertion of guardianship over [the Pueblos] cannot be said to be arbitrary, but must be regarded as both authorized and controlling." *Id.* at 47. And the Court so held even though the Pueblos differed (in the Court's view) in some respects from other Indians: They were not "nomadic in their inclinations"; they were "disposed to peace"; they "liv[ed] in separate and isolated communities"; their lands were "held in communal, fee-simple ownership under grants from the King of Spain"; and they possibly had become citizens of the United States. *Id.* at 39.

Sandoval thus holds, first, that Congress, in exercising its constitutional authority to deal with Indian tribes, may determine whether a "community or body of people" is amenable to that authority, and, second, that unless Congress acts "arbitrarily," courts do not second-guess Congress' determination. The courts have employed this approach in a number of other cases. *See United States* v. *Holliday*, 3 Wall. 407, 419 (1866) ("If by [the political branches] those Indians are recognized as a tribe, this court must do the same."); *Long*, 324 F.3d at 482 ("[W]hile we assume that Congress neither can nor would confer the status of a tribe onto a random group of people, we have no doubt about congressional power to recognize an ancient group of people for what they are."). 3/

ii. Congress' determination that Native Hawaiians are amenable to its constitutional authority over native groups is amply supported and cannot fairly be deemed arbitrary.

The language of the NHGRA contains a congressional determination that Native Hawaiians are amenable to its plenary authority over native groups. *See, e.g.,* NHGRA § 4(a)(3). It cannot be said that this determination is an arbitrary exercise of Congress' power to recognize

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3/ *See also Lara*, 541 U.S. at 205 (federal judiciary should not "second-guess the political branches' own determinations" with respect to "the metes and bounds of tribal autonomy"); *United States* v. *McGowan*, 302 U.S. 535, 538 (1938) ("Congress alone has the right to determine the manner in which this country's guardianship over the Indians shall be carried out").

and deal with this Nation's native peoples. This is so for at least four reasons, explained in more detail below: First, Congress has made extensive findings of fact, both in the NHGRA and other legislation, that support its determination. Second, Congress has long treated Native Hawaiians like other Native Americans, and no Act of Congress doing so has been struck down by the courts. Third, Native Hawaiians bear striking similarities to Alaska Natives, the latter of whom are treated by Congress as Native Americans. And finally, Congress has recognized that the United States owes moral obligations to Native Hawaiians; such obligations constitute an implicit basis for congressional power to legislate as to indigenous peoples.

Congress' findings as to Native Hawaiians, and Native Hawaiian history, preclude a claim of arbitrariness.

The NHGRA expressly finds that Native Hawaiians "are indigenous, native people of the United States," NHGRA § 2(2); that the United States recognized Hawaii's sovereignty prior to 1893, *id.* § 2(4); that the United States participated in the overthrow of the Hawaiian government in 1893, *id.*§ 2(13); and that "the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands," *id.* The statute further finds that that Native Hawaiians continue to reside on native lands set aside for them by the U.S. government, "to maintain other distinctly native areas in Hawaii," and "to maintain their separate identity as a single distinct native community through cultural, social, and political institutions," *id.* §§ 2(7), 2(11), 2(15); *see also* U.S. Department of Justice & U.S. Department of the Interior, *From Mauka to Makai: The River of Justice Must Flow Freely*, Report on the Reconciliation Process Between the Federal Government and Native Hawaiians at 4 (Oct. 23, 2000) (hereinafter "*The Reconciliation Report*") (finding that "the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions").

Finally, the NHGRA finds that Native Hawaiians through the present day have maintained a link to the Native Hawaiians who exercised sovereign authority in the past. *See id.* § 2(22)(A) ("Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands"); *id.* § 2(22)(B).

These findings all support the conclusion that Native Hawaiians, and the Native Hawaiian experience, are similar to other Native Americans in important ways. Indeed, the NHGRA reflects some of Congress' prior determinations that Native Hawaiians are like other Native Americans. *See* NHGRA § 2(2) (finding that Native Hawaiians "are indigenous, native people of the United States"); *id.* § 2(20)(B) (Congress "has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted scores of statutes on their behalf"); *id.* § 4(a)(1); Native American Languages Act, 25 U.S.C. § 2902(1) ("The term 'Native American' means an Indian, Native Hawaiian, or Native American Pacific Islander"); American Indian Religious Freedom Act, 42 U.S.C. § 1996 (declaring it to be the policy of the United States "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians"); 42 U.S.C. § 11701(1) (finding that "Native Hawaiians comprise a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago whose society was organized as a Nation prior to the arrival of the first nonindigenous people in 1778").

These extensive factual findings are crucial because they render implausible any argument that Congress' decision to treat Native Hawaiians like other Native Americans is without a rational basis. Like in *Sandoval*, whatever differences there may be between Native Hawaiians and other Native Americans, it cannot be said in light of Congress' findings that it is

"bring[ing] a community or body of people within the range of [its] power by arbitrarily calling them an Indian tribe." 231 U.S. at 46. There is nothing arbitrary about such a legislative choice; it reflects a long pattern of Congress' dealings with Native Hawaiians.

Native Hawaiian history confirms that the congressional determination in the NHGRA is both supportable and supported. Although unique in some respects, the Native Hawaiian story is in other ways very similar to the story of all Native Americans. By the time Captain Cook, the first white traveler to Hawaii, "made landfall in Hawaii on his expedition in 1778, the Hawaiian people had developed, over the preceding 1,000 years or so, a cultural and political structure of their own. They had well-established traditions and customs and practiced a polytheistic religion." *Rice*, 528 U.S. at 500. Hawaiian society, the Court noted, was one "with its own identity, its own cohesive forces, its own history." *Id.* As late as 1810, "the islands were united as one kingdom under the leadership of an admired figure in Hawaiian history, Kamehameha I." *Id.* at 501.

During the 19th century, the United States established a government-to-government relationship with the Kingdom of Hawaii. Between 1826 and 1887, the two nations executed a number of treaties and conventions. *See id.* at 504. But in 1893, "a group of professionals and businessmen, with the active assistance of John Stevens, the United States Minister to Hawaii, acting with the United States Armed Forces, replaced the monarchy [of Queen Liliuokalani] with a provisional government." *Id.* at 505. In 1894, the U.S.-created provisional government then established the Republic of Hawaii. *See id.* In 1898, President McKinley signed the Newlands Resolution, which annexed Hawaii as a U.S. territory. *See id.*; *Territory of Hawaii* v. *Mankichi*, 190 U.S. 197, 209-211 (1903) (discussing the annexation of Hawaii); *Lara*, 541 U.S. at 203-204 (citing the annexation of Hawaii as an example of Congress'

adjustment of the autonomous status of a dependent sovereign). Under the Newlands Resolution, the Republic of Hawaii ceded all public lands to the United States, and the revenue from such lands was to be "used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes." *Rice*, 528 U.S. at 505.

In 1921, concerned about the deteriorating conditions of the Native Hawaiian people, Congress passed the Hawaiian Homes Commission Act, "which set aside about 200,000 acres of the ceded public lands and created a program of loans and long-term leases for the benefit of native Hawaiians." *Id.* at 507. In 1959, Hawaii became the 50th State of the United States. In connection with its admission to the Union, Hawaii agreed to adopt the Hawaiian Homes Commission Act as part of the Hawaii Constitution, and the United States adopted legislation transferring title to some 1.4 million acres of public lands in Hawaii to the new State, which lands and the revenues they generated were by law to be held "as a public trust" for, among other purposes, "the betterment of the conditions of Native Hawaiians." *Id.* (quoting Admission Act, Pub. L. No. 86-3, § 5(f), 73 Stat. 5, 6).

In 1993, a century after the Kingdom of Hawaii was replaced with the active involvement of the U.S. Minister and the American military, "Congress passed a Joint Resolution recounting the events in some detail and offering an apology to the native Hawaiian people." *Id.* at 505; *see* Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993). In the Apology Resolution, Congress both "acknowledge[d] the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people" and issued a formal apology to Native Hawaiians "for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination." *Id.* §§ 1, 3, 107 Stat. 1513.

In short, the story of the Native Hawaiian people is the story of an indigenous people having a distinct culture, religion, and government. Contact with the West led to a period of government-to-government treaty making with the United States; the involvement of the U.S. government in overthrowing the Native Hawaiian government; the establishment of the public trust relationship between the U.S. government and Native Hawaiians; and, finally, political union with the United States. Given the parallels between the history of Native Hawaiians and other Native Americans, Congress has ample basis to conclude that its power to deal with the Native Hawaiian community is coterminous with its power to deal with American Indian tribes. *Cf. Long*, 324 F.3d at 482 ("This case does not involve a people unknown to history before Congress intervened. * * * [W]e have no doubt about congressional power to recognize an ancient group of people for what they are.").

Congress' long history of treating Native Hawaiians, and Alaska Natives, like Native Americans further supports its determination in the NHGRA.

Congress' authority to treat Native Hawaiians like American Indians is further supported by the numerous statutes Congress has enacted doing just that. *See, e.g.*, Hawaiian Homes Commission Act, 42 Stat. 108 (1921); Native Hawaiian Education Act, 20 U.S.C. §§ 7511-7517; Native Hawaiian Health Care Act, 42 U.S.C. § 11701(19) (noting Congress' "enactment of federal laws which extend to the Hawaiian people the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities"); *see also* Statement of U.S. Representative Ed Case, Hearing Before the Senate Committee on Indian Affairs on S. 147, the Native Hawaiian Government Reorganization Act, at 2-3 (March 1, 2005) ("[O]ver 160 federal statutes have enacted programs to better the conditions of Native Hawaiians in areas such as Hawaiian homelands, health, education and economic development, all exercises of Congress' plenary authority under our U.S. Constitution to address the conditions of

indigenous peoples.") (prepared text) (hereinafter, "Senate Indian Affairs Committee Hearing on S. 147"); *cf.* Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993). 4/ For example, The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. No. 100-297, 102 Stat. 130, authorized "supplemental programs to meet the unique educational needs of Native Hawaiians" and federal grants to Native Hawaiian Educational Organizations to help increase educational attainment among Native Hawaiians. 20 U. S. C. §§ 4902-03, 4905 (1988). The Hawaiian Homelands Homeownership Act of 2000 provides governmental loan guarantees "to Native Hawaiian families who otherwise could not acquire housing financing." Pub. L. No. 106-569, §§ 511-14, 114 Stat. 2944, 2966-67, 2990 (2000). Congress has also enacted legislation authorizing employment preferences for Native Hawaiians. *See, e. g.*, 1995 Department of Defense Appropriations Act, Pub. L. No. 103-335, 108 Stat. 2599, 2652 (1994) ("In entering into contracts with private entities to carry out environmental restoration and remediation of Kaho'olawe Island * * * the Secretary of the Navy shall * * * give especial preference to businesses owned by Native Hawaiians."). *See also* Drug Abuse Prevention, Treatment and Rehabilitation Act, 21 U.S.C. § 1177(d) (involving grant applications aimed at combating drug abuse and providing: "The Secretary shall encourage the submission of and give special consideration to applications under this section to programs and projects aimed at underserved populations such as racial and ethnic minorities, Native Americans (including Native Hawaiians and Native American Pacific Islanders), youth, the elderly, women,

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4/ In *Ahuna v. Department of Hawaiian Home Lands*, 640 P.2d 1161 (Hawaii 1982), the Hawaii Supreme Court assessed the trust responsibilities that the Hawaiian Homes Commission owes to "native Hawaiians." The court specifically relied on federal Indian law principles regarding lands set aside by Congress in trust for the benefit of native Americans. The court reasoned that "[e]ssentially, we are dealing with relationships between the government and aboriginal people. Reason thus dictates that we draw the analogy between native Hawaiian homesteaders and other native Americans." *Id.* at 1169.

handicapped individuals, and families of drug abusers."); Workforce Investment Act of 1998, 29 U.S.C. § 2911(a) ("The purpose of this section is to support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals"); American Indian Religious Freedom Act, 42 U.S.C. § 1996 ("it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."); Native American Programs Act of 1974, 42 U.S.C. §§ 2991-92, 2991a (including Native Hawaiians in a variety of Native American financial and cultural benefit programs: "The purpose of this subchapter is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives."); Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, 42 U.S.C. § 4577(c)(4) (giving preference to grant applications aimed at combating drug abuse: "The Secretary shall encourage the submission of and give special consideration to applications under this section for programs and projects aimed at underserved populations such as racial and ethnic minorities, Native Americans (including Native Hawaiians and Native American Pacific Islanders), youth, the elderly, women, handicapped individuals, public inebriates, and families of alcoholics."); 20 U.S.C. § 4441 (providing funding for Native Hawaiian arts and cultural development); Older Americans Act of 1965, 42 U.S.C. § 3001 et seq., 45 C.F.R. § 1328.1 (2004) (establishing a "program * * * to meet the unique needs and circumstances of Older Hawaiian

Natives"). No court has struck down any of these numerous legislative actions as unconstitutional. 5/

That Congress has power to enact such special legislation for Native Hawaiians is made still clearer by congressional action dealing with Alaska Natives, who – like Native Hawaiians – differ from American Indian tribes anthropologically, historically, and culturally. In 1971, Congress adopted the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §§ 1601-1629h, which is predicated on the view that congressional power to deal with Alaska Natives is coterminous with its plenary authority relating to American Indian tribes. *See* 43 U.S.C. § 1601(a) (finding a need for settlement of all claims "by Natives and Native groups of Alaska"); *id.* § 1602(b) (defining "Native" as a U.S. citizen "who is a person of one-fourth degree of more Alaska Indian * * * Eskimo, or Aleut blood, or combination thereof."); *id.* § 1604(a) (directing the Secretary of the Interior to prepare a roll of all Alaskan Natives). The Supreme Court has never questioned the authority of Congress to enact such legislation. *See Native Village of Venetie, supra*; *Morton* v. *Ruiz*, 415 U.S. 199, 212 (1974) (quoting passage of Brief for Petitioner the Secretary of the Interior referring to "Indians in Alaska and Oklahoma"); *see also Pence* v. *Kleppe*, 529 F.2d 135, 138 n.5 (9th Cir. 1976) (when the term "Indians" appears in federal statutes, that word "as applied in Alaska, includes Aleuts and Eskimos"). If Congress has authority to enact special legislation dealing with Alaska Natives, it follows that Congress has the same authority with respect to Native Hawaiians.

5/ The vast number of federal and state programs that could be called into question by a ruling against the NHGRA renders even smaller the chance of a successful court challenge. It is not a persuasive answer to claim that all of these statutes, too, are unconstitutional. "Every legislative act is to be presumed to be a constitutional exercise of legislative power until the contrary is clearly established." *Close* v. *Glenwood Cemetery*, 107 U.S. 466, 475 (1883); *see also Reno* v. *Condon*, 528 U.S. 141, 148 (2000).

The U.S. government's complicity in overthrowing the Hawaiian Kingdom reinforces Congress' moral and legal authority to enact the NHGRA.

Finally, Congress could easily conclude that its moral and legal authority to establish a process for the reorganization of the Native Hawaiian governing entity also derives from the role played by the United States – in particular U.S. Minister John Stevens, aided by American military forces – in bringing a forcible end to the Kingdom of Hawaii in 1893.

As Congress recounted in the Apology Resolution, Stevens in January 1893 "conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii." 107 Stat. 1510. In pursuit of that objective, Stevens "and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaii nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government." *Id.* *See also* S. Rep. No. 108-85, 108th Cong., 2d Sess. 11 (2003) (on Stevens' orders, "American soldiers marched through Honolulu, to a building known as Ali'iolani Hale, located near both the government building and the palace"); *Rice*, 528 U.S. at 504-505. The next day, the Queen issued a statement indicating that she would yield her authority "to the superior force of the United States of America whose Minister Plenipotentary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu." 107 Stat. 1511. The United States, quite simply, effected regime change in Hawaii because "without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms." *Id.* On December 18, 1893, President Cleveland described the Queen's overthrow "as an 'act of war,'

committed with the participation of a diplomatic representative of the United States and without the authority of Congress." *Id.*

Given the role of United States agents in the overthrow of the Kingdom of Hawaii, Congress could conclude that its "unique obligation toward the Indians," *Mancari*, 417 U.S. at 555, extends to Native Hawaiians. Congress' power to enact special legislation dealing with native people of America is derived from the Constitution "both explicitly and implicitly." *Id.* at 551. *See Lara*, 541 U.S. at 201 (to the extent that, through the late 19th Century, Indian affairs were a feature of American military and foreign policy, "Congress' legislative authority would rest in part * * * upon the Constitution's adoption of preconstitutional powers necessarily inherent in any Federal Government"). The Supreme Court has explained that the United States has a special obligation toward the Native Americans – a native people who were overcome by force – and that this obligation carries with it the authority to legislate with the welfare of Native Americans in mind. As the Court said in *Board of County Commissioners of Creek County* v. *Seber*, 318 U.S. 705 (1943):

> From almost the beginning the existence of federal power to regulate and protect the Indians and their property against interference even by a state has been recognized. This power is not expressly granted in so many words by the Constitution, except with respect to regulating commerce with the Indian tribes, but its existence cannot be doubted. In the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them an uneducated, helpless and dependent people needing protection against the selfishness of others and their own improvidence. Of necessity the United States assumed the duty of furnishing that protection and with it the authority to do all that was required to perform that obligation * * *.

Id. at 715 (citation omitted).

In the case of Native Hawaiians, the maneuverings of the U.S. Minister and the expression of U.S. military force contributed to the overthrow of the Kingdom of Hawaii and the ouster of her Queen. The events of 1893 cannot be undone; but their import extends to this day, imbuing Congress with a special obligation and the inherent authority to restore some semblance of the self-determination then stripped from Native Hawaiians. Certainly it cannot be said that Congress' conclusion to this effect would be arbitrary. In the words of Justice Jackson,

> The generation of Indians who suffered the privations, indignities, and brutalities of the westward march of the whites have gone to the Happy Hunting Ground, and nothing that we can do can square the account with them. Whatever survives is a moral obligation resting on the descendants of the whites to do for the descendants of the Indians what in the conditions of this twentieth century is the decent thing.

Northwestern Bands of Shoshone Indians v. *United States*, 324 U.S. 335, 355 (1945) (concurring opinion). 6/

III. OBJECTIONS TO THE NHGRA

In 2005, hearings on a previous incarnation of the NHGRA drew several speakers who objected to the legislation on constitutional grounds. We have considered these objections and do not believe they would be persuasive to a court considering the NHGRA's lawfulness.

6/ NHGRA opponents have argued that the "Republic of Hawaii," which succeeded the Kingdom of Hawaii after Queen Liliuokalani was overthrown, extinguished native Hawaiians' claims to tribal status, and that as a result there was no Native Hawaiian sovereignty at the time of U.S. annexation. But this argument relies on the notion that the United States did not play a role in the Queen's ouster, and that the Republic of Hawaii was a legitimate government. Congress has explicitly found to the contrary, *see*, *e.g.*, Apology Resolution, and that congressional finding is due substantial deference from the courts.

A. As an Exercise of Congress' Indian Affairs Powers, the NHGRA Is Not an Impermissible Classification Violative of Equal Protection.

The principal constitutional objection to the NHGRA – that it classifies U.S. citizens on the basis of race, in violation of the constitutional guarantee of equal protection – would depart from long-standing precedent with respect to both Native Americans and equal protection.

Those who level this objection have cited *Rice* v. *Cayetano*, *supra*, for support. But *Rice* is inapposite for two reasons: (1) It did not concern Congress' special powers to employ political classifications when dealing with Native Americans but rather concerned a state legislative determination; and (2) it was limited to the unique 15th Amendment voting context.

First, in *Rice*, the Court held that the Fifteenth Amendment to the Constitution did not allow the State of Hawaii to limit to Native Hawaiians eligibility to vote in elections to choose trustees for the Office of Hawaiian Affairs, a *state* governmental agency. *See Rice*, 528 U.S. at 523-524. In this instance, by contrast, the reorganized Native Hawaiian governing entity will be neither a United States nor a state governmental body, but rather the governing entity of a sovereign native people. Because the NHGRA is an exercise of Congress' Indian affairs powers, the legislation is "political rather than racial in nature," *Mancari*, 417 U.S. at 553 n.24, and under well-settled precedent it does not violate the Constitution's equal protection guarantees. As the Court explained:

> The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians. * * * Federal regulation of Indian tribes * * * is governance of once-sovereign political communities; it is not to be

> viewed as legislation of a " 'racial' group consisting of Indians * * * ." *Morton* v. *Mancari*, *supra*, at 553 n.24.

United States v. *Antelope*, 430 U.S. at 645-646 (footnote omitted); *see also Washington* v. *Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463, 500-501 (1979) ("It is settled that 'the unique legal status of Indian tribes under federal law' permits the Federal Government to enact legislation singling out tribal Indians, legislation that might otherwise be constitutionally offensive.") (quoting *Mancari*, 417 U.S. at 551-552). In short, *Rice* simply has no application here. *See Kahawaiolaa* v. *Norton*, 386 F.3d 1271, 1279 (9th Cir. 2004) ("*Rice* does not bear on the instant case because * * * [w]hile Congress may not authorize special treatment for a class of tribal Indians in a state election, Congress certainly has the authority to single out 'a constituency of tribal Indians' in legislation 'dealing with Indian tribes and reservations.'") (quoting *Rice*, 528 U.S. at 519-20). 7/

7/ The Ninth Circuit recently described a special relationship between Congress and the Hawaiians in *Doe* v. *Kamehameha Schools*, 470 F.3d 827 (9th Cir. 2006):

> Beginning as early as 1920, Congress recognized that a special relationship existed between the United States and Hawaii. *See* Hawaiian Homes Commission Act, 1920, 42 Stat. 108 (1921) (designating approximately 200,000 acres of ceded public lands to Native Hawaiians for homesteading). Over the years, Congress has reaffirmed the unique relationship that the United States has with Hawaii, as a result of the American involvement in the overthrow of the Hawaiian monarchy. *See, e.g.*, 20 U.S.C. § 7512(12), (13) (Native Hawaiian Education Act, 2002); 42 U.S.C. § 11701(13), (14), (19), (20) (Native Hawaiian Health Care Act of 1988).

Id. at 847-48. The Ninth Circuit also recently pointed out that Congress has repeatedly singled out Native Hawaiians to provide them with special benefits:

> Congress has relied on the special relationship that the United States has with Native Hawaiians to provide specifically for their welfare in a number of different contexts. For example, in 1987, Congress amended the Native American Programs Act of 1974, Pub.L. No. 100-175, § 506, 101 Stat. 926 (1987), to provide federal funds for a state agency or "community-based Native Hawaiian organization" to "make loans to Native Hawaiian organizations and to individual Native Hawaiians for the purpose of promoting economic development in the

In *Mancari*, the Supreme Court rejected the claim that an Act of Congress according an employment preference for qualified Indians in the Bureau of Indian Affairs violated the Due Process Clause and federal anti-discrimination provisions. The Court explained that "[o]n numerous occasions this Court specifically has upheld legislation that singles out Indians for particular and special treatment." 417 U.S. at 554 (citing cases involving, *inter alia*, the grant of tax immunity and tribal court jurisdiction). The Court laid down the following rule with respect to Congress' special treatment of Indians: "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed." *Id.* Clearly, and as explained above, the NHGRA can be "rationally tied" to Congress' discharge of its duty with respect to the native people of Hawaii. As such, it does not violate equal protection principles.

A more subtle variation of the objection is that because the NHGRA does not immediately result in recognition of a sovereign Native Hawaiian entity, the "race-based" classifications Congress makes now – before that entity is reconstituted – violate equal protection principles. This argument, albeit clever, ignores the fact that in passing the NHGRA, Congress would be finding (as it has before) that Native Hawaiians are, and have been, an indigenous political entity analogous to American Indian tribes, and that they never ceased to retain elements of their political and cultural unity. *See, e.g.*, NHGRA §§ 2(13), 2(15), 2(22). The NHGRA simply reflects Congress' determination that such an entity already exists – the

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> state of Hawaii." A year later, Congress enacted the Native Hawaiian Health Care Act of 1988, Pub.L. No. 100-579, § 11703(a), 102 Stat. 2916 (1988), "for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians."

Id. at 848.

legislation declares, it does not create. As a result, Native Hawaiians are deemed a political unit even before formal recognition of their sovereignty, and the lines drawn by Congress in the NHGRA are not racial at all, but instead fall within Congress' plenary power as to indigenous peoples. *See Mancari*, 417 U.S. at 551-552. 8/

To be sure, Justice Breyer's separate concurrence in *Rice* suggested that there is a limit to how attenuated a purported tribal member's connection to the tribe may be. *See* 528 U.S. at 527. However, to overread this point as an objection to the NHGRA would be to confuse the limited power other bodies – agencies, states, and courts – have as to Indian affairs with the robust plenary power enjoyed by Congress. Justice Breyer, writing for himself and Justice Souter, noted only that while "a Native American tribe has broad authority to define its membership, [t]here must * * * be some limit on what is reasonable, *at the least when a State (which is not itself a tribe) creates the definition*." *Rice*, 528 U.S. at 527 (Breyer, J., concurring) (citation omitted) (emphasis added). He rightly makes no mention of a *congressional* definition, or of a constitutional limit on congressional power. *Rice* involved state, not congressional, action, and as cases such as *Mancari* reflect, Congress has far more latitude when dealing with Native Americans than do the states. *See Rice*, 528 U.S. at 520 ("OHA is a state agency, established by the State Constitution, responsible for the administration of state laws and obligations."); *id.* at 522 ("[T]he elections for OHA trustee are elections of the State, not of a separate quasi-sovereign, and they are elections to which the Fifteenth Amendment applies. To

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8/ The *Mancari* principle can apply as fully with respect to indigenous groups not currently recognized as sovereign as it does with respect to indigenous groups already so recognized. If that were not so, then the congressional power to recognize and restore sovereignty to tribes – affirmed by the Supreme Court in *Lara*, 541 U.S. 193 – could not exist; such congressional restoration would by definition violate equal protection principles.

extend *Mancari* to this context would be to permit a State, by racial classification, to fence out whole classes of its citizens from decisionmaking in critical state affairs").

Second, *Rice* dealt exclusively with the Fifteenth Amendment and voting restrictions. Nowhere did it mention the equal protection clause. Only the dissents mentioned the Fourteenth Amendment. *See id.* at 528-28 (Stevens, J., dissenting); *id.* at 548 (Ginsburg, J., dissenting). By contrast, the majority decision consistently referenced the Fifteenth Amendment's unique history and requirements. *See, e.g., id.* at 512 (discussing concern about giving "the emancipated slaves the right to vote"). It is doubtful that the rigid rules applied to voting would translate directly into the Fourteenth Amendment context, which is by its nature more flexible. *E.g., Hayden v. Pataki*, 449 F.3d 305, 351-352 (2d Cir. 2006) ("The text and the legislative history of the Fifteenth Amendment demonstrate that it did not simply mimic § 2 of the Fourteenth Amendment, but, instead, broke new ground by instituting a ban on any disenfranchisement based on race."). 9/

9/ Opponents of the legislation also have relied on yet another constitutional provision, arguing that a congressional grant of superior political rights to Native Hawaiians would violate Art. I, sec. 9, which forbids the creation of a hereditary aristocracy. This argument is baseless. Apart from the absurdity of characterizing Native Hawaiians as "noble" after the enactment of the NHGRA (as opposed to simply being partially restored to their preexisting condition), no court has ever relied on Art. I, sec. 9's "title of nobility" clause to strike down any enactment of Congress – indeed, it appears that no court has ever relied on the clause for any holding whatsoever. In any event, a congressional finding that Native Hawaiians are an indigenous group analogous to Native American tribes would bring the NHGRA within Congress' plenary authority to legislate with regard to Native Americans, and as a result the "superior" rights granted to Native Hawaiians by the NHGRA would be no different, as a constitutional matter, from the "superior" rights granted to other American Indian groups. As discussed above, such groups' status as political entities removes congressional enactments about them from the strict scrutiny given racial classifications under traditional equal protection analysis. *See Mancari*, 417 U.S. at 551-552. There is no reason why the analysis should proceed differently under any other constitutional equality guarantee. *See Zobel* v. *Williams*, 457 U.S. 55, 70 n.3 (1982) (Brennan, J., concurring) (comparing the Fourteenth Amendment to Art. I, sec. 9).

Finally, in connection with any discussion of the equal protection implications of the NHGRA, it should be noted that the equality of treatment, under federal law, between Native Hawaiians and other native groups is one of the purposes and justifications for the NHGRA. Native Hawaiians have been denied some of the self-governance authority long established for other indigenous populations in the United States. As Governor Lingle testified to Congress,

> The United States is inhabited by three indigenous peoples – American Indians, Native Alaskans and Native Hawaiians. * * * Congress has given two of these three populations full self-governance rights. * * * To withhold recognition of the Native Hawaiian people therefore amounts to discrimination since it would continue to treat the nation's three groups of indigenous people differently. * * * [T]oday there is no one governmental entity able to speak for or represent Native Hawaiians. The [NHGRA] would finally allow the process to begin that would bring equal treatment to the Native Hawaiian people.

Testimony of Linda Lingle, Governor of the State of Hawaii, Senate Indian Affairs Committee Hearing on S. 147, at 2 (March 1, 2005) (prepared text). *See also* Statement of Sen. Byron Dorgan, Vice Chairman, Senate Indian Affairs Committee Hearing on S. 147, at 1 (March 1, 2005) ("[T]hrough this bill, the Native Hawaiian people simply seek a status under Federal law that is equal to that of America's other Native peoples – American Indians and Alaska Natives.") (prepared text); Haunani Apoliona, Chairperson, Board of Trustees, Office of Hawaiian Affairs, Senate Indian Affairs Committee Hearing on S. 147, at 2 (March 1, 2005) ("In this legislation, as Hawaiians, we seek only what long ago was granted this nation's other indigenous peoples.") (prepared text).

B. The Fact that Native Hawaiians Allowed Foreigners Into Their Society Prior to 1893 Has No Bearing on the Analysis.

Opponents of the legislation also have argued that Congress cannot recognize Native Hawaiians as a sovereign people because they did not enjoy such a status even before

1893. In support of this argument, they have said, among other things, that (1) Native Hawaiian society was multiracial and whites held high-ranking positions in Queen Liliuokalani's government, and (2) the Hawaiian government was a monarchy and thus sovereignty did not rest with the people.

We do not believe this argument carries much constitutional weight. First, the fact that Hawaii was a monarchy prior to U.S. annexation is irrelevant to the analysis. The American Indian and Alaska Native groups that have been recognized as dependent sovereigns had a wide range of political structures prior to the arrival of whites, and that fact has never been deemed to have any bearing on congressional power to recognize their sovereignty or tribal status. *See, e.g., Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 664 & n.5 (1979) ("[S]ome bands of Indians * * * had little or no tribal organization * * *. Indeed, the record shows that the territorial officials who negotiated the treaties on behalf of the United States took the initiative in aggregating certain loose bands into designated tribes and even appointed many of the chiefs who signed the treaties."). Congress is certainly well within its powers to determine that the situation of Native Hawaiians parallels those of other federally recognized tribes.

Second, the fact that Native Hawaiians invited foreigners into their midst prior to 1893 is equally irrelevant to their inherent sovereignty *vel non*. Taken to its logical endpoint, this argument suggests that any sovereign political group that permits outsiders into its ranks surrenders its sovereignty; this clearly cannot be. It would be a perversion of the United States' trust responsibility toward indigenous people to punish a group for having been too inclusive when settlers arrived, while rewarding those who were exclusive or discriminatory. In any event, participation of non-Hawaiians in the Hawaiian monarchical government was at least in

part the result of direct pressure by Europeans and Americans who sought increased influence over Hawaiian affairs. *See Rice*, 528 U.S. at 504. It would be equally perverse to find that this pressure – which led to the overthrow of the Native Hawaiian monarch – negates the possibility of a sovereign Native Hawaiian government going forward.

Opponents of the legislation also have advanced a related argument: They have said that because foreigners were part of the Hawaiian polity in 1893, there was never a solely Native Hawaiian entity of the sort that would be reconstituted by the NHGRA – in other words, that if one were to accurately reconstitute the Hawaiian sovereign, one would have to include lineal direct descendants of non-indigenous Hawaiian natives, over whom Congress has no Indian affairs power. The flaw in this argument is that it discounts both the realities of Hawaiian history and the great deference paid to congressional line-drawing in the Indian affairs arena.

Under *Sandoval*, *supra*, Congress has extraordinarily broad authority to decide who falls within its Indian affairs power; the logical concomitant of this authority is the power to decide who falls *outside* the groups it chooses to recognize. For this reason, a congressional decision on how to define "Native Hawaiian" would be reviewable only for arbitrariness. The NHGRA's approach cannot be said to run afoul of this highly deferential standard. As the Supreme Court has noted, much of the nineteenth century foreign presence in Hawaii – both within Hawaiian government and in the broader polity – was unwanted and in fact actively resisted by Native Hawaiians. *See Rice*, 528 U.S. at 504 (finding that there was "an anti-Western, pro-native bloc" in the Hawaiian government, that in 1887 Westerners "forced * * * the adoption of a new Constitution" that gave the franchise to non-Hawaiians, and that the U.S.-led 1893 uprising was triggered in part by the queen's attempt to promulgate a new constitution again limiting the franchise to Hawaiians). Furthermore, Congress has long distinguished between

indigenous Hawaiians and others who may have lived in the Hawaiian Islands at the time of annexation. *See* Hawaiian Homes Commission Act §§ 201, 203 (setting aside land to provide lots to Native Hawaiians with 50 percent or more Hawaiian blood). With all of these facts in mind, Congress supportably could find that an initial definition of "Native Hawaiian" as limited to those with some Hawaiian blood is appropriate. 10/

NHGRA opponents have made one additional argument aimed at pre-statehood days: They say that Native Hawaiians' failure to preserve their polity through some sort of treaty or other formal recognition at the time of annexation (or later, at the time Hawaii joined the Union) waives any claim of revival now. But the lack of a treaty recognizing Native Hawaiian sovereignty at the time of annexation is immaterial for several reasons. First, the argument is ahistorical: The 1898 annexation post-dated the era when the United States signed treaties with native groups. *See Lara*, 541 U.S. at 201 ("[I] n 1871 Congress ended the practice of entering into treaties with the Indian tribes") (citing 25 U.S.C. § 71). This change in U.S. policy did not alter the sovereignty of native groups. *Cf. id.* (noting that 25 U.S.C. § 71 "'in no way affected Congress' plenary powers to legislate on problems of Indians.'") (quoting *Antoine* v. *Washington*, 420 U.S. 194, 203 (1975)). Second, yet again, it would be perverse to punish an indigenous group precisely because it had been so thoroughly removed from power in its own land that it did not have the means to win concessions from the annexing entity. And third, as a factual matter, there *were* concessions made by the United States analogous to the treaties signed with American Indian groups. *See* Hawaiian Homes Commission Act, *supra*.

10/ In any event, of course, the congressional definition is preliminary – it defines only the roll of those who may participate in reconstituting the Native Hawaiian entity. Congress could rationally conclude that the initial definition of "Native Hawaiian" should be limited to indigenous Hawaiians and their descendants, while leaving the subsequent dependent sovereign entity some leeway to later determine – just as virtually every Native American tribe determines for itself – who else (if anyone) should be included in its ranks.

Finally, it is unclear why a failure to recognize Native Hawaiians at the time of Hawaiian statehood should have any effect on congressional power to recognize them now; this argument, like many of those above, appears grounded in an improperly cramped view of congressional authority as to native groups. But in any event, it is simply inaccurate to say no steps were taken in 1959 to recognize the separate existence of a Native Hawaiian people. As noted *supra* at 16, Hawaii agreed in connection with its admission to the Union to adopt the Hawaiian Homes Commission Act as part of the Hawaii Constitution. Furthermore, the United States transferred title to some 1.4 million acres of public lands in Hawaii to the new State as a public trust for the betterment of "Native Hawaiians." Admission Act § 5(f). These actions constitute the sort of recognition of a continuing indigenous corpus that NHGRA opponents wrongly claim was lacking.

C. The Claim that Congress Can Only Recognize a Native Group that Has Had a "Continuous" Governmental Structure is Incorrect as a Matter of Constitutional Law.

NHGRA opponents also have argued that Congress cannot recognize Native Hawaiians as a sovereign indigenous people because they have not existed as a coherent "tribe" on a consistent basis since Hawaii's annexation; this argument sometimes relies on the proposition that Congress may not recognize a tribe unless its existence has been "continuous." This objection suffers from numerous fundamental flaws. In our judgment, it would not carry the day in any challenge to the NHGRA's constitutionality.

i. The supposed "continuity" rule does not bind Congress.

First, and most importantly, congressional power to recognize Indian tribes is not hamstrung by a "continuity" rule or any similar requirement. The "continuity" rule cited by opponents of the legislation is drawn in the main from Department of the Interior regulations that

govern when *that agency* will recognize an Indian tribe pursuant to its delegated power. *See* 25 C.F.R. § 83.1 *et seq.* But these regulations govern nothing more than the scope of the agency's power, and they in no way mean Congress' authority is similarly cabined. To the contrary, Congress has plenary power to establish the criteria for recognizing a tribe; it may delegate this authority to the executive branch at its discretion, and the executive branch restricts its agency decision-makers by means of regulations they are bound to follow. *See Miami Nation* v. *United States Dep't of Interior*, 255 F.3d 342, 345 (7th Cir. 2001). In other words, the reservoir of authority lies in Congress. The Agent (an executive agency) cannot tell the Principal (Congress) what recognition criteria to employ.

This structural arrangement, in turn, governs the shape of judicial review. As Judge Posner has explained, it means that a decision recognizing a tribe is reviewable by the courts *only* if it was made by an agency within the agency's regulatory framework; in that circumstance, the decision is "within the scope of the Administrative Procedure Act" and therefore within the competence of the courts. *Id.* at 348. Otherwise, the decision "has traditionally been held to be a political one not subject to judicial review." *Id.* at 347 (quoting William C. Canby, Jr., *American Indian Law in a Nutshell* 5 (3d ed. 1998)). 11/

Like the Department of the Interior, some courts have employed a "continuity" requirement when examining whether a group of Native Americans qualifies as the successor of an earlier tribe for purposes of exercising treaty rights. *See, e.g., United States* v. *Washington,* 641 F.2d 1368, 1373 (9th Cir. 1981) ("*Washington I*"). Again, however, the courts do so only as

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11/ In any event, reliance on these regulations is misplaced because they are expressly inapplicable to Native Hawaiians. *See* 25 C.F.R. § 83.3(a) ("This part applies only to those American Indian groups indigenous to the continental United States which are not currently acknowledged as Indian tribes by the Department."); *id.* § 83.1 (defining continental United States to mean "the contiguous 48 states and Alaska").

a default rule in the face of congressional silence about a tribe's qualifications; if Congress has chosen to recognize (or decline to recognize) a tribe, the courts defer to that decision, recognizing Congress' far greater authority in the arena. *See United States* v. *Washington*, 394 F.3d 1152, 1158 (9th Cir. 2005) ("*Washington II*") (noting "the traditional deference that the federal courts pay to the political branches in determining whether a group of Indians constitutes a tribe"); Canby, *American Indian Law in a Nutshell* 6 ("Once granted, * * * the recognition will bind the courts until it is removed by the Executive or Congress."); *Holliday*, 3 Wall. at 419 ("If by [the political branches] those Indians are recognized as a tribe, this court must do the same."). In short, the courts uniformly have recognized that "Congress has the power, both directly and by delegation to the President, to establish the criteria for recognizing a tribe." *Miami Nation*, 255 F.3d at 345.

ii. Even if a "continuity" rule applied, Native Hawaiians would meet it.

The "continuity" rule does not limit congressional power to recognize a Native Hawaiian sovereign entity. However, even assuming that it did, Native Hawaiians would be able to meet its mandate.

Courts that use a "continuity" rule in the absence of congressional direction have explained that it is not absolute – that is, it does not require that a native group have maintained a robust political structure no matter the circumstances. To the contrary, these courts sensibly have recognized that native groups often were subject to intense pressure – military, economic, and otherwise – to abandon their lands and submit to Western governments. They therefore hold that *any modern tribal vestige demonstrating that assimilation is not complete* suffices to meet the continuity test. As the *Washington I* court wrote:

> [C]hanges in tribal policy and organization attributable to adaptation do not destroy tribal status. Over a century, change in any community is

> essential if the community is to survive. Indian tribes in modern America have had to adjust to life under the influence of a dominant non-Indian culture. * * * A degree of assimilation is inevitable under these circumstances and does not entail the abandonment of distinct Indian communities.

641 F.2d at 1373. Therefore, only when assimilation is "complete" do those purporting to be the tribe lose their claim to tribal rights. *Id.*; *see also Native Village of Venetie I.R.A. Council* v. *State of Alaska*, 944 F.2d 548, 557 (9th Cir. 1991) ("[A] relationship * * * must be established, but some connection beyond total assimilation is generally sufficient."). Further, the courts "have been particularly sympathetic to changes wrought as a result of dominion by non-natives." *Id.* The relaxed construction of the "continuity" rule in this circumstance reflects the principle that "if a group of Indians has a set of legal rights by virtue of its status as a tribe, then it ought not to lose those rights absent a voluntary decision made by the tribe * * *." *Mashpee Tribe* v. *New Seabury Corp.*, 592 F.2d 575, 586 (1st Cir. 1979).

If such a continuity test applied here, it would be met on the strength of Congress' findings of fact. As discussed above, Congress has determined – both in the NHGRA and elsewhere – that Hawaiians have indeed maintained elements of their political and cultural structure in the years since Hawaiian annexation. *See, e.g.,* NHGRA § 2(9) ("Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities"); *id.* § 2(11) ("Native Hawaiians continue to maintain other distinctly native areas in Hawaii"); *id.* § 2(15) ("Native Hawaiians have continued to maintain their separate identity as a single distinct native community through cultural, social, and political institutions"); *see also The Reconciliation Report* at 4 (noting that native Hawaiian people "continue to maintain a distinct community and certain governmental structures"). This, combined with the fact (found by Congress) that the United States played a role in the ouster of

the Hawaiian government, *see* Apology Resolution, *supra*, and the fact (also found by Congress) that "the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands," NHGRA § 2(13), brings Native Hawaiians within the relaxed "continuity" requirement established by such cases as *Washington I.* 12/

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The Supreme Court has confirmed that Congress has broad, plenary constitutional authority to recognize indigenous governments and to help restore the federal relationship with indigenous governments overtly terminated or effectively decimated in earlier eras. *See Lara*, 541 U.S. at 203 (affirming that the Constitution authorizes Congress to enact legislation "recogniz[ing] * * * the existence of individual tribes" and "restor[ing] previously extinguished tribal status"). That authority extends to the Native Hawaiian people and permits Congress to adopt the NHGRA, which would recognize the Native Hawaiian governing entity and initiate a process for its restoration.

12/ Furthermore, that many native Hawaiians are integrated into multiracial communities does not set them apart from Alaska Natives, who have been similarly assimilated and whose dependent sovereignty has nonetheless been recognized by Congress. *See Metlakatla Indian Community* v. *Egan*, 369 U.S. 45, 50-51 (1962) (describing how the "Indians of southeastern Alaska * * * have very substantially adopted and been adopted by the white man's civilization").

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Senator INOUYE. I thank you very much, sir.

I have just one question, Mr. Burgess. In your written statement, you indicated that this violates Article I, Section 9 of the Constitution. Is that correct?

Mr. BURGESS. That is the anti-nobility clause of the Constitution. Yes, that is correct.

Senator INOUYE. Does that also suggest that the Statehood Act was a violation of that clause?

Mr. BURGESS. The Statehood Act, Senator Inouye, in Section 4, required the new State of Hawaii as a condition of statehood to adopt the Hawaiian Homes Commission Act. That, I believe, is unconstitutional. That is the subject of litigation which is now pending.

Senator INOUYE. Thank you.

Mr. BURGESS. May I add, Senator, that in the lawsuit in which we challenged the constitutionality of the Hawaiian Homes Commission Act, we do not seek to dispossess Native Hawaiians who have homesteads. We ask that the court permit the negotiation between the State and the homesteaders, so that they can become homeowners, fee simple homeowners of their property, and then terminate the Hawaiians Homes Commission, and Native Hawaiians could be treated just like everyone else, have the same joys and the same responsibilities of home ownership.

Senator INOUYE. Thank you.

Professor Dinh, does this bill, S. 321, suggest that Native Hawaiians are not citizens of the United States?

Mr. DINH. No, sir, it does not. Indeed, as you cited to Article I, Section 9, I had to pull out my Constitution and read it because our research has shown that no court, not the Supreme Court or any other courts in the United States, have ever held anything unconstitutional under this provision. Let me read that provision. It says, "No title of nobility shall be granted by the United States." On its face, this law does no such thing, and that is I think why this clause has never been relied upon by any court in order to strike down any legislation because the United States simply does not engage in the process of making lords or knights or prince potentates. Nothing in this bill offends or upsets that tradition.

Senator INOUYE. Does this bill suggest that upon its passage, Native Hawaiians would not be subjected to the laws of the United States?

Mr. DINH. No, sir, it does not.

Senator INOUYE. They would be subject to pay taxes, obey the laws, to the draft, et cetera?

Mr. DINH. Yes, sir.

Senator INOUYE. Do you believe that this is a race-based bill?

Mr. DINH. No, sir, I do not, for the exact reason that the Supreme Court has never considered legislation dealing with Indian affairs to be race-based bills. Sure, it does single out a class, that is, the tribe itself, but that in and of itself is a power that is expressly granted in the Constitution under the Indian Commerce Clause and the Treaty Clause. The courts have very clearly and consistently characterized this as a political decision, not a race-based classification.

Senator INOUYE. Do Native American Indians lose their citizenship when they leave their reservation?

Mr. DINH. Absolutely not, Mr. Chairman.

Senator INOUYE. And you have absolutely no question as to the constitutional authority on the part of Congress to enact this bill?

Mr. DINH. We are very confident in our constitutional analysis, based upon the constitutional text and the precedents we have studied. Like General Bennett, I am not so confident as to say that we are 100 percent confident of anything that the nine members of the Supreme Court do, but we are very confident, based upon the Constitution and the precedents up to this point that Congress has ample authority to enact this legislation.

Senator INOUYE. Under the Constitution, if this bill is enacted, it could also be repealed?

Mr. DINH. Absolutely, sir. One of the aspects of this bill is that it does give those who challenge it and think it to be unconstitutional an immediate basis for standing in order to challenge it in Federal court. For example, the Department of Interior and the commission it sets up would have to create a roll of Native Hawaiians eligible to vote for the interim governing council. Anybody who applied and is excluded from the roll based upon noncompliance with statutory criteria has immediate standing to challenge that decision. So in that way, this constitutional question will be very quickly and favorably resolved in favor of congressional authority.

Senator INOUYE. Does this bill upon its passage create a separate entity?

Mr. DINH. It does not create a separate entity of Native Hawaiian sovereignty. It creates a commission in order to facilitate the process of drafting the organic document. That is a question that is very important to note because it does not empower the Department of Interior or the State of Hawaii or any other government agency to conduct the polling and the election necessary in order to reconstitute the Native Hawaiian Governing Entity. All that it does is that it reestablishes the sovereign status of the Native Hawaiians and puts in place a process through which Native Hawaiians who fit the criteria as specified in Section 310 to start the process of self-governance.

This, as I noted before, is precisely the process that Congress employed in the 1973 Menominee Restoration Act, which has been cited with approval by the United States Supreme Court.

Senator INOUYE. And in this process, the government of the United States and the government of the State of Hawaii would be involved?

Mr. DINH. They would be as part of the three way negotiation process that Mr. Chairman and members of the Committee have noted. Obviously, nobody is going to pre-judge the results of the negotiation process.

Senator INOUYE. Do you believe realistically that we would permit separatism?

Mr. DINH. It would be not only contrary to everything that we believe in as Americans, but I think it would be contrary to everything that all of Native Hawaiians believe as Americans and as Native Hawaiians.

Senator INOUYE. I thank you very much, sir.

Senator AKAKA. [Presiding]. Thank you very much, Senator Inouye.

Mr. Burgess, the language in the bill is the result of successful negotiations between representatives from the Department of Justice and the Administration, the Office of Management and Budget, the Hawaii State Attorney General, and the Hawaii congressional delegation.

In your testimony, you mention about the certification commission. This language was modified as introduced and replaced at the urging of the Department of Justice. Are you saying that the Department of Justice would approve language that would violate the Constitution?

Mr. BURGESS. Senator Akaka, I understand the Department of Justice's position pretty much as it was expressed by the Attorney General here today, and as it was expressed in June of last year by the Administration through William Moschella of the Department of Justice, and that is that they strongly oppose the Akaka bill, and that they have not signed off on the provisions of the Akaka bill.

I personally, my analysis does not indicate that the questions, not only the constitutional questions, but the possibility, for example, of gaming. I don't think the bill puts those questions to rest. I might say that as to the question of whether this bill could lead eventually to secession, it is my understanding that you, Senator Akaka, actually acknowledged that that is a possible outcome of this bill, and that you would leave it to your grandchildren.

There are many people in Hawaii, I agree with Bill Meheula, that it is probably a minority, and I hope so, but they have expressed a desire for independence. I have heard Haunani-Kay Trask, a tenured professor at the University of Hawaii, say that, "God, I would love to see secession; I hate the United States of America." And there is an active and vocal group of Native Hawaiians who want independence. As I understand it, the proponents of the bill have gone out of their way to assure those people that this Akaka bill is just the first step, and it does not rule out eventual secession from the United States. That is what concerns me.

Senator AKAKA. Is General Bennett here? May I ask you, General Bennett, the same question that I asked Mr. Burgess?

Mr. BENNETT. There is no possibility that this bill could lead to secession or anything like that. The Constitution of the United States does not provide for secession. There is no nullification process or provisions of the Constitution. The negotiators would not have the ability to negotiate anything like that. The bill simply provides and makes clear in its provisions that since the recognition afforded the Native Hawaiian Governing Entity is of the precise type and nature afforded the American Indian tribes, that the type of limited dependent self-government is limited to that afforded to those Native American tribes.

Senator AKAKA. Thank you. Thank you very much.

Professor Dinh, does Congress have the power to treat Native Hawaiians just as it treats Native Americans?

Mr. DINH. Absolutely, sir.

Senator AKAKA. What is your view as a former head of legal counsel in the Department of Justice, and constitutional law professor, is there any Federal law that imposes criteria preventing groups seeking Federal recognition from acquiring such recognition because of the form of government that indigenous people had?

Mr. DINH. No, sir, and that is for a very obvious reason, because prior to the enactment of our Constitution, the Native Americans who inhabited our land had various types of government, be it a monarchy in Hawaii to a smaller form of chief-based monarchy, if you will, of hereditary chieftains in the United States. Notwithstanding those differences in governmental structures, obviously they have become the dependent sovereign entities within the United States and Congress has the power under the Treaty Clause and the Indian Commerce Clause to establish full relations.

Senator AKAKA. There was mention of the *Lara* case here. In your written testimony, you mention that the *Lara* case relates to Congress's authority to deal with Indian tribes. How does this case relate to Native Hawaiians, in your opinion?

Mr. DINH. In a number of ways, Mr. Chairman. Of course, the exact question of the *Lara* case, whether or not there is double jeopardy from a Federal prosecution after a tribal prosecution, is not at issue before this Committee. But as part of its analysis of that ultimate question of double jeopardy, the court has to go through a number of steps that are of quite significant relevance.

First, as General Bennett has pointed out, and I repeat it, the court recognized the traditional and unbroken line of cases establishing the whole plenary and exclusive authority of the Congress to deal with Indian Affairs. Secondly, it recognizes the unbroken line of cases that says absent arbitrary determinations, courts will not likely second guess the political determinations of Congress as to what constitutes an Indian tribe.

More significantly, it cited with approval the Menominee restoration process, a termination and restoration process in 1954 and 1973, upon which this bill is patterned after. Incidentally, while it cited with approval that process as evidence of Congress's power to terminate and restore Indian sovereignty, it cited to the Native Hawaiian example with respect to the Hawaiian Homes Act and the Admissions Act.

Senator AKAKA. Thank you.

Senator Inouye, do you have any further questions?

I want to thank our witnesses on the second panel and also the first panel. I am hopeful and confident that our colleagues on this Committee will once again support our efforts to extend the Federal policy of self-governance and self-determination to Native Hawaiians.

Just yesterday, the House Committee on Natural Resources favorably reported the House companion bill, H.R. 505, without amendments.

In closing here, respecting the rights of Native Hawaiians does not impede or diminish the rights of non-Native Hawaiians. Hawaii is truly an aloha State as its people have demonstrated, that can foster an appreciation for culture that does not come at the expense of any individual or community. For me, the aloha spirit is something that unifies and brings us together. When we are guided by the spirit of compassion and love, we are able to bring about outcomes that benefit all of the people of Hawaii.

I appreciate the testimony of our witnesses. At this time, I would like to let the witnesses know that they can voluntarily supplement their written testimony. My colleagues and I may wish to submit written questions to you in response to your testimony today.

For those not present to testify in this hearing, the record will open until May 17, 2007.

Again, I want to thank all of you for being here and responding and contributing to this hearing.

Senator Inouye?

Senator INOUYE. Mr. Chairman, may I join you in thanking all of the witnesses who have participated, not just those who are for it, but those who are opposed to it. It has resulted in a fine discussion, which is necessary for legislation. We thank you very much.

Senator AKAKA. Thank you very much.

This hearing is adjourned.

[Whereupon, at 12:10 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. TOM COBURN, U.S. SENATOR FROM OKLAHOMA

The indigenous peoples of Hawaii have a proud and distinguished history and remain a vibrant part of the State of Hawaii and this nation. Throughout their rich history, the people of Hawaii have served as one of the finest examples of the "melting pot." While we have sometimes fallen short of this ideal as a nation, the people of Hawaii have shown how a diverse society can become a single, unique and vibrant culture and economy.

In the words of Frank Fasi, Democratic National Committeeman for Hawaii in 1953 testimony before the Senate: "Hawaii is the furnace that is melting that melting pot. We are the light. We are showing the way to the American people that true brotherhood of man can be accomplished. We have the light and we have the goal. And we can show the peoples of the world.[1]"

E Pluribus Unum—From many, one: that uniquely American concept may have it roots in Philadelphia and points eastward, but it was given renewed meaning when Hawaii entered the Union.

To the casual observer, the bill before the Committee today—the Native Hawaiian Government Reorganization Act (the Akaka bill)—appears non-controversial; Yet, it poses the single greatest risk to "e pluribus unum" that this Congress will face during the 110th.

This bill does not restore "tribal status" where it once existed; It creates an entirely new government based solely on race. The Kingdom of Hawaii was a diverse society and government (much like the state today). The new "tribe" will not reflect that tradition and will create a government just for those deemed "indigenous."

Unlike the many Indian tribes in my state whose governments were subsequently terminated, no such history exists for a Native Hawaiian entity. As a recent at 1998, the State of Hawaii agreed with this statement. In a brief before the Supreme Court, the state argued: "*the tribal concept simply has no place in the context of Hawaiian history.*[2]"

American Indians weren't even formally given full citizenship until 1924.[3] In contrast, Native Hawaiians became citizens of this country in 1900, *twenty four years earlier*.[4] Native Hawaiians took part in the referendum that brought Hawaii into the Union as a state, and as one government.

In Oklahoma, and even in Alaska, there were distinct tribal populations with existing governments at the time of statehood. That was not the case in Hawaii. In Alaska, distinct tribal communities existed at the time of statehood and were addressed in that state's organic documents. Again, that is not the case in Hawaii.

We must not overlook the fact that Congress lacks the authority to create governments based on "indigenous status," and that doing so now creates a precedent for other indigenous peoples that existed in parts of the United States. Consider vast territories once occupied by Mexico in the Southwest; Consider the vast territory gained as a result of the Louisiana Purchase. There are many other examples. The Constitution very clearly gives Congress the power to regulate commerce among the "Indian tribes." It does not speak to "indigenous peoples." This bill begins the balkanization of America.

Proponents must answer this question: *if the law allowed for Native Hawaiians to seek recognition as a tribe through the established regulatory framework (at the Department of Interior) would it qualify?* If the answer is yes, we should simply

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[1] Testimony of Frank Fasi, Democratic National Committeeman for Hawaii, before the Senate Committee on Interior and Insular Affairs, June 30, 1953. *http://www.heritage.org/Research/LegalIssues/wm1117.cfm.*

[2] Brief in Opposition to Petition for Writ of Certiorari at p. 18, Rice v Cayetano, 528 US 495 (2000).

[3] *http://memory.loc.gov/ammem/today/jun02.html.*

[4] *http://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/03-ORG/ORG_0004.HTM.*

alter this proposal to allow a Native Hawaiian entity to apply for recognition as a tribe. It cannot, because no tribe ever existed and because it fails the basic seven step process established to determined tribal status recognition.

That is the paradox of this legislation: On the one hand, proponents argue that Native Hawaiians are eligible for recognition just like Indian tribes; on the other hand, they argue that they are not an Indian tribe and must be treated separately (creates an Office of Native Hawaiian Affairs within Interior).

Is this bill good for Native Hawaiians? I have the great privilege of representing the members of 38 recognized tribes in Oklahoma. I doubt you will find one that appreciates the efficiency or effectiveness of the Department of Interior, yet this bill will require significant interaction between the Native Hawaiian and the Department. Consider that Interior is now subject to a multi-billion dollar lawsuit for gross mismanagement of trust resources; Consider that Bureau of Indian Affairs schools are among the worst in the nation; Consider the grave conditions present at most federally run hospitals and clinics for American Indians.

The bill before us doesn't even guarantee that Native Hawaiians will be subject to Constitutional protections. Instead, it leaves that and many other critical, basic issues up to negotiation between the state, federal, and new Native Hawaiian governments. The Bill of Rights—which guarantees our most basic liberties—should never be left to negotiation. This bill should make clear that the U.S Constitution remains the supreme law of the land.

Furthermore, it does not preclude the eventual secession of the new government from the United States. Consider what Senator Akaka said last year: According to Hawaiian press, "When asked during a National Public Radio interview whether the bill 'could eventually go further, perhaps even leading to outright independence.' he replied, "*That could be. That could be. As far as what's going to happen at the other end, I'm leaving it up to my grandchildren and great-grandchildren.*[5]"

Despite the very noble intentions of many who support this legislation, I am concerned this is less about obtaining tribal government status or self-determination and more about protecting the many federal funding streams for Native Hawaiians, which have been called into question in recent litigation. The only way one can guarantee these programs in perpetuity is to manufacture tribal status. That is an affront to the many tribes in my state who labored to regain their status, and the many hundreds around the country who are standing in line seeking recognition.

My hope is that this bill will never reach the Senate floor. It is bad policy for America, and it is bad policy for Native Hawaiians. If we proceed, however, I intend to offer dozens of amendments that will minimize many of the potential dangers present in the current bill.

Mr Chairman, I thank you for conducting this important hearing today. I ask that my full statement be made part of the record, that I be allowed to submit additional documents for submission in the record, and that I have the ability to submit additional questions once I have reviewed today's testimony.

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Chairman Dorgan, Vice Chairman Thomas, distinguished Members of the Committee, thank you for holding this hearing. I appreciate the opportunity to testify in support of S. 310, the Native Hawaiian Government Reorganization Act of 2007.

As a Senator for Alaska, the decision to support S. 310 is a simple one. Native cultures and traditions are an important part of the heritage and history of both Alaska and Hawaii. Preserving the rights of Alaska Natives has been my priority for more than forty years, and it is my firm belief that Native Hawaiians deserve these protections as well.

As you know, the Constitution and a series of federal laws establish our nation's policy of self-determination and self-governance for Native Americans. In 1971, Alaska Natives were granted the same status through the passage of the Alaska Native Claims Settlement Act, or ANCSA. Now, more than 100 years after Hawaii was annexed by the United States, S. 310 would formally—and finally—expand this policy to include Native Hawaiians.

S. 310 contains three principal elements to help Native Hawaiians achieve legal parity with Native Americans and Alaska Natives. The first would establish a process for federal recognition of a Native Hawaiian governing entity, which would be authorized to negotiate with the United States and the State of Hawaii. These negotiations would address the unique issues faced by Native Hawaiians—from the

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[5] *http://www.hawaiireporter.com/story.aspx?9abaa598-e962-4238-be26-67b473a20aa3.*

transfer of lands to natural resource rights—and help ensure their future well-being.

This Act would also create two bodies dedicated to the best interests of Native Hawaiians. A new office focused solely on Native Hawaiian issues would be established in the Department of the Interior. A working group of officials from federal agencies with programs affecting Native Hawaiians would also be formed.

Many agree that governmental reorganization is the best way to improve the position of Native Hawaiians, and my good friends in the Hawaiian delegation have now introduced legislation to do so in five consecutive Congresses.

In the past, this legislation has been endorsed by the Governor of Hawaii, the Hawaii State Legislature, and thousands of individual Hawaiians. The National Congress of American Indians, the Alaska Federation of Natives, the American Bar Association, and dozens more groups and organizations all support its purpose. The current version of this bill also satisfies concerns raised by the Department of Justice in 2005.

Of course, this legislation is not without critics. Several members of Congress, the news media, and the general public contend it would create a race-based government. Last year, for example, the *Wall Street Journal* called this measure "secessionist, unconstitutional, and un-American."

Similar arguments were made during the debate over ANCSA, and they are as mistaken today as they were nearly four decades ago. Those opposed to ANCSA claimed it would create a state within a state, a movement for secession by that state, and ultimately a separate nation within our nation. None of these predictions have come true—instead, ANCSA's clarification of the relationship between the Federal Government and Native communities has empowered them to achieve great success. Alaska Native corporations now have thousands of employees and annually distribute dividends to their shareholders. Alaska Natives have preserved their culture and identity—but they have also continued to abide by the laws of our land. Nothing suggests Native Hawaiians will not do the same.

The bill being considered today, S. 310, would provide Native Hawaiians with many of the same opportunities ANCSA offered to Alaska Natives. Although these bills are structured differently, their objectives are the same. S. 310 would create a framework to help Native Hawaiians address their unique circumstances, afford them greater control over their natural resources and assets, and, in my view, right a long-standing wrong.

Our Federal Government has a responsibility to promote the welfare of all indigenous peoples. To properly fulfill this commitment, we must extend our federal policy of self-determination and self-governance to Native Hawaiians. I hope each of you will support this Act and join in our efforts to see it signed into law.

PREPARED STATEMENT OF HON. NEIL ABERCROMBIE, U.S. REPRESENTATIVE FROM HAWAII

Chairman Dorgan, Vice-Chairman Thomas and Members of the Committee, I would like to express my wholehearted support for S. 310, the Native Hawaiian Government Reorganization Act of 2007. This legislation has been introduced by Senator Daniel Akaka and Senator Daniel Inouye. I, along with my colleague Congresswoman Mazie Hirono, have introduced the companion measure in the House of Representatives.

The purpose of the bill is to provide a process for the reorganization of the Native Hawaiian governing entity for the purposes of a federally recognized government-to-government relationship. The Native Hawaiian Government Reorganization Act would provide Native Hawaiians the same right of self-governance and self-determination that are afforded to other indigenous peoples.

Since Hawaii was annexed as a territory, the United States has treated Native Hawaiians in a manner similar to that of American Indians and Alaska Natives. This bill would formalize that relationship and establish parity in federal policies towards all of our indigenous peoples.

As a requirement of Hawaii's admission to the United States in 1959, the State of Hawaii was required to take over administration of the Hawaiian Home Lands and other former Hawaiian government lands for Native Hawaiians. Since that time, the State of Hawaii has administered that trust with the Federal Government retaining oversight and the ability to enforce that trust.

One of the goals of H.R. 505 is to allow Native Hawaiians to take responsibility for assets already set aside for them by law—without taking anything away from all others who have worked hard and make up the diversity of people who are Hawaii today.

H.R. 505 provides a democratic process for the reorganization of the Native Hawaiian governing entity, including the development of a base roll of the adult members of the Native Hawaiian community and the election of a Native Hawaiian Interim Governing Council charged with developing the organic governing documents of the Native Hawaiian governing entity. This governing instrument will be subject to the approval of the Secretary of the Interior.

This bill will also provide a structured process to address the longstanding issues resulting from the annexation of Hawaii. This discussion has been avoided for far too long because no one has known how to address or deal with the emotions that arise when these matters are discussed. There has been no structured process. Instead, there has been fear as to what the discussion would entail, causing people to avoid the issues. Such behavior has led to high levels of anger and frustration, as well as misunderstandings between Native Hawaiians and non-Native Hawaiians.

The bill provides a structured process to negotiate and resolve these issues with the federal and state governments and will alleviate the growing mistrust, misunderstanding, anger, and frustration about these matters.

This measure is supported by Hawaii's Republican Governor, Linda Lingle, Hawaii's Congressional delegation, and the Hawaii State Legislature. The bill is also supported by a number of local and national organizations in Hawaii who have passed resolutions in support of this bill.

Mahalo Chairman Dorgan and Vice-Chairman Thomas for your consideration of this legislation.

PREPARED STATEMENT OF MICAH A. KANE, CHAIRMAN, HAWAIIAN HOMES COMMISSION

Aloha kakou, Chairman Dorgan, Vice Chairman Thomas, Senator Inouye, Senator Akaka and Members of this Committee.

I am Micah Kane, Chairman of the Hawaiian Homes Commission, and I thank you for this opportunity to express strong support for this bill and to address how federal recognition plays a critical role in sustaining our Hawaiian Home Lands program.

In 1921, the United States Congress adopted the Hawaiian Homes Commission Act and set aside more than 200,000 acres of land in Hawaii to rehabilitate the native Hawaiian people. With Statehood in 1959, the Hawaiian home lands program and its assets were transferred to the State of Hawaii to administer. The United States, through its Department of the Interior, maintains an oversight responsibility and major amendments to the Act require Congressional consent.

For more than 80 years, the Department of Hawaiian Home Lands has worked determinedly to manage the Hawaiian Home Lands trust effectively and to develop and deliver lands to native Hawaiians. Currently, there are over 35,000 native Hawaiians living in 25 homestead communities throughout the State. Although unique and distinct, our communities are an integral part of each state's economic, social, cultural, and political fabric. About one percent of our lands are dedicated to commercial and industrial uses, producing revenues to help sustain our programs.

Passage of S. 310 will enable the Hawaiian Homes Commission to not only continue fulfilling the mission Congress entrusted to us, but to reach incredible successes that we are only starting to realize.

These five reasons are why we need this bill to be passed:

- **Our housing program benefits the entire state.**

  Today, the Department of Hawaiian Home Lands is the largest single family residential developer in the State of Hawaii. In the past four years our program has provided more than 2,250 families a homeownership opportunity and we are planning several thousand more over then next four years. Each home we build represents one more affordable home in the open market or one less overcrowded home. Homeownership opportunities have also lead us to focus on financial literacy in order to ensure that our beneficiaries will be successful and responsible homeowners. In a state with high living costs and an increasing homeless population, there is no question that we are doing our part in raising the standard of living for all residents of our great state.

- **The Department of Hawaiian Home Lands builds and maintains partnerships that benefit the entire communities.**

  We think regionally in our developments and we engage the whole community in our planning processes. Our plans incorporate people, organizations (e.g. schools, civic clubs, hospitals, homeowner associations), all levels of government

and communities from the entire region–not only our beneficiaries. It is a realization of an important Hawaiian concept of ahupuaa–in order for our Hawaiian communities to be healthy; the entire region must also be healthy. This approach encourages a high level of cooperation, promotes respect among the community, and ensures that everyone understands how our developments are beneficial to neighboring communities and the region.

- **The Department of Hawaiian Home Lands is becoming a self-sustaining economic engine.**

  Through our general lease program, we rent nonresidential parcels to generate revenue for our development projects. Since 2003, the Department has doubled its income through general lease dispositions. We have the ability to be self-sufficient. Revenue generation is the cornerstone to fulfilling our mission and ensuring the health of our trust.

- **Hawaiian communities foster Native Hawaiian leadership.**

  Multi-generational households are very common in our Hawaiian homestead communities. This lifestyle perpetuates our culture as knowledge and values are passed through successive generations. These values build strong leaders and we are seeing more leaders rising from our homesteads and the Hawaiian community at-large. It is common to see Native Hawaiians in leadership positions in our state. Three members of Governor Lingle's cabinet are Hawaiian, as are almost one-fifth of our state legislators. Hawaiian communities grow Hawaiian leaders who make decisions for all of Hawaii.

- **Hawaiian home lands have similar legal authority as proposed under S. 310.**

  Because of our unique legal history, the Hawaiian Homes Commission exercises certain authority over Hawaiian home lands, subject to state and federal laws, similar to that being proposed under S. 310.

  The Commission exercises land use control over our public trust lands, but complies with State and County infrastructure and building standards. The Commission allocates land within its homestead communities for public and private schools, parks, churches, shopping centers, and industrial parks.

  Amendments to the trust document, the Hawaiian Homes Commission Act, require State legislative approval and, in some instances, Congressional consent. Hawaiian home lands cannot be mortgaged, except with Commission approval, and cannot be sold, except by land exchanges upon approval of the United States Secretary of the Interior.

  The State and Counties exercise criminal and civil jurisdiction on Hawaiian home lands. Gambling is not allowed and the Commission cannot levy taxes over Hawaiian home lands.

Ultimately, I envision our program becoming so successful that we will work ourselves out of a job. I envision a time when we will not need the Department of Hawaiian Home lands, a time when our native people, as defined in the Hawaiian Homes Commission Act, will be fully rehabilitated. We will be self-sufficient, self-governing native Hawaiians contributing to an island society. The first step toward achieving this vision is passage of this legislation.

The Hawaiian Home Lands Trust and our homesteading program are part of the fabric of Hawaii. It is part of the essence of Hawaii. On behalf of the Hawaiian Homes Commission, I ask that you approve this bill so we can work toward recognition and continue doing good work for all the people of Hawaii.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM COBURN TO HAUNANI APOLIONA

Question 1. Do you believe that the State of Hawaii will be a more cohesive society after this legislation is enacted?

Answer. Yes. In 1978, the citizens of Hawaii convened a constitutional convention, at which amendments to the Hawaii State Constitution were considered, debated, and ultimately approved for adoption. Following the convention, the proposed amendments to Hawaii's constitution were ratified by a majority of the voting citizens of Hawaii.

Principal amongst the amendments to Hawaii's State constitution adopted by the citizens of Hawaii in 1978 was an amendment to establish the Office of Hawaiian Affairs. The stated purpose for establishing the Office of Hawaiian Affairs was to provide the indigenous, native people of Hawaii with a means by which to give ex-

pression to their rights as one of three groups of America's indigenous, native people to self-determination and self-governance. In establishing the Office of Hawaiian Affairs, the citizens of Hawaii sought to address the long-standing injury to the Native Hawaiian people that arose out of the illegal overthrow of the Native Hawaiian government.

Since that time, the State of Hawaii has supported the rights of the indigenous, native people of Hawaii through numerous legislative enactments, including legislation to implement the amendment to the State's constitution establishing the Office of Hawaiian Affairs. Three successive Governors of the State of Hawaii have expressed their strong support for Federal legislation that would extend the United States' policy of self-determination and self-governance to the Native Hawaiian people through the formal recognition of a reorganized Native Hawaiian government. The State legislature has also repeatedly adopted resolutions of support for such Federal legislation.

In 1993, the United States Congress enacted Public Law 103–150, also known as the Apology Resolution, which extended an apology to the Native Hawaiian people for the United States' role in the overthrow of the Native Hawaiian government and announced a policy of reconciliation between the United States and the Native Hawaiian people.

All of these actions, by both State and Federal governments, reflect an effort to provide justice to the Native Hawaiian people so that the State of Hawaii might become a more cohesive society.

Question 2. In 1998, the State of Hawaii argued that "the tribal concept simply has no place in the context of Hawaiian history." What has changed since that time?

Answer. Please refer to the response of the Attorney General of the State of Hawaii to this question.

Question 3. Given that this legislation modified the vote of the Hawaiian people in the late 1950s, should the people of Hawaii be given an opportunity to vote in a referendum on the new proposal?

Answer. In 1959, as part of the compact between the United States and the new State of Hawaii, the Hawaii Admissions Act provided that the United States would transfer lands held in trust by the United States for Native Hawaiians under the authority of the Hawaiian Homes Commission Act of 1920 to the State of Hawaii provided that the State held those lands in trust for Native Hawaiians. The United States retained the authority to enforce against any breach, by the State, of its trust responsibility for the Hawaiian homelands. The United States also insisted that any amendment to the Hawaiian Homes Commission Act proposed by the State would have to be ratified by the U.S. Congress.

In addition, as a condition of its admission into the Union of States, the United States required that the State of Hawaii include the provisions of the Hawaiian Homes Commission Act in the State's Constitution.

Another provision of the Hawaii Statehood Act of 1959 provided for the return of lands previously ceded to the United States, and required that the revenues derived from the ceded lands be used for five purposes, one of which is the betterment of the conditions of Native Hawaiians.

As indicated above, in 1978, the citizens of the State of Hawaii adopted amendments to the State's constitution to establish the Office of Hawaiian Affairs. The State Constitution thereafter provided that the Office of Hawaiian Affairs was charged with administering the revenues derived from the ceded lands for the betterment of the conditions of Native Hawaiians and such other resources, including land, natural resources, and other financial resources that may be transferred to the Office of Hawaiian Affairs.

Upon the Federal recognition of the Native Hawaiian government, S. 310 authorizes the United States, the State of Hawaii and the Native Hawaiian government to enter into a process of negotiations to address the transfer of lands, natural resources and financial resources to the Native Hawaiian government.

It is generally anticipated that among the lands that would be considered for transfer to the Native Hawaiian government would be the lands that were set aside under Federal law, the Hawaiian Homes Commission Act, that are now held in trust by the State of Hawaii for Native Hawaiians.

In addition, it is also generally anticipated that among the resources that would be transferred to the Native Hawaiian government would be the resources that are currently administered by the Office of Hawaiian Affairs.

However, as contemplated by the provisions of S. 310, the transfer of lands and resources will require changes in existing Federal and State law, as well as amendments to the Hawaii State Constitution.

Amendments to the Hawaii State Constitution require the approval of the citizens of Hawaii. Accordingly, before lands now held in trust for Native Hawaiians by the State of Hawaii can be transferred to the Native Hawaiian government, the portion of the Hawaii State Constitution that contains the provisions of the Hawaiian Homes Commission Act, will have to be amended—through a vote of the eligible voters in the State of Hawaii.

Likewise, before the resources currently administered by the Office of Hawaiian Affairs can be transferred to the Native Hawaiian government, the provisions of the Hawaii State Constitution that vest authority in the Office of Hawaiian Affairs to administer such resources, will have to amended—and again, those amendments will have to be approved by the citizens of Hawaii.

Thus, while there is no authority in Hawaii State law for statewide referenda, the citizens of Hawaii do have to vote and approve any amendments to the State's constitution—an opportunity that will be afforded to them if lands and resources now addressed in the State's constitution are to be transferred to the Native Hawaiian government.

Question 4. If there is no difference between Congress' power to regulate "Indian tribes" and "indigenous peoples" why does this legislation treat Native Hawaiians differently from Native Americans by segregation of programs and the creation of a new Office of Native Hawaiian Affairs [*sic* Relations]?

Answer. The Congress has enacted laws to carry out its political and legal relationship with the indigenous, native people of the United States that are designed to address the unique conditions of each of America's three groups of indigenous, native people—American Indians, Alaska Natives and Native Hawaiians.

As a general proposition, programs and services provided to members of Federally-recognized Indian tribes are carried out through the Bureau of Indian Affairs within the U.S. Department of the Interior and the Indian Health Service within the U.S. Department of Health and Human Services, and to a lesser extent, through other Federal agencies.

In Alaska, as a function of Congress' enactment in 1971 of the Alaska Native Claims Settlement Act, the United States' political and legal relationship with Alaska Natives is reflected in the Act's authorization of Alaska Native regional and village corporations in which Alaska Natives are shareholders. Many Federal programs are administered by non-profit Native corporations that are affiliated with the Native regional and village corporations.

Beginning in 1910, the Congress has enacted over 160 Federal statutes designed to address the conditions of Native Hawaiians. In the same manner that the Congress elected to fashion its political and legal relationship with Alaska Natives in a different manner than its relationship with Indian tribes, the Congress has provided unique authority for the provision of Federal programs and services to Native Hawaiians.

The authority for the establishment of the Office of native Hawaiian Relations contained in S. 310, is—as is stated in the bill—for the purpose of carrying out the Federal policy of reconciliation with the Native Hawaiian people that was articulated in the Apology Resolution referenced above, Public Law 103–150.

Question 5. If existing law was modified, and Native Hawaiians were allowed to apply for tribal recognition through the established process, would it [*sic*] (Native Hawaiians) qualify for such status?

Answer. The Congress has repeatedly recognized that Native Hawaiians have a political and legal relationship with the United States through the enactment of over 160 Federal laws, including the Hawaiian Homes Commission Act, the Hawaii Statehood Act, the Native Hawaiian Education Act, the Native Hawaiian Health Care Improvement Act, the Native Hawaiian Homelands Recovery Act, and Title VIII of the Native American Housing Assistance and Self-Determination Act, to name a few.

As indicated in the response of Hawaii's Attorney General to this question, we agree that Native Hawaiians clearly meet the Federal acknowledgment criteria and could qualify for Federal acknowledgment under the existing regulatory criteria.

Question 6. Do you believe that the Bill of Rights, and the essential protections it provides, is up for negotiation for any American citizen?

Answer. The provisions of the United States Constitution apply to all citizens of the United States and the citizens of each State. Nothing in S. 310 alters the framework or application of the U.S. Constitution.

Question 7. Can you discuss with this committee all studies that have been completed demonstrating the impact of the new Native Hawaiian governing entity, its assumption of all appropriate lands, and any other appropriate factors, on the Hawaiian economy?

Answer. Once the Native Hawaiian government is reorganized and the United States extends Federally-recognized status to the Native Hawaiian government, S. 310 provides for a process of negotiation amongst the United States, the State of Hawaii, and the Native Hawaiian government. Until such negotiations take place and the parties to the negotiations reach agreement and thereafter propose recommendations to the U.S. Congress and the State of Hawaii for amendments to existing Federal and State laws to implement their agreements, any assessment of economic impact would have to be based on conjecture.

Question 8. If the State of Hawaii and the new governing entity are unable to reach agreement on measures outlined in the legislation, please describe how potential conflicts will be settled.

Answer. The provisions of S. 310 provide that any claims against the United States or the State of Hawaii are to be addressed through a process of negotiations, and S. 310 further provides that such claims are nonjusticiable. As to other matters to be addressed by the three governments, it is likely that as part of the negotiations process, the three governments will identify the manner in which potential conflicts will be resolved. S. 310 does not confine the three governments to anyone means of resolving potential conflicts.

Question 9. Do you believe that the Native Hawaiian entity should receive consideration before the roughly 300 entities currently seeking recognition as a tribe before the Department of the Interior?

Answer. The Federal Acknowledgment Process does not operate on the basis of chronological order. Although they are assigned numbers, petitions are not considered on the basis of when a letter of intent is first filed. Rather, petitions are considered on the basis of when they are complete and deemed ready for active consideration. Some petitions have been pending in the Federal Acknowledgment Process for many years and have yet to be deemed either complete or ready for active consideration.

As stated above, the Federal Acknowledgment Process applies only to Native groups within the continental United States, thereby excluding Native Hawaiians.

Question 10. In the question and answer period, Attorney General Bennett mentioned that "nothing in this Act suggests secession". Would you support an explicit statement barring future secession efforts?

Answer. In our view, there is no need for such a statement. Neither the U.S. Constitution nor any Federal law provides authority for secession from the Union of States.

Question 11. Similarly, would you support an explicit ban on all gaming activities by the new governing entity?

Answer. The provisions of S. 310 already provide that the Native Hawaiian governing entity shall not conduct gaming in the State of Hawaii or any other state. In addition, Hawaii is one of only two states in the Union (the other is Utah) that criminally prohibit all forms of gaming.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM COBURN TO MARK J. BENNETT

Question 1. Do you believe the State of Hawaii would be a more cohesive society after this legislation is enacted?

Answer. Yes. By providing Native Hawaiians with a sense that some measure of justice has been attained, the bill would promote harmony between Hawaii's native and non-native populations. Also, non-Native Hawaiians living in Hawaii recognize the just and fair nature of recognition.

Question 2. In 1998, the State of Hawaii argued that the "the tribal concept simply has no place in the context of Hawaiian history." What has changed since that time?

Answer. That reference has repeatedly been taken out of context. It simply meant that Native Hawaiians were never organized in the same manner, nor did they possess identical anthropological characteristics, as Native American Indian tribes on the Continent. It was never meant to suggest that Native Hawaiians are not "Indian Tribes" within the meaning of the Indian Commerce Clause, U.S. Const., Article I, Section 8, Clause 3.

Question 3. Given that this legislation modifies the vote of the Hawaiian people in the late 1950s, should the people of Hawaii be given an opportunity to vote in a referendum on the new proposal?

Answer. First, this legislation does not in any way modify the vote for Statehood by Hawaii's people in 1959. The vote for statehood was not a vote against eventual

federal recognition of an entity providing limited self-governing authority for Native Hawaiians. Second, Congress's power to recognize native peoples is plenary. In any event, in order to amend Hawaii's Constitution, Hawaii citizens will need to vote, and therefore, if this bill leads eventually to the creation of a sovereign entity, and the transfer of assets, that will necessitate a change in Hawaii's Constitution, *and* a vote of its people. And third, there is no current provision in Hawaii law for any type of referendum on *any* subject.

Question 4. If there is no difference between Congress' power to regulate "Indian tribes" and "indigenous peoples" why does this legislation treat Native Hawaiians differently from Native Americans by segregation of programs and the creation of a new Office of Native Hawaiian Affairs?

Answer. Congress clearly has the power to recognize a Native Hawaiian governing entity, like it has the power to recognize Indian tribes. That does not logically mean, however, that from the start, Native Hawaiians, who do not currently have official recognition, ought to be governed by the exact same recognition process as Native Americans. Alaska Natives were not treated exactly the same either, even though Congress's power to recognize them springs from the same authority in the Constitution. It could be that after recognition, and through negotiations, Congress could decide that similar structures and interrelationships are appropriate, but there is no reason to foreordain or require that.

Question 5. If existing law was modified, and Native Hawaiians were allowed to apply for tribal recognition through the established process, would it qualify for such status?

Answer. Current law does not allow Native Hawaiians to apply. If Native Hawaiians were allowed to apply, the result would depend upon how Congress modified existing law, but it would be fair to expect that those modifications would be responsive to any unique circumstances of Native Hawaiians, and thus the answer would be "yes."

But Native Hawaiians do satisfy the most relevant *existing* criteria, including: (a) the group has been identified from historical times to the present, on a substantially continuous basis, as Indian—that is, aboriginal inhabitants; (b) a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present; (c) the group has maintained political influence or other authority over its members as an autonomous entity from historical times until the present; (d) the group has lists of members demonstrating their descent from a tribe that existed historically; and (e) most of the members are not members of any other acknowledged Indian tribe. To the extent Native Hawaiians may meet certain criteria less strongly, that is only because the United States's demolition of their sovereignty was more complete and unjust.

Question 6. Do you believe that the Bill of Rights, and the essential protections it provides, is up for negotiation for any American citizen?

Answer. No, and this bill does nothing that is contrary to or inconsistent with that answer.

Question 7. How does the recognition of Native Hawaiians impact potential claims by other "indigenous groups," such at those in the Southwest?

Answer. It doesn't affect such "potential" claims at all. Native Hawaiians, like American Indians and Native Alaskans, were the aboriginal inhabitants of a geographic area they occupied at the time of the first Western contact. Those within the continental United States, who also meet that definition, are Indians. Likely the other "indigenous" groups mentioned do not meet that definition.

Question 8. Can you discuss with this committee all studies that have been completed demonstrating the impact of the new Native Hawaiian governing entity, its assumption of all appropriate lands, and any other appropriate factors, on the Hawaiian economy?

Answer. Since there have been no negotiations yet, and no product of such negotiations, it is premature to conduct such a study. I note, however, that Hawaii's newspapers, banks, and many businesses fully support recognition for Native Hawaiians, because it is fair, just, and long overdue.

Question 9. If the State of Hawaii and the new governing entity are unable to reach agreement on measures outlined in the legislation, please describe how potential conflicts will be settled.

Answer. The status quo is maintained. There is no mandate for agreement.

Question 10. How do "indigenous sovereign peoples" compare to Indian tribes, as defined in the U.S. Constitution? If similar, please describe how the new Native Hawaiian governing entity will operate in a manner consistent with established tribal governments, and how it will interact with the Department of Interior.

Answer. The question is unclear. Congress has the right to recognize Native Hawaiians, pursuant to its power under the Indian Commerce Clause. The governing entity will, at first, interact with the Department of the Interior, as specified in the bill. After negotiations, Congress will specify the precise method of interaction.

Question 11. Do you believe the Native Hawaiian entity should receive consideration before the roughly 300 entities currently seeking recognition as a tribe before the Department of Interior?

Answer. Hundreds of tribes on the continent are currently recognized. No Native Hawaiian governing entity is. We believe it is fair and just that Congress now afford the recognition this bill provides. In any event, this bill does not interfere in any manner with the process for recognition those other entities are currently pursuing.

Question 12. In the question and answer period, Attorney General Bennett mentioned that "nothing in this Act suggests secession." Would you support an explicit statement barring future secession efforts?

Answer. I would have no objection, although it is not an Act of Congress that does and would bar secession—it is the Constitution of the United States. No secession of any part of the United States is legally possible without an amendment to the United States Constitution.

Question 13. Similarly, would you support an explicit ban on all gaming activities by the new governing entity? For example, "the new Native Hawaiian governing entity shall not engage in any form of gaming."

Answer. The bill already has such a ban, using language suggested by the Department of Justice, as the bill explicitly bars using any federal law as authority for gambling. However, I would not object to the proposed language. I am against any legalized gambling in Hawaii.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM COBURN TO H. WILLIAM BURGESS

Question 1. Do you believe the State of Hawaii would be a more cohesive society after this legislation is enacted?

Answer. No. I believe the opposite would be more likely. The Akaka bill (S. 310) defines "Native Hawaiian" as anyone with at least one ancestor indigenous to Hawaii, essentially the same definition the Supreme Court in *Rice v. Cayetano*, 528 U.S. 495, 514–516 (2000) held to be a racial classification because it uses ancestry as a proxy for race. The bill would give Native Hawaiians political power superior to that of all other citizens (*i.e.,* the right to create their own separate sovereign government and still retain all their rights as citizens of the U.S. and the State of Hawaii).

Racial distinctions are especially "odious to a free people," *Rice* 528 U.S. at 517 where they undermine the democratic institutions of a free people by instigating racial partisanship. This was the fundamental evil that the *Rice* Court detected in Hawaii's law: "using racial classifications" that are "corruptive of the whole legal order" of democracy because they make "the law itself . . . the instrument for generating" racial "prejudice and hostility." *Rice*, 528 U.S. at 517.

It "is altogether antithetical to our system of representative democracy" to create a governmental structure "solely to effectuate the perceived common interests of one racial group" and to assign officials the "primary obligation . . . to represent only members of that group." *Shaw* v. Reno, 509 U.S. 630, 648 (1983). *Shaw* quoted Justice Douglas:

When racial or religious lines are drawn by the State, the multiracial . . . communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race . . . rather than to political issues are generated; communities seek not the best representative but the best racial . . . partisan. Since that system is at war with the democratic ideal, it should find no footing here.

Wright v. Rockefeller, 376 U.S. 52, 67 (1964) (Douglas, dissenting).

In *Shaw*, the racial partisanship was fostered indirectly by gerrymandering legislative districts. By contrast, as in *Rice*, the "structure" in the Akaka bill "is neither subtle nor indirect;" The Akaka bill would specifically sponsor the creation of a new sovereign government by "persons of the defined ancestry and no others." *Rice*, 528 U.S. at 514.

To advance "the perceived common interests of one racial group," *Shaw*, 509 U.S. at 648, the Akaka bill vests public officials with authority to give away public funds and public lands. This cannot stand: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which en-

courages, entrenches, subsidizes, or results in racial discrimination." *Lau v. Nichols*, 414 U.S. 563, 569 (1974) (quoting Senator Humphrey during the floor debate on Title VI of the Civil Rights Act of 1964, a provision that is coextensive with the Equal Protection Clause, *Alexander v. Sandoval,* 532 U.S. 275, 280–81 (2001)).

The government is even forbidden to give money to private parties "if that aid has a significant tendency to facilitate, reinforce and support private discrimination." *Norwood v. Harrison,* 413 U.S. 455, 466 (1973). *Norwood* instructed the District Court to enjoin state subsidies for private schools that advocated the "private belief that segregation is desirable" and that "communicated" racial discrimination as "an essential part of the educational message." *Id.* at 469. *A fortiori,* federal or state agencies, even with the acquiescence of their legislatures, cannot institutionalize racial classifications that are "odious to a free people" and "corruptive" of democracy. *Rice*, 528 U.S. at 517.

Question 2. In 1998, the State of Hawaii argued that "the tribal concept simply has no place in the context of Hawaiian history." What has changed since that time?

Answer. Amid many changes in our lives since 1998, one thing has stayed the same: There is no tribe or governing entity of any kind presiding over a separate community of the Native Hawaiian people as defined in the Akaka bill (any person anywhere in world who has at least one ancestor indigenous to Hawaii). Senator Daniel K. Inouye acknowledged this on January 25, 2005 on the floor of the Senate (151 Congressional Record 450).

"Because the Native Hawaiian government is not an Indian tribe, the body of Federal Indian law that would otherwise customarily apply when the United States extends Federal recognition to an Indian tribal group does not apply."

"That is why concerns which are premised on the manner in which Federal Indian law provides for the respective governmental authorities of the state governments and Indian tribal governments simply don't apply in Hawaii."

Question 3. Given that this legislation modifies the vote of the Hawaiian people in the late 1950s, should the people of Hawaii be given an opportunity to vote in a referendum on the new proposal?

Answer. Yes. The Akaka bill would usurp the power of the people of Hawaii to govern the entire State of Hawaii as *promised by Congress in the 1959 Admission Act.* In 1959 Congress proposed, subject to "adoption or rejection" by the voters of the Territory of Hawaii, that Hawaii "shall be immediately admitted into the Union" and that "boundaries of the State shall be as prescribed." "The State of Hawaii shall consist of all the [major] islands, together with their appurtenant reef and territorial waters." "The Constitution of the State of Hawaii shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

The voters decisively accepted: 94.3 percent "Yes" for Statehood and 94.5 percent "Yes" for the State boundaries.

Yet the Akaka bill would authorize negotiations unlimited in scope or duration to break up and giveaway lands, natural resources and other assets, governmental power and authority and civil and criminal jurisdiction. The avowed purpose of the promoters of the bill is to remove vast lands in Hawaii from the jurisdiction of the United States Constitution and to create an unprecedented sovereign empire ruled by a new hereditary elite and repugnant to the highest aspirations of American democracy.

At the very least, the Akaka bill must be amended to require:

> Prior consent to the process by the voters of Hawaii *before* any "recognition" or other provision of the bill takes effect; and
>
> If the electorate approves the process, limit the negotiations both in scope and duration, and, if any transfer is to be made to the new entity the agreement must include a final global settlement of all claims and be subject to ratification by referendum of the entire electorate of the State of Hawaii.

Question 4. If there is no difference between Congress' power to regulate "Indian tribes" and "indigenous peoples" why does this legislation treat Native Hawaiians differently from Native Americans by segregation of programs and the creation of a new Office of Native Hawaiian Affairs?

Answer. Excellent question. It pinpoints the deceptive sales pitch that the Akaka bill would just give Native Hawaiians the same recognition as Native Americans. No Native American group has the right to be recognized as a tribe merely because its members share Indigenous ancestors, as the Akaka bill proposes for Native Hawaiians.

By giving superior political power to Native Hawaiians based on blood alone; and by equating them with Native Americans and Native Alaskans, the Akaka bill

would put all three groups into the "race" category and would either threaten the continued existence of real Indian tribes or erase the Civil Rights movement and the Civil War itself from our history.

For over 20 years, a draft Declaration of Indigenous Rights has circulated in the United Nations. The United States and other major countries have opposed it because it challenges the current global system of states; is "inconsistent with international law"; ignores reality by appearing to require recognition to lands now lawfully owned by other citizens; and "No government can accept the notion of creating different classes of citizens." In November 2006, a subsidiary body of the U.N. General Assembly rejected the draft declaration, proposing more time for further study.

Thus, by enacting the Akaka bill, Congress would brush aside core underpinnings of the United States itself both as to the special relationship with real Indian tribes; and as to the sacred understanding of American citizenship as adherence to common principles of equal justice and the rule of law, in contrast to common blood, caste, race or ethnicity.

Question 5. If existing law was modified, and Native Hawaiians were allowed to apply for tribal recognition through the established process, would it qualify for such status?

Answer. No. The United States has granted tribal recognition only to groups that have a long, continuous history of self-governance in a distinct community separate from the non-Indian community. But there has never been, even during the years of the Kingdom, any government for Native Hawaiians separate from the government of all the people of Hawaii.

Census 2000 counted some 400,000 persons who identified themselves as of some degree of Native Hawaiian ancestry. About 60 percent of them or about 240,000, live in the State of Hawaii and are spread throughout all the census districts of the State of Hawaii. The other 40 percent, or about 160,000, live throughout the other 49 states. The Akaka bill would recognize these 400,000 people plus everyone anywhere else in the world with at least one ancestor indigenous to Hawaii, as a tribe. Such widely scattered and disconnected persons would not be eligible for recognition under CFR by the DOI or by Congress under the standards set by the Supreme Court.

If blood alone were sufficient for tribal recognition (as the Akaka bill proposes for Native Hawaiians), Indian law would change radically. Millions of Americans with some degree of Indian ancestry, but not currently members of recognized tribes, would be eligible. Some 60 tribes from all parts of the country were relocated to Oklahoma in the 1800s. Descendants of each of those tribes would be arguably entitled to create their own new governments in the states where they originated. Indian tribes and Indian Casinos would surely proliferate.

Question 6. Do you believe that the Bill of Rights, and the essential protections it provides, is up for negotiation for any American citizen?

Answer. Yes, the Akaka bill would put the Bill of Rights of every American citizen in Hawaii and in all other states on the table as bargaining chips. If this bill should become law, it would be the first step in the breakup of the United States. Its premise is that Hawaii needs two governments: One in which everyone can vote which must become smaller and weaker; The other in which only Native Hawaiians can vote, growing more powerful as the other government shrinks away.

In the negotiation process called for by S. 310, the transfers of lands, reefs, territorial waters, power and civil and criminal jurisdiction go only one way; and are unlimited in scope or duration. The bargaining can and likely will continue slice by slice, year after year, until the State of Hawaii is all gone, and 80 percent of Hawaii's citizens are put into servitude to the new Congressionally sponsored hereditary elite.

But even then it will not be over, because there are today living descendants of the indigenous people of every state. Surely they will take notice and demand their own governments.

Question 7. How does the recognition of Native Hawaiians impact potential claims by other "indigenous groups," such at those in the Southwest?

Answer. The impact would be ominous. Today, over 1 million American citizens residing in Hawaii are under siege by what can fairly be called an evil empire dedicated to Native Hawaiian Supremacy. A remarkable book has revealed that America's largest charitable trust, Kamehameha Schools Bishop Estate (KSBE), has used its $8.5 Billion in assets and vast land holdings to so corrupt the political process in the State of Hawaii that the legislative, executive and judiciary powers have been, and still seem to be, concentrated in the hands of those who facilitated a "World Record for Breaches of Trust" by trustees and others of high position, without surcharge or accountability. *Broken Trust: Greed, Mismanagement & Political*

Manipulation at America's Largest Charitable Trust, King and Roth, 2006. KSBE openly flaunts its association with others in supporting passage of the Akaka bill. KSBE and its Alumni Associations of Northern and Southern California are members of CNHA, Council for Native Hawaiian Advancement, *http://www.hawaiiancouncil.org/members.html.*

The *nativehawaiians.com* website, lists the co-conspirators: CNHA, the Kamehameha Alumni Association, the prominent entities [many under KSBE's hegemony] that support the Akaka bill; and a number of questionable groups such as the National Council of La Raza, the organization that seeks to "liberate" the Southwest. *http://www.nativehawaiians.com/listsupport.html.*

May 14, 2007

MEMORANDUM

FROM NEAL KATYAL

RE: Analysis of testimony of Gregory G. Katsas, Principal Deputy Associate Attorney General, U.S. Department of Justice, concerning "S. 310, Native Hawaiian Government Reorganization Act of 2007," on May 3, 2007

This memorandum, prepared at the request of the Office of Hawaiian Affairs, analyzes the testimony of Gregory G. Katsas, Principal Deputy Associate Attorney General, U.S. Department of Justice, concerning "S. 310, Native Hawaiian Government Reorganization Act of 2007," on May 3, 2007 (hereinafter "Katsas Testimony").[1] In my judgment, the Katsas Testimony raises no truly significant legal objection to S. 310. Rather, the Testimony provides a hodgepodge of policy arguments against S. 310 that are well within the purview of the nation's legislature to reject. As an attorney who specializes in constitutional law, I cannot speak to the policy wisdom of S. 310, but I believe that the Katsas Testimony identifies no significant legal objection should the Congress of the United States decide to enact this bill into law.

The Katsas Testimony begins, as it must, by recognizing that the language of S. 310 was changed to accommodate many of the Justice Department's previous objections to S. 147. But after that point, the Testimony descends into a Cassandra-like warning that the bill would create a "balkaniz[ation] ...along racial and ancestral lines" (p.1); that the bill is a "significant step backwards," (p.2); that it "would grant sweeping powers to the proposed Native Hawaiian governing entity," (p.3); that S. 310 enacts a "race-based government offensive to our Nation's commitment to equal justice," (p.7); and so on. None of these adjectives is developed with sufficient precision; some are even baldly wrong on their face. The Katsas

[1] I previously co-authored, along with Viet Dinh and Christopher Bartolomucci, a paper that analyzed the constitutional issues surrounding S. 310. That paper, *The Authority of Congress to Establish a Process for Recognizing a Reconstituted Native Hawaiian Governing Entity*, Feb. 26, 2007, is available at http://www.nativehawaiians.com/pdf/NHGRA070226.pdf.

Testimony lacks much of the indicia of reliability upon which the Justice Department has traditionally insisted upon in past testimony to Congress. So while there are undoubtedly legal arguments that can be voiced against the bill, the Katsas Testimony presents an overly-exaggerated view of them, which reduces the Testimony's own credibility and significance. Such exaggeration may serve a policy objective, but that type of strident advocacy does not advance the legal analysis much, if at all.

I proceed through the Katsas Testimony point-by-point, identifying several of its many shortcomings.

1. S. 310's "division of Americans into... 'discrete subgroups' is contrary to the goals of this Administration and, indeed, contrary to the very principle reflected in our national motto *E Pluribus Unum*." (p.2).

This claim suffers from a number of problems. First of all, it disregards the Supreme Court's repeated exhortation that when Congress deals with entities it considers Native Americans, such classifications are "political rather than racial in nature." *Morton v. Mancari*, 417 U.S. 535, 554 n.24 (1974). The Supreme Court has repeatedly reaffirmed this principle:

> The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians.

United States v. *Antelope*, 430 U.S. 641, 645 (1977).

For this reason, the Supreme Court has held that "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as 'plenary and exclusive.'" *United States* v. *Lara*, 541 U.S. 193, 200 (2004). Far from insisting upon any sort of continuity requirement, *Lara* specifically recognized Congress' power to *restore* previously extinguished sovereign relations with Indian tribes. The Court observed that "Congress has restored previously extinguished tribal status – by re-recognizing a Tribe whose tribal existence

it previously had terminated." *Id.* at 203. (citing Congress' restoration of the Menominee tribe in 25 U.S.C. §§ 903-903f). And the Court cited the 1898 annexation of Hawaii as an example of Congress' power "to modify the degree of autonomy enjoyed by a dependent sovereign that is not a State." *Id.*[2] Indeed, the Court went so far as to hold that it is not for the federal judiciary to "*second-guess the political branches' own determinations*" in such circumstances. *Id.* at 205. (emphasis added).

In *United States* v. *Sandoval*, 231 U.S. 28 (1913), the Court held that Congress has the authority to recognize and deal with Native groups pursuant to its Indian affairs power, and furthermore that courts possess only a very limited role in reviewing the exercise of such congressional authority. The exercise of this power is not contrary to *E Pluribus Unum* – but rather is a recognition of the special obligation of the United States to the Native population. *Sandoval* rejected the claim that Congress lacked authority to treat the Pueblos of New Mexico as Indians and that the Pueblos were "beyond the range of congressional power under the Constitution." *Id.* at 49.

Sandoval first observed:

> Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States . . . the power and duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territory subsequently acquired, and whether within or without the limits of a state.

Id. at 45-46. The Court went on to say that, although "it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe," nevertheless, "the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and

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[2] Thus, when it comes to the sovereignty of Indian tribes or other "domestic dependent nations," *Cherokee Nation* v. *Georgia*, 30 U.S. 1, 17 (1831), the Constitution does not "prohibit Congress from changing the relevant legal circumstances, *i.e.*, from taking actions that modify or adjust the tribes' status." *Lara*, 541 U.S. at 205.

protection of the United States are to be determined by Congress, and not by the courts." *Id.* at 46. Applying those principles, the Supreme Court concluded that Congress' "assertion of guardianship over [the Pueblos] cannot be said to be arbitrary, but must be regarded as both authorized and controlling." *Id.* at 47.

Notably, the Court reached this holding despite the fact that the Pueblos differed in some respects from other Indians: They were not "nomadic in their inclinations"; they were "disposed to peace"; they "liv[ed] in separate and isolated communities"; their lands were "held in communal, fee-simple ownership under grants from the King of Spain"; and they possibly had become citizens of the United States. *Id.* at 39.[3] *Sandoval* thus holds, first, that Congress, in exercising its constitutional authority to deal with Indian tribes, may determine whether a "community or body of people" is amenable to that authority, and, second, that unless Congress acts "arbitrarily," courts do not second-guess Congress' determination. The courts have employed this approach in a number of other cases. *See United States* v. *Holliday*, 3 Wall. 407, 419 (1866) ("If by [the political branches] those Indians are recognized as a tribe, this court must do the same.") After all, recognition has extended to a variety of entities:

> some federally recognized tribes are legal entities only.... Or tribes may confederate for political purposes, forming governmental entities such as the Minnesota Chippewa Tribes or the Central Council of the Tlingit & Haida Indian Tribes, which have received federal recognition, in addition to their constituent tribes.

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[3] The fact that sovereignty and political structures might have been different from other Natives is not, by itself, a reason to preclude Congress from recognizing Native Hawaiians. After all, the American Indian and Alaska Native groups that have already been recognized as dependent sovereigns had a wide range of political structures prior to the arrival of whites, and that fact has never been deemed to have any bearing on congressional power to recognize their sovereignty or tribal status. *See, e.g.*, *Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 664 & n.5 (1979) ("[S]ome bands of Indians . . . had little or no tribal organization . . .. Indeed, the record shows that the territorial officials who negotiated the treaties on behalf of the United States took the initiative in aggregating certain loose bands into designated tribes and even appointed many of the chiefs who signed the treaties.").

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 3.02[2], at 137 (2005 ed.). Indeed, the Katsas Testimony curiously does not even mention the recent concurrence of five judges on the Ninth Circuit in *Doe v. Kamehameha Schools*, 470 F.3d 827, 851-52 (9th Cir. 2006) (en banc) (Fletcher, J., concurring), which argued that Native Hawaiians were currently entitled to the more permissive review standard under *Mancari*:

> In other contexts, the Supreme Court has not insisted on continuous tribal membership, or tribal membership at all, as a justification for special treatment of Indians....
>
> For its part, Congress has repeatedly provided special treatment, including distribution of funds, based on broad definitions of the terms "Indian," "native," "Native American," and "tribal organization" that encompass Indians who are not members of federally recognized tribes....
>
> We observe "the time-honored presumption" that the passage of the many federal statutes benefiting Native Hawaiians, Alaska Natives, and American Indians "is a 'constitutional exercise of legislative power.' " The basis for this exercise of power is Congress' conclusion that "Native Hawaiian," like "Alaska Native" and "Indian," is a political classification subject to the special relationship doctrine. Unless we were to hold that Congress cannot legislate for the special benefit of Native Hawaiians, thereby striking down the enormous swaths of the United States Code enacted pursuant to the special relationship doctrine, we must conclude that the doctrine permits Congress to provide special benefits to Native Hawaiians.

Id. (citations omitted). The reasoning in this concurrence was rejected by the dissent, but notably all of the opinions were arguing about the *current* status of Native Hawaiians, and not the enhanced status that would follow from the enactment of S. 310.

In sum, the Katsas Testimony advances a generic policy claim about *E Pluribus Unum* without sufficient attention to the unique power possessed by the federal government in this arena. The Testimony's cramped view of federal power does not describe current federal law in this realm. To the contrary, the Supreme Court has repeatedly reaffirmed the breadth of

Congress' power – a power so broad that it even extends to re-recognizing a Tribe whose recognition had previously been extinguished by Congress.

2. "[T]he bill defines 'Native Hawaiian,' along explicitly racial and ancestral lines, to encompass a vast group of some 400,000 individuals scattered throughout the United States." (p.2). "Section 3(10) of the bill defines the term 'Native Hawaiian,' as 'the indigenous, native people of Hawaii' who are the 'direct lineal descendant[s] of the aboriginal, indigenous, native people who...resided in the lands that now comprise the State of Hawaii on or before January 1, 1893.'....In short, the bill classifies people not based on a political relationship like citizenship in a foreign country, or membership in a quasi-sovereign Indian tribe, but rather based purely on race and ancestry." (p.7).

The statement by Mr. Katsas is not at all accurate. It is worth looking at the *entire* definition in the section of S. 310 that Mr. Katsas cites. That provision defines the term "Native Hawaiian" as:

> (i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who (I) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; *and* (II) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii...

Id. § 3(10) (emphasis added).[4] It is simply impossible to contend, as Mr. Katsas does, that this definition imposes a classification "based purely on race and ancestry." After all, the Act *itself* requires not simply race and ancestry, but also that the individuals resided on the islands on or before January 1, 1893 *and* "occupied and exercised sovereignty." The Katsas Testimony simply misreads the text of the bill, endeavoring to create a constitutional problem where none exists.

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[4] There is a separate definition of Native Hawaiians in Section 3(10) that relates to the Hawaiian Homes Commission Act. That definition is not criticized in the Katsas Testimony.

The 1893 date specified in S. 310, incidentally, continues an earlier effort made by Congress to apologize to the Hawaiian people. In 1993, a century after the Kingdom of Hawaii was replaced with the active involvement of the U.S. Minister and the American military, "Congress passed a Joint Resolution recounting the events in some detail and offering an apology to the native Hawaiian people." *Rice* v. *Cayetano*, 528 U.S. 495, 505 (2000).; *see* Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (1993). In the Apology Resolution, Congress both "acknowledge[d] the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people" and issued a formal apology to Native Hawaiians "for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination." *Id.* §§ 1, 3, 107 Stat. 1513.[5] The proposed language of S. 310 tracks this part of the Apology Resolution.

Nor does the fact that some of the beneficiaries of recognition reside outside of Hawaii change the legal analysis. Congress has repeatedly recognized Tribes even when their members' residence spills beyond particular areas:

> Other federally recognized entities represent fragments of previously unified peoples. The great Sioux nation, for example, was divided by federal law into geographically separated and independently recognized tribes in order to weaken the Sioux militarily. Other groups, such as the Oneida, the Cherokee, and the Choctaw, are recognized as multiple separate nations, because some members moved to new

[5] The Katsas Testimony attempts to claim that Hawaiians are not comparable to an Indian Tribe and that a Congressional determination to the contrary would be arbitrary. But by the time Captain Cook, the first white traveler to Hawaii, "made landfall in Hawaii on his expedition in 1778, the Hawaiian people had developed, over the preceding 1,000 years or so, a cultural and political structure of their own. They had well-established traditions and customs and practiced a polytheistic religion." *Rice*, 528 U.S. at 500. Hawaiian society, the Court noted, was one "with its own identity, its own cohesive forces, its own history." *Id.* As late as 1810, "the islands were united as one kingdom under the leadership of an admired figure in Hawaiian history, Kamehameha I." *Id.* at 501. It is difficult to understand how S. 310, in light of this history--which the Supreme Court has previously provided and which Congress has explicitly invoked in the Act, could lead to a finding of arbitrariness. That is particularly so since, as explained above, Congress has repeatedly recognized Tribes even when they have been geographically dispersed.

> territories as part of the federal removal process in the nineteenth century and others refused to leave ancestral homelands.

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 3.02[2], at 137 (footnote omitted).

For these reasons, I believe that the current definition of "Native Hawaiians" in S. 310 is constitutional. If, out of an abundance of caution, further change is desired, then perhaps the best approach would be to emulate the definition of "Native Hawaiian" that is used in most current federal statutes dealing with Native Hawaiians. (Even as early as 1921, Congress defined Native Hawaiians as "not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778." Act of July 9, 1921, Sec. 207(1), 42 Stat. 108.) Were such a definition to be employed in S. 310, it would define that part of the class as something like the following: individuals who are "direct lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii prior to western contact in 1778."

A variety of mechanisms to prove membership in this 1778 group could be legislatively specified, as OHA has previously suggested. OHA's full proposal for the definition of Native Hawaiian is to define them as:

> (i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—
>
> (I) resided in the islands that now comprise the State of Hawaii prior to western contact in 1778 as evidenced by:
>
> (a) birth certificates;
> (b) marriage certificates;
> (c) death certificates;
> (d) genealogical research;
> (e) certification from registries reviewing documents, including but not limited to:
>
> (A) the Department of Hawaiian Home Lands;
> (B) the Kamehameha Schools

(C) the Operation 'Ohana program and the Hawaiian Registry program of the Office of Hawaiian Affairs; or

(f) other legally sufficient methods, including court orders; and

(II) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(ii) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—

(I) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(II) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(iii) an individual who is 1 of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendant of that individual.

Letter to Sen. Akaka from Chairperson Haunani Apoliona, Office of Hawaiian Affairs, Jan. 19, 2007. While changing the definition from the current one employed in S. 310 to the 1778 criteria is not strictly necessary, it is a prudential change that the Senate may wish to consider.

3. "S. 310 would grant sweeping powers to the proposed Native Hawaiian governing entity, and to the proposed Native Hawaiian Council charged with creating that entity." (p.3).

This curious claim is backed by no analysis. And there is simply no warrant for the claim. S. 310 does not grant "sweeping powers" to the governing entity; it actually grants no powers at all beyond that which any other recognized entity would have. *See* Haunani Apoliona, Chairperson, Board of Trustees, Office of Hawaiian Affairs, Senate Indian Affairs Committee Hearing on S. 147, at 2 (March 1, 2005) ("In this legislation, as Hawaiians, we seek only what long ago was granted this nation's other indigenous peoples.") (prepared text).

It is also worth responding here to something else that appears in the Katsas Testimony at this point. The Testimony also asserts the following: OHA "contends that this scheme would give native Hawaiians, as subjects of the new governing entity, 'their right to self-determination by selecting another form of government including free association or total independence.'" (p.3-4) (citing State of Hawaii's Office of Hawaiian Affairs, Questions and Answers, http://www.nativehawaiians.com/questions/SlideQuestions.html). It appears that this is an unsupported reading both of the text of the bill and what OHA has tucked onto a slideshow presentation on a website. Starting with the text of the act, there is no language in S. 310, and the Katsas Testimony tellingly points to none, that suggests that Native Hawaiians would have the ability to *secede* from the Union. The Katsas Testimony's breathless claim that "the Nation endured a Civil War to prevent such secession," is simply irrelevant.

Furthermore, OHA's slideshow on its website does not argue that S. 310 provides a right of secession. In fact, that slideshow actually concerned a predecessor version of the bill, S. 344, introduced four years ago.[6] And the Katsas Testimony disregards the many places in that slideshow when OHA made clear that it was not a bill about secession. For example, the slideshow states:

> The bill articulates that Native Hawaiians have an inherent right of self-determination and have the right to reorganize a Native Hawaiian governing entity. S. 344 authorizes the process for the establishment and federal recognition of a Native Hawaiian governing entity for *the purpose of continuing a government-to-government relationship*."

State of Hawaii's Office of Hawaiian Affairs, Questions and Answers, http://www.nativehawaiians.com/questions/SlideQuestions.html (emphasis added). A "government-to-government relationship" is hardly the phrase of would-be secessionists. Whatever might be said, it is quite difficult to read that slide as a statement endorsing secession. Later language from the slideshow makes the point even clearer:

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[6] Indeed, OHA does not even provide a link to that slideshow on its webpage anymore since the slideshow is geared to address S. 344, not S. 310.

> If the Akaka/Stevens bill is enacted and the Hawaiian people choose to gain federal recognition, nation-within-a-nation, the Native Hawaiian governing entity would then *work directly with the federal government* and the State of Hawai'i to protect Native Hawaiian lands and programs that affect Native Hawaiians.

Id. (emphasis added). The language quoted by the Katsas Testimony about "free association or total independence" does not mean complete independence from the federal government, but rather the same type of independence as other Native Americans have received – a "government-to-government relationship" in which they are a "nation-within-a-nation." No one plausibly thinks that anything else is intended by S. 310 – and claims of secession should be met with caution when lawyers attempt to peddle them.

4. "The Ninth Circuit has explained that 'Congress has evidenced an intent to treat Hawaiian natives differently from other indigenous groups'... *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1281-82 (9th Cir. 2004)." (p.4).

It is undoubtedly true that this language appears in *Kahawaiolaa*. But the Katsas Testimony disregards the context of *Kahawaiolaa*, for the Court there was being asked to *force* the government to recognize Native Hawaiians. The language quoted by Mr. Katsas merely said that it was *rational* for the Government not to recognize Hawaiians. In case there was any doubt, *Kahawaiolaa* itself made clear its holding was limited, *see, e.g.*, 386 F. 3d at 1277 n.3 ("the issue is far from clear. A detailed factual analysis of the treaties, legislation and congressional findings applicable to native Hawaiians requires a more detailed review than we are equipped to handle on the present record."); *id.* at 1283 (holding that "the result is less than satisfactory" and that the court would "have more confidence in the outcome if the Department of Interior had applied its expertise to parse through history and determine whether native Hawaiians, or some native Hawaiian groups, could be acknowledged on a government-to-government basis"). Quite simply, *Kahawaiolaa*'s decision that it is *rational* for the Government not to treat Hawaiians like other indigenous peoples does not forbid the Congress of the United States from deciding to treat Hawaiians similarly to these other peoples.

Furthermore, the Katsas Testimony never mentions the fact that *Kahawaiolaa*'s language has been recently cut back by the Ninth Circuit, *en banc*, in *Doe* v. *Kamehameha Schools*, 470 F.3d 827 (9th Cir. 2006) (en banc). That decision recognized a special relationship between the United States and Hawaii:

> Beginning as early as 1920, Congress recognized that a special relationship existed between the United States and Hawaii. *See* Hawaiian Homes Commission Act, 1920, 42 Stat. 108 (1921) (designating approximately 200,000 acres of ceded public lands to Native Hawaiians for homesteading). Over the years, Congress has reaffirmed the unique relationship that the United States has with Hawaii, as a result of the American involvement in the overthrow of the Hawaiian monarchy. *See, e.g.*, 20 U.S.C. § 7512(12), (13) (Native Hawaiian Education Act, 2002); 42 U.S.C. § 11701(13), (14), (19), (20) (Native Hawaiian Health Care Act of 1988).

Id. at 847-48. The Ninth Circuit also recently pointed out that Congress has repeatedly singled out Native Hawaiians to provide them with special benefits:

> Congress has relied on the special relationship that the United States has with Native Hawaiians to provide specifically for their welfare in a number of different contexts. For example, in 1987, Congress amended the Native American Programs Act of 1974, Pub.L. No. 100-175, § 506, 101 Stat. 926 (1987), to provide federal funds for a state agency or "community-based Native Hawaiian organization" to "make loans to Native Hawaiian organizations and to individual Native Hawaiians for the purpose of promoting economic development in the state of Hawaii." A year later, Congress enacted the Native Hawaiian Health Care Act of 1988, Pub.L. No. 100-579, § 11703(a), 102 Stat. 2916 (1988), "for the purpose of providing comprehensive health promotion and disease prevention services as well as primary health services to Native Hawaiians."

Id. at 848.[7] Of course, Congress has at times *chosen* to treat Native

[7] The Katsas Testimony also selectively quotes *Kahawaiolaa*, ignoring the decision's

Hawaiians differently than other indigenous groups, but that has never been the metric to decide whether Congress *can* provide such recognition. Indeed, Congress has even reversed course and recognized a tribe whose recognition it had earlier decided to revoke. In 1954, Congress adopted the Menominee Indian Termination Act, 25 U.S.C. §§ 891-902, which terminated the government-to-government relationship with the tribe, ended federal supervision over it, closed its membership roll, and provided that "the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction." *Menominee Tribe of Indians* v. *United States*, 391 U.S. 404, 407-410 (1968). In 1973, Congress reversed course and adopted the Menominee Restoration Act, which repealed the Termination Act, restored the sovereign relationship with the tribe, reinstated the tribe's rights and privileges under federal law, and reopened its membership roll. 25 U.S.C. §§ 903a(b), 903b(c).[8] It has done the same with other Tribes. *See* COHEN'S

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language that is favorable to S. 310, such as the Ninth Circuit's observation that the *Rice* case did not reach the issues in S. 310:

> *Rice* explicitly reaffirmed and distinguished the political, rather than racial, treatment of Indian tribes as explained in *Mancari*. The issue did not concern recognition of quasi-sovereign tribes. Instead, *Rice* concerned elections of the State of Hawaii to which the Fifteenth Amendment applied...at its core, *Rice* concerned the rights of individuals, not the legal relationship between political entities.
>
> ...While Congress may not authorize special treatment for a class of tribal Indians in a state election, Congress certainly has the authority to single out "a constituency of tribal Indians" in legislation "dealing with Indian tribes and reservations." *Rice*, 528 U.S. at 519-20.

Kahawaiolaa 386 F.3d at 1279.

[8] The Menominee Restoration Act established a process for reconstituting the Menominee tribal leadership and organic documents under the direction of the Secretary of the Interior. The Restoration Act directed the Secretary (a) to announce the date of a general council meeting of the tribe to nominate candidates for election to a newly-created, nine-member Menominee Restoration Committee; (b) to hold an election to select the members of the Committee; and (c) to approve the Committee so elected if the Restoration Act's nomination and election requirements were met. *Id.* § 903b(a). Just so with S. 310. The NHGRA authorizes the Secretary of the Interior to establish a Commission that will prepare and maintain a roll of Native Hawaiians wishing to participate in the reorganization of the Native Hawaiian governing entity. NHGRA § 7(b). The legislation also provides for the establishment of a Native Hawaiian Interim Governing Council. *Id.* § 7(c)(2). Native Hawaiians listed on the roll may develop criteria for candidates to be elected to serve on the Council; determine the Council's

HANDBOOK OF FEDERAL INDIAN LAW 3.02[8][c], at 168 ("Congress has the authority to reestablish the tribal-federal relationship with terminated tribes....The relationship need not be continuous. The relevant question is whether and to what extent Congress has chosen to exercise its authority with respect to a particular tribe. Congress has exercised its authority to restore the federal-tribal relationship with a number of terminated tribes.") (footnote omitted).

Moreover, the Katsas' criticism ignores the fact that the NHGRA itself rejects the conclusion he reaches, that Congress has not recognized Native Hawaiians. It is one thing to argue about the status of Native Hawaiians *before* the enactment of the NHGRA (as *Kahawaiolaa* does), quite another to do so after the NHGRA has been enacted. After all, the NHGRA expressly finds that Native Hawaiians "are indigenous, native people of the United States," NHGRA § 2(2); that the United States recognized Hawaii's sovereignty prior to 1893, *id.* § 2(4); that the United States participated in the overthrow of the Hawaiian government in 1893, *id.* § 2(13); and that "the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands," *id.* The statute further finds that Native Hawaiians continue to reside on native lands set aside for them by the U.S. government, "to maintain other distinctly native areas in Hawaii," and "to maintain their separate identity as a single distinct native community through cultural, social, and political institutions," *id.* §§ 2(7), 2(11), 2(15); *see also* U.S. Department of Justice & U.S. Department of the Interior, *From Mauka to Makai: The River of Justice Must Flow Freely*, Report on the Reconciliation Process Between the Federal Government and Native Hawaiians at 4 (2000) (finding that "the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions"). Finally, the NHGRA finds that Native Hawaiians through the present day have maintained a link to the Native Hawaiians who exercised sovereign authority in the past. *See id.* § 2(22)(A) ("Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands"); *id.* § 2(22)(B).

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structure; and elect members of the Council from enrolled Native Hawaiians. *Id.* § 7(c)(2)(A).

These findings track previous statutes, and indeed the bill itself makes explicit note of that fact as well. *See* NHGRA § 2(20)(B) (Congress "has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted scores of statutes on their behalf"); *id.* § 4(a)(1); Native American Languages Act, 25 U.S.C. § 2902(1) ("The term 'Native American' means an Indian, Native Hawaiian, or Native American Pacific Islander"); American Indian Religious Freedom Act, 42 U.S.C. § 1996 (declaring it to be the policy of the United States "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians"); 42 U.S.C. § 11701(1) (finding that "Native Hawaiians comprise a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago whose society was organized as a Nation prior to the arrival of the first nonindigenous people in 1778").[9]

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[9] Congress has repeatedly treated Native Hawaiians like American Indians. Indeed, the huge number of federal laws that are called into question by the Katsas Testimony is itself a good reason to discount its conclusions. "Every legislative act is to be presumed to be a constitutional exercise of legislative power until the contrary is clearly established." *Close* v. *Glenwood Cemetery*, 107 U.S. 466, 475 (1883); *see also Reno* v. *Condon*, 528 U.S. 141, 148 (2000).

For examples of these statutes, *see, e.g.*, Hawaiian Homes Commission Act, 42 Stat. 108 (1921); Native Hawaiian Education Act, 20 U.S.C. §§ 7511-7517; Native Hawaiian Health Care Act, 42 U.S.C. § 11701(19) (noting Congress' "enactment of federal laws which extend to the Hawaiian people the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities"); *see also* Statement of U.S. Representative Ed Case, Hearing Before the Senate Committee on Indian Affairs on S. 147, the Native Hawaiian Government Reorganization Act, at 2-3 (March 1, 2005) ("[O]ver 160 federal statutes have enacted programs to better the conditions of Native Hawaiians in areas such as Hawaiian homelands, health, education and economic development, all exercises of Congress' plenary authority under our U.S. Constitution to address the conditions of indigenous peoples.") (prepared text); The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. No. 100-297, 102 Stat. 130 (authorizing "supplemental programs to meet the unique educational needs of Native Hawaiians" and federal grants to Native Hawaiian Educational Organizations to help increase educational attainment among Native Hawaiians), 20 U. S. C. §§ 4902-03, 4905 (1988). The Hawaiian Homelands Homeownership Act of 2000 provides governmental loan guarantees "to Native Hawaiian families who otherwise could not acquire housing financing." Pub. L. No. 106-569, §§ 511-14, 114 Stat. 2944, 2966-67, 2990 (2000). Congress has also enacted legislation authorizing employment preferences for Native Hawaiians. *See, e. g.*, 1995 Department of Defense Appropriations Act, Pub. L. No. 103-

The Katsas Testimony also curiously omits the status of Alaska Natives, who – like Native Hawaiians – differ from American Indian tribes anthropologically, historically, and culturally. In 1971, Congress adopted the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §§ 1601-1629h, which is predicated on the view that congressional power to deal with Alaska Natives is coterminous with its plenary authority relating to American Indian tribes. *See* 43 U.S.C. § 1601(a) (finding a need for settlement of all claims "by Natives and Native groups of Alaska"); *id.* § 1602(b) (defining "Native" as a U.S. citizen "who is a person of one-fourth degree of more Alaska Indian . . . Eskimo, or Aleut blood, or combination thereof."); *id.* § 1604(a) (directing the Secretary of the Interior to prepare a roll of all Alaskan Natives). The Supreme Court has never questioned the authority of Congress to enact such legislation. *See Alaska v. Native Village of Venetie Tribal Gov't,* 522 U.S. 520, 531 & n.6 (1998); *Morton* v. *Ruiz*, 415 U.S. 199, 212 (1974) (quoting passage of Brief for Petitioner the Secretary of the Interior referring to "Indians in Alaska and Oklahoma"); *see also Pence* v. *Kleppe*, 529 F.2d 135, 138 n.5 (9th Cir. 1976) (when the term "Indians" appears in federal statutes, that word "as

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335, 108 Stat. 2599, 2652 (1994) ("In entering into contracts with private entities to carry out environmental restoration and remediation of Kaho'olawe Island . . . the Secretary of the Navy shall . . . give especial preference to businesses owned by Native Hawaiians."). *See also* Drug Abuse Prevention, Treatment and Rehabilitation Act, 21 U.S.C. § 1177(d) (involving grant applications aimed at combating drug abuse and providing: "The Secretary shall encourage the submission of and give special consideration to applications under this section to programs and projects aimed at underserved populations such as racial and ethnic minorities, Native Americans (including Native Hawaiians and Native American Pacific Islanders), youth, the elderly, women, handicapped individuals, and families of drug abusers."); Workforce Investment Act of 1998, 29 U.S.C. § 2911(a) ("The purpose of this section is to support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals"); American Indian Religious Freedom Act, 42 U.S.C. § 1996 ("it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."); Native American Programs Act of 1974, 42 U.S.C. §§ 2991-92, 2991a (including Native Hawaiians in a variety of Native American financial and cultural benefit programs: "The purpose of this subchapter is to promote the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives.").

applied in Alaska, includes Aleuts and Eskimos"). If Congress has authority to enact special legislation dealing with Alaska Natives, it follows that Congress has the same authority with respect to Native Hawaiians.

5. "S. 310 effectively seeks to undo the political bargain through which Hawaii secured its admission into the Union in 1959." (p.4).

The Katsas Testimony does not explain why the failure (should one even exist) to recognize Native Hawaiians at the time of Hawaiian statehood should have any effect on congressional power to recognize them now. It is unclear whether the Testimony is attempting to make a legal or policy argument; regardless, the argument here, like many of its others, appears grounded in an improperly stunted view of congressional authority as to Native groups. Congress has repeatedly recognized Tribes that it has earlier terminated – and these recognitions have not been invalidated on the ground that they unravel earlier decisions. Furthermore, it is simply inaccurate to say no steps were taken in 1959 to recognize the separate existence of a Native Hawaiian people. After all, Hawaii agreed in connection with its admission to the Union to adopt the Hawaiian Homes Commission Act as part of the Hawaii Constitution. *See* Hawaiian Homes Commission Act §§ 201, 203 (setting aside land to provide lots to Native Hawaiians with 50 percent or more Hawaiian blood). Furthermore, the United States transferred title to some 1.4 million acres of public lands in Hawaii to the new State as a public trust for the betterment of "Native Hawaiians." Admission Act § 5(f). And the Admissions Act also required that statutory amendments that reduce benefits to Native Americans be enacted only with the consent of the United States. These actions constitute recognition of a continuing indigenous corpus.

Under *Sandoval, supra,* Congress has extraordinarily broad authority to decide who falls within its Indian affairs power; the logical concomitant of this authority is the power to decide who falls *outside* the groups it chooses to recognize. For this reason, a congressional decision on how to define "Native Hawaiian" would be reviewable only for arbitrariness. The NHGRA's approach cannot be said to run afoul of this highly deferential standard. As the Supreme Court has noted, much of the nineteenth century foreign presence in Hawaii – both within Hawaiian government and in the broader polity – was unwanted and in fact actively resisted by Native Hawaiians. *See Rice v. Cayetano*, 528 U.S. 495, 504 (2000) (finding that there was "an anti-Western, pro-native bloc" in the Hawaiian government,

that in 1887 Westerners "forced . . . the adoption of a new Constitution" that gave the franchise to non-Hawaiians, and that the U.S.-led 1893 uprising was triggered in part by the queen's attempt to promulgate a new constitution again limiting the franchise to Hawaiians). Furthermore, Congress has long distinguished between indigenous Hawaiians and others who may have lived in the Hawaiian Islands at the time of annexation. With all of these facts in mind, Congress could find that an initial definition of "Native Hawaiian" as limited to those with some Hawaiian blood is appropriate.[10]

6. "S. 310 would encourage other indigenous groups to seek favorable treatment by attempting to reconstitute themselves as Indian tribes" (p.6).

This "slippery slope" argument is not very plausible. While the Katsas Testimony discusses a range of far-flung hypotheticals, it presents no group as having the same history as Hawaiians. In addition to the unique history of Hawaii, it is hard to conceive of another group of people whose previous relationship with the Congress of the United States resembles that of Hawaiians. A glance at the 1993 apology resolution, some of the text of which has been discussed *supra*, makes clear that Native Hawaiians stand in a very different position from other groups. As Governor Lingle testified to Congress,

> The United States is inhabited by three indigenous peoples – American Indians, Native Alaskans and Native Hawaiians. . . . Congress has given two of these three populations full self-governance rights. . . . To withhold recognition of the Native Hawaiian people therefore amounts to

[10] In any event, of course, the congressional definition is preliminary – it defines only the roll of those who may participate in reconstituting the Native Hawaiian entity. Congress could rationally conclude that the initial definition of "Native Hawaiian" should be limited to indigenous Hawaiians and their descendants, while leaving the subsequent dependent sovereign entity some leeway to later determine – just as virtually every Native American tribe determines for itself – who else should be included in its ranks. *See* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 3.03[3], at 176 ("Courts have consistently recognized that one of an Indian tribe's most basic powers is the authority to determine questions of its own membership. A tribe has power to grant, deny, revoke, and qualify membership.").

> discrimination since it would continue to treat the nation's three groups of indigenous people differently. . . . [T]oday there is no one governmental entity able to speak for or represent Native Hawaiians. The [NHGRA] would finally allow the process to begin that would bring equal treatment to the Native Hawaiian people.

Testimony of Linda Lingle, Governor of the State of Hawaii, Senate Indian Affairs Committee Hearing on S. 147, at 2 (March 1, 2005) (prepared text). *See also* Statement of Sen. Byron Dorgan, Vice Chairman, Senate Indian Affairs Committee Hearing on S. 147, at 1 (March 1, 2005) ("[T]hrough this bill, the Native Hawaiian people simply seek a status under Federal law that is equal to that of America's other Native peoples – American Indians and Alaska Natives.") (prepared text).

It is simply implausible to think that the other far-flung groups mentioned by the Katsas Testimony would be able to seek recognition on the basis of the Native Hawaiian precedent established by S. 310. To the contrary, the relevant question today should be whether Native Hawaiians resemble these far-flung groups more than they do the Menominee and Native Alaskans. For reasons that have been explained, the answer to that question is clear.

7. "Unless S. 310 can be justified as an exercise of Congress's unique constitutional power with respect to Indian tribes, its creation of a separate governing body for native Hawaiians would be subject to (and would almost surely fail) strict scrutiny under the equal protection component of the Fifth Amendment." (p.8).

S. 310 is justified as an exercise of Congress' unique powers. If there are reasons why Congress does not have power in this area, the Katsas Testimony does not credibly present them.

8. "Relying on *Mancari*, Hawaii argued in *Rice* that, because native Hawaiians constituted the legal equivalent of an Indian tribe, the voting restriction at issue should be subjected only to rational basis review as a 'political' classification. In framing that argument, the Court described as 'a matter of some dispute' – and a question 'of considerable moment

and difficulty' – 'whether Congress may treat the native Hawaiians as it does the Indian tribes.' *Id.* at 519." (p.9).

No one should mistake the Katsas Testimony's words for what the Court actually said. The Testimony isolates three separate phrases from the Supreme Court opinion. Of those three, the one that was the most pointed – namely, "of considerable moment and difficulty" – was the very statement that applied not simply to the question of whether Congress *could* treat Hawaiians like Indian Tribes, but whether Congress *has* in fact already done so. That question would, of course, be put to rest by the enactment of S. 310.[11] The full statement from the Court is as follows:

> If Hawaii's restriction were to be sustained under *Mancari* we would be required to accept some beginning premises not yet established in our case law. Among other postulates, it would be necessary to conclude that Congress, in reciting the purposes for the transfer of lands to the State-and in other enactments such as the Hawaiian Homes Commission Act and the Joint Resolution of 1993-has determined that native Hawaiians have a status like that of Indians in organized tribes, and that it may, and has, delegated to the State a broad authority to preserve that status. These propositions would raise questions of considerable moment and difficulty. It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes. Compare Van Dyke, The Political Status of the Native Hawaiian People, 17 Yale L. & Pol'y Rev. 95 (1998), with Benjamin, Equal Protection and the Special Relationship: The Case of Native Hawaiians, 106 Yale L.J. 537 (1996). We can stay far off that difficult terrain, however.

528 U.S. at 518-19. I do not wish to make too much of these technical issues, except to simply note that the Katsas Testimony conveys the impression that the Court wrestled with the issue of whether Congress *could* recognize Native Hawaiians, when in fact the Court explicitly reserved that very question.

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[11] Part of the confusion may also stem from the fact that the quotations Mr. Katsas isolates in his Testimony from the Supreme Court decision in *Rice* do not actually appear on the page of the United States Reports that he cites.

Instead, the Katsas Testimony makes it sound as if *Rice* itself raises critical questions about the legality of S. 310. It does not. The status of the Office of Hawaiian Affairs, an "arm of the State," *Rice*, 528 U.S. at 521, is totally different from whether Congress may recognize Native Hawaiians. On the latter question, Congress is entitled to a wide berth of latitude, as this Memorandum has previously discussed.

9. "The bill also raises the further constitutional question addressed in Justice Breyer's concurring opinion – whether Congress may create a sweeping definition of membership depending only on lineal descent over the course of centuries." (p.11).

Again, the Katsas Testimony does not accurately describe the separate opinion in *Rice v. Cayetano* filed by Justice Breyer. In that opinion, Justice Breyer, joined only by Justice Souter, argued that "to define that membership in terms of 1 possible ancestor out of 500, thereby creating a vast and unknowable body of potential members-leaving some combination of luck and interest to determine which potential members become actual voters-goes well beyond any reasonable limit." *Id.* at 527 (Breyer, J., concurring in the result).

The Katsas Testimony, however, makes it sound as if Justice Breyer was discussing whether *Congress* may create such a definition, when in actuality Justice Breyer was discussing a law of *Hawaii*, as his next words make clear: "It was not a tribe, but rather the State of Hawaii, that created this definition..." *Id.*[12] Now it might be that the Supreme Court would approach the issue the same way as between a federal and state classification, but there are plenty of reasons to think that they will not. *Cf.* Stephen Breyer, *Madison Lecture: Our Democratic Constitution*, 77 N.Y.U. L. Rev. 245 (2002) (outlining the case for judicial deference to political branches but noting that deference to state governments raise different concerns). In any event, the question of whether the class is too diffuse has not sufficiently permeated law to be a strong objection at this point in time, and particularly not to a statute whose definition is backed by explicit Congressional findings and a detailed history. Congress is within its considerable power in this area to preliminarily define the group in ways that

[12] See also *Rice*, 528 U.S. at 527 (Breyer, J., concurring) ("[t]here must . . . be some limit on what is reasonable, *at the least when a State (which is not itself a tribe) creates the definition.*") (citation omitted) (emphasis added).

include some and exclude others, just as it has done with other Native groups.

Conclusion

There may be good policy reasons to vote against the NHGRA, as that is an area outside of my expertise. However, my background in constitutional law leads me to believe that the Katsas Testimony does not muster a coherent and credible legal argument against the bill. It presents a caricatured view of the text of S. 310 and the governing law, and should not be considered an authoritative guide for resolving legal disputes in this area.

Ms. MURKOWSKI. I thank the Senator from Hawaii for his leadership on this issue, for his leadership on behalf of the people of Hawaii. There is so much in common that the Alaskans in the north share with our neighbors in the Pacific. I would like to take a few moments to speak a little bit about the history and how the history of our Alaska Natives ties in with the Native Hawaiians and why I stand today in support of the legislation offered by Senator AKAKA.

As Abraham Lincoln is revered by the African American community as our first civil rights President, Richard Nixon is held in esteem by America's native people for his doctrine of self-determination. President Nixon knew that in order for the native people to break out of the despair and poverty that gripped their lives, they would need to be empowered to take control of their own destiny. One of President Nixon's legacies to America's first peoples is the Indian Self Determination and Educational Assistance Act. Another one is the Alaska Native Claims Settlement Act. These two pieces of legislation eliminated any doubt as to whether the Native people of Alaska were recognized as among the first people of our United States and were, therefore, eligible for the programs and services accorded to Native people.

Yet it took more than a century from the time the United States acquired Alaska from Russia for the legitimate claims of Alaska's native people to be resolved. One hundred and three years to be exact. President Nixon signed the Alaska Native Claims Settlement Act into law on December 18, 1971. It has been amended by Congress to clarify one ambiguity or another on numerous occasions since.

The Indian Commerce Clause of the United States Constitution, which provides the legal basis for our Nation's special relationship with its native people, speaks of the authority of Congress to regulate commerce with the Indian tribes. It is now well established that this provision of the Constitution is the legal basis for our Nation's special relationships with the Native peoples of Alaska.

Some of Alaska's native people regard themselves as Indians. But the Eskimo and Aleut peoples of Alaska, who have also been recognized by this Congress and the courts as deserving of the special relationship, most certainly would not regard themselves as Indians.

In Alaska, the basic unit of native organization is the village and while some villages refer to themselves as "tribes," many native villages do not.

The Inupiaq Eskimo villages carry names like the native village of Barrow, the native village of Kaktovik, and the regional governing body of North Slope Inupiaq Eskimos refers to itself as the Inupiaq Community of the Arctic Slope.

Alaska's native peoples are Aleuts, Eskimos and Indians and their units of organization include entities like traditional councils, village councils, village corporations, regional consortia and subregional consortia. Yet neither the Congress nor the Federal courts deny all fall within the purview of the Indian Commerce Clause.

Leading constitutional scholars, including our esteemed Chief Justice John Roberts, have argued that Native Hawaiians also fall within the purview of the Indian Commerce Clause. I think it is high time that this Congress confirm that they do.

The American Indian Law Deskbook, 2d edition, authored by the Conference of Western Attorneys General, an association of state attorneys general, quotes the U.S. Supreme Court's decision in United States v. Antelope for this point.

> Congress may not bring a community or body of people within the range of its Indian Commerce Clause by arbitrarily calling them an Indian tribe, but . . . the questions whether, to what extent, and for what time they shall be recognized and dealt with as tribes are to be determined by the Congress, and not by the courts.

As anyone who has been to law school knows, when the courts apply arbitrariness as the standard of review, they are highly deferential to the initial decision maker, whether that decision is made by the executive branch or the legislative branch.

And the new 2005 edition of Cohen's Federal Indian Law treatise, which has historically been regarded as the definitive authority on Federal Indian Law notes that "no Congressional or executive determination of tribal status has been overturned by the courts" and indeed the Supreme Court has never refined the arbitrariness standard to which I referred.

The Alaska Native Claims Settlement Act was most importantly, a settlement of land claims. But it has turned out to be so much more for Alaska's native people. It created native owned and native controlled institutions at the regional and village level. These institutions, the Alaska Native Corporations, have functioned as leadership laboratories, helping a people who traditionally lived a subsistence lifestyle gain the skills necessary to run multi-million-dollar economic enterprises. I am not only referring to the profit-making corporations created by the act, but also the people serving institutions that manage Indian Self Determination Act programs.

The Alaska native health care delivery system is a prime example of President Nixon's self-determination policies at work. At one time the Federal Government administered the delivery of health care to the native people of Alaska through the Indian Health Service. Today, the native people administer their own health care delivery system under a self-governance compact with the Federal Government.

This healthcare system is recognized around the world as a laboratory for innovation. It is a pioneer in the use of telemedicine technology to connect clinics in remote villages to doctors at regional hospitals, and at the advanced Alaska Native Medical Center in Anchorage. Confidence in the quality of care delivered by the native healthcare system rose when native people took over the system.

But for me the most gratifying thing is to see young native people who are leading their communities into the new millennium. You see them in management and developmental positions everywhere in the Alaska native healthcare system.

The institutions created and fostered by the Alaska Native Claims Settlement Act have helped countless native young people pursue educational opportunities at the undergraduate and graduate level. Young people from the villages of rural Alaska are going off to school and returning with MBAs and degrees in law and medicine, nursing, education and social work.

As I visit the traditional native villages in my State of Alaska, it is evident to me that the Alaska Native Claims Settlement Act accomplished much more than settling land claims and creating native institutions. This legislation empowered a people. The Native people of Alaska have regained their pride in being native. Even as native people are pursuing careers that their ancestors never considered, there is a resurgence of interest in native languages and native culture in many of our native communities.

The empowerment of Alaska's Native people also enriches the broader Alaska community. Thousands of Alaskans participate in programs offered by the Alaska Native Heritage Center in Anchorage. The Athabascan Old Time Fiddler's Festival and the World Eskimo-Indian Olympics enable the native people of Interior Alaska to share their culture with the Alaska community.

At the time the Alaska Native Claims Settlement Act became law, some believed that it would balkanize the State of Alaska and separate people from one another. As we approach the 35th anniversary of the Alaska native land claims settlement, I can state with confidence that this single step of recognizing the legitimate claims of Alaska's native peoples has made our State a better place. It strengthened our ties to the past. It strengthened our sense of community. It enables all of us, native and non-native alike to take pride in Alaska.

Some 112 years have passed since the overthrow of the Kingdom of Hawaii, depriving the Native Hawaiian people of their self-determination and their land. Some 112 years after the Native Hawaiian people came under the control of the United States, I am sad to note that their status among the aboriginal peoples of the United States remains in controversy.

This controversy persists even though the Congress has enacted more than 150 separate laws that recognize a special relationship between the Native Hawaiian people and the United States. Among these laws is the Hawaiian Homes Commission Act of 1921, which set aside lands for Native Hawaiians much like the Alaska Native Allotment Act set aside lands for Alaska Natives.

Now you would think that if Native Hawaiians were regarded as not having the status of Indian people under the Commerce Clause, that the Congress would not have set aside land for them or made them eligible for the sorts of programs and services for which native people are eligible. But the Congress has done so time and time again and Presidents continue to sign these bills into law.

I am referring to the inclusion of Native Hawaiians in laws like the Native American Programs Act of 1974 and the Native American Graves Protection and Repatriation Act, which protect the interests of all of America's native peoples.

I also refer to laws such as the Native Hawaiian Healthcare Act and the Native Hawaiian Education Act which specifically rely on Congress's plenary power over matters involving Indians for their authority.

This controversy persists even though this Senate passed by a margin of 65-34, an Apology Act in 1993 which was ultimately signed into law as Public Law 103-150. Through this Apology Act, the Congress expressed its commitment to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people.

The bill before us, S. 147, is the logical next step in the process of reconciliation. It is the product of many years of hard work by our esteemed colleagues, Senator AKAKA and Senator INOUYE. It has earned the support of the Governor of Hawaii, the Honorable Linda Lingle, and the support of the Hawaii Legislature. It is endorsed by every major Indian group in our Nation—the National Congress of American Indians, the Alaska Federation of Natives and the Council on Native Hawaiian Advancement. It has been carefully considered by the Senate Committee on Indian Affairs which has reported the bill favorably to the full Senate.

First and foremost, it conclusively resolves the issue of whether Native Hawaiians are aboriginal peoples alongside American Indians and Alaska natives. This is a process that the native people of Alaska waited 108 years to resolve. It is important for the Congress to resolve these issues in order to assure that the programs we have enacted for the benefit of Native Hawaiians are free of constitutional challenge.

It provides for the organization of Native Hawaiians in a form that the adult members of that community determine by an open and transparent ballot. And it empowers that Native Hawaiian organization to negotiate with the State of Hawaii and the United States of America over the direction that Native Hawaiian self-determination may take. This is a modest piece of legislation that simply establishes a framework for negotiations to take place in the future.

Some of the opponents of this legislation have set out a parade of horribles that will flow from its enactment. I, for one, am unwilling to speculate on the outcome of the negotiations between the United States, the State of Hawaii, and the organization of Native Hawaiians established by this legislation. This legislation on its face states that it does not authorize Indian gaming, it does not vest the Native Hawaiian organization formed under its provisions with civil or criminal jurisdiction, and it does not require that Federal programs and services to other aboriginal peoples of the United States be reduced in order to provide access to the native peoples of Hawaii. It also does not create Indian reservations in Hawaii.

Sharing and inclusion are fundamental values to the native people of Alaska. The Alaska Federation of Natives, which is the oldest and most respected organization representing all of Alaska's native peoples, strongly supports the inclusion of Native Hawaiians among our first peoples, just as it supports the legitimate claims of the Virginia tribes and those of the Lumbees of North Carolina. I ask unanimous consent that the AFN's resolution of support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

IN SUPPORT OF THE HAWAIIAN PEOPLE

Whereas: the aboriginal people of the Hawaiian Islands, like Alaska Natives and Indians of the Lower 48 states, have long been the victims of colonial expansionism and racial discrimination; and

Whereas: the Office of Hawaiian Affairs, a unit of state government, has for years administered trust funds for the benefit of Native Hawaiians under the aegis of a Board of Directors elected by Native Hawaiians; and

Whereas: in the recent Rice v. Cayetano ruling, the U.S. Supreme Court held that this electoral process violates the Fifteenth Amendment to the United States Constitution, which prohibits the use of race as an eligibility factor in voting; and

Whereas: the Rice decision opens the door to additional lawsuits that would threaten the status and well-being of Hawaiians—and could create serious implications for Alaska Natives and other indigenous Americans; and

Whereas: the most experienced legal strategists in Hawaii, including the Governor and the Congressional Delegation, have determined that the best response to the Rice decision is that the United States Congress enact legislation specifically recognizing the Hawaiians as an "indigenous people" of the United States; and

Whereas: the State of Hawaii, particularly when compared to Alaska, has generally treated its indigenous population with respect and it is now making a unified effort to avoid the damage that Rice could do its own future; and

Whereas: there are several compelling reasons why AFN and the statewide Alaska Native community should now stand up for the Hawaiian people during the struggle for their appropriate legal status:

(1) because it is the right and just thing to do;

(2) because all Americans have a vested interest in healthy social relationships, racial tolerance, and political cohesion; and

(3) because the Hawaiian Congressional Delegation—and above all, Senators Daniel Inouye and Daniel Akaka—have always been there for us in our long fight for Alaska Native rights, including subsistence; Now therefore be it

Resolved, That the Board of Directors of the Alaska Federation of Natives declares its unqualified concern for, and support of, the Hawaiian people in their quest for federal recognition as indigenous people of the United States; and be it further

Resolved, That the Alaska Federation of Natives' Board of Directors direct the President and staff to assist the State of Hawaii's political leadership in this critical effort, by all appropriate means.

Ms. MURKOWSKI. Celebrating the distinctive cultures and ways of our first peoples strengthens of us. The Alaska Native Claims Settlement Act has stood the test of time and proven to be a good thing for the people of Alaska—native and non-native alike.

During his introductory remarks, the Senator from Tennessee, Mr. ALEXANDER, drew some distinctions between the situation of the Native Hawaiians and those of Alaska Natives. I would like to offer a few observations for the RECORD.

It is true that some Alaska Natives now and at the time the Alaska Native Claims Settlement Act of 1971 was enacted live in Alaska Native villages. Those villages have never been regarded as Indian reservations. Non-Natives live in Alaska Native villages alongside Alaska Natives.

But more significantly, the Alaska Native Claims Settlement Act of 1971 did not require that one reside in one of the Alaska Native villages or even in the State of Alaska to be a beneficiary of the settlement. All it required it that an individual have as a result of one's ancestry a specified quantum of Aleut, Eskimo or Indian blood to be an initial shareholder in an Alaska Native Corporation. The Federal Government determined who was eligible to receive stock by formulating a roll of Alaska Natives.

Recognizing rates of intermarriage among Alaska Natives, Congress has amended this legislation to give descendants of a corporation's original shareholders an opportunity to participate in the corporations on a co-equal basis with those shareholders who had the requisite blood quantum.

At the time that the claims act was passed Alaska Natives resided in every urban center of Alaska and many resided outside of the State of Alaska. They too lived as everyone's next door neighbor and were mixed in with the State's population.

In the 34 years since the claims act was passed more and more Alaska Natives have relocated to regional hubs, to Alaska's largest cities, and to locations outside Alaska. Today, Anchorage is regarded as Alaska's largest Native village. Some even live in Hawaii. Yet they have not lost their status as Alaska Natives in fact as in law. All remain eligible for services customarily provided to American Indians and Alaska Natives under the law.

I trust in the judgment of my respected colleagues, Senator AKAKA and Senator INOUYE, and my friend, Governor Lingle, that passage of S. 147 will enrich the lives and spirits of all of the people of Hawaii.

I ask that my colleagues support cloture to enable us to debate S. 147. With that, I yield the floor.

May 16,2007

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On behalf of the Office of Hawaiian Affairs Native Hawaiian Revolving Loan Fund, I am writing to express our support for S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act of 2007, *introduced by the Members of the Hawai'i Congressional Delegation, and to ask that you vote yes to support passage of S. 310/H.R. 505.*

NHGRA reaffirms the special political and legal relationship between the United States and the indigenous, aboriginal Native Hawaiian people. NHGRA is about fairness in U.S. policy, protection of Native Hawaiian culture and existing programs, and justice.

A process of U.S. recognition is already available to American Indians and Alaska Natives, and enactment of NHGRA extends a similar process to Native Hawaiians. There are over 560 federally recognized Native governing entities functioning in the U.S, along side local, state and federal governing entities. Native Hawaiians are the indigenous people of Hawai'i, whose ancestors practiced sovereignty in their ancestral lands that later became part of the United States. The establishment of a process of federal recognition for Native Hawaiians moves us toward fairness in federal policy toward American Indians, Alaska Natives and Native Hawaiians.

Protection of Native Hawaiian culture, as well as existing Native Hawaiian programs is critical for future generations. Perpetuation of distinct, living cultures requires self-determination, and that is necessary for the Native Hawaiian culture as well. Enactment of NHGRA protects this greater self-determination, and thus the distinct culture. It protects existing programs because it establishes a single U.S. policy reaffirming that as the indigenous people of Hawai'i, Native Hawaiian people have a special political and legal relationship with the U.S., consistent with the Hawai'i Constitution, over 150 existing Federal laws addressing Native Hawaiians and the U.S. Constitution regarding Native people of the lands of the 50 states.

The historical facts of the role of the U.S. in the illegal overthrow of the Native Hawaiian government in 1893 are accurately documented in U.S. Public Law 103-150, the Apology Resolution. As evidenced by the anti-annexation Ku'e petitions filed with the U.S, the vast majority of Native Hawaiians opposed the 1898 annexation of Hawai'i. Upon enactment of NHGRA, just reconciliation and movement forward, after 114 years of justice delayed, will now be possible. After the required U.S. recognition process is satisfied, representatives of the U.S., the State of Hawai'i and the recognized, representative Native Hawaiian governing entity will be able to talk together, with equal standing, negotiating to resolve consequences of the illegal overthrow with well-being and justice for all as the goal.

Some critics are fueling emotional fears of secession, land grabbing, and the balkanization of Hawaii into classes of people. These are simply not true. NHGRA is not about race. It is about native indigenous people seeking to preserve and perpetuate our culture, our values, and our inherent sovereign right.

Reaffirmation of the special legal and political relationship between the U.S. and the Native Hawaiian people as a whole, acknowledges Native Hawaiians with their unique culture, values, history, assets and institutions can best determine and implement solutions to solve problems specific to Native Hawaiians.

We take special interest in this legislation, and urge your support.

Thank you for your consideration of this important issue.

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Name: Kenneth M. Quiocson
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Name: Paul Jamison
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Name: Ronica Hanaike
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Name: Onde Apao Loé
Address: 1611 Ho'oliamoe st.
PC. HI 96702

Name: Ron Galindo
Address: 3107 Hinano st.
Honolulu, HI 96815

Name: Dayton Galindo.
Address: 3107 Hinano st.
Hon, HI 96815

Name: Attila Pohlman
Address: PO Box 15212
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Name: Eric Eads
Address: 2738 Manoa Rd
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Name: D. Meyer
Address: 688 Nanaao Pl.
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Name: [illegible]
Address: 1810 University Ave
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Name: Ivette Rodriguez Stern
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Name: Hauoli Akeka
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Name: Patrick Swiffer
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Name: David Young
Address: 927 Prospect St.
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Name: Marie G. Kalikina
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Name: Gavin Lum
Address: 94-667 Kauakapuu loop
Mililani HI, 96789

Alvin K. Kushima
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Name: Earl Cordero
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Name: [illegible]
Address: 530 Poipu Dr.
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Name: Ezra K. Bumanglag
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Name: CHIP MILLER
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Name: PATRICIA OBIRA
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Name: Neil Hayase
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Name: Jonah Uhu
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Name: Dalene Wilbur
Address: 86-630 Puuhulu Rd
Waianae, 96792

Name: Kalei Wilbur
Address: 86-630 Puuhulu Rd
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Name: TAMA Isaia
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Name: Leilani Isaia-Wilbur
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Name: Pilani Isaia
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Name: Rochelle K. Wilbur
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Name: Mark Cortes
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Name: Marzie Hogan
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Name: Sherna Rodrigues
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Name: Ramjah Timas
Address: 94-1044 Hihiwa St
Waipahu, Hi 96797

Name: Sherry Ho
Address: 962 Ala Lilikoi St.
Honolulu, Hi 96818

Name: Jason L Pacle
Address: 94-844 Farrington St
Waipahu, Hi 96797

Name: [illegible]
Address: 28 Prospect St.
Street Number
Hon. Hi 96813
City State Zip

Name: A. Grillo

* Copies of individual letters have been retained in Committee files.

The Honorable Byron Dorgan, Chairman,
The Honorable Craig Thomas, Vice-Chairman and Members of the Senate Committee on Indian Affairs

I am writing to urge you to support S.310 the Native Hawaiian Government Reorganization Act of 2007.

Hawai'i was a sovereign nation before 1893 when it was illegally taken over by a group of American businessmen with help from the United States government. The assets from the former Kingdom are being held in trust for the Hawaiian people. These assets (e.g. Hawaiian Homelands, Kamehameha Schools) are now coming under legal attack using civil rights legislation intended to protect minorities.

Hawaiians are today suffering the ravages of colonization. Hawaiians have higher rates of incarceration, heart disease and substance abuse than other demographic groups. Hawaiians are a minority even in their own homeland largely because the commercialization of Hawai'i has made it unaffordable for working class people.

The Native Hawaiian Government Reorganization Act would provide protection against legal challenges seeking to allow non-Hawaiians to have access to the assets from the Kingdom of Hawai'i. The NHGRA would firmly establish Hawaiians as political entity rather than a race. The NHGRA would allow Hawaiians to have self-determination in addressing issues of health and education. Some Native Alaskans and Native Americans currently enjoy this legal recognition (and protection). Please support s 3.10 so that Hawaiians may also have legal recognition of their political status as a nation within a nation.

Sincerely,

Mark Kamakea

Subject: Letter of Support for S. 310/HR 505 Native Hawaiian Government

Honorable Congresspersons and Senators:

My name is Derek Kawaii. I am a Unitied States citizen born in San Francisco, California. I am also a native Hawaiian. I am writing this letter of support for S. 310/ HR 505. This bill will set the ground work for a positive relationship between the Unitied States Government and the native Hawaiian people.

My grandfather came to the "mainland" in 1915 when Hawaii was still a territory as a result of the overthrow of the Hawaiian government in 1893. Despite the span of generations, time, and distance, my family has found ways to sustain our culture. My daughter learns of the Hawaiian language, dance, and traditions at a local hula halau (traditional dance school). Despite the fact that we hawaiians have no nation, the hawaiian diaspora have a desire and need to continue our traditions.

The Native Hawaiian Government Reorganization Act (NHGRA) will set in place a framework for hawaiians to more formally organize in a way that has formal recognition and meaning. Currently, the hawaiian diaspora meet in small groups where we can find them. In the State of Hawaii, there certainly are more means for Hawaiians to continue our culture, but there is no central organization for self-determination. All native Hawaiians will benefit from the formal recognition of a Hawaiian government that places the needs of Hawaiians as paramont.

I urge you to support the NHGRA.

Thank you for your time and consideration of this most important issue.

Sincerely Yours,

Derek Kawaii

9 May 2007

The Honorable Byron Dorgan, Chairman, Senate Committee on Indian Affairs

I am writing this letter requesting your support for S.310/H.R.505, the Native Hawaiian Government Reorganization Act of 2007.

I write this as a Native Hawaiian who pledges total allegiance (now and forever) to my country, the United States of America! I write this as U.S. Army veteran who spent over twenty years on active duty, including nearly thirty months in Viet Nam, fighting to preserve and protect the principles of Freedom and Liberty for Americans! I write this on behalf of thousands of other Native Hawaiians, many of whom gave their lives in battle, who served in the various U.S. military services in the past! I write this on behalf of the thousands of Native Hawaiians who have suffered (and continue to suffer today) as a result of the illegal overthrow of the Hawaiian government that was in place in 1893! I write this with the greatest hope that the culture and values of my Native Hawaiian people will continue to live on!

After all the words have been stated and every argument, pro or con, has been made, the issue that has to be resolved is simply "did the government of the United States support the illegal overthrow of a recognized Hawaiian government" resulting in slow but obvious erosion of an internationally recognized indigenous people and their culture? In my mind, the answer is obviously in the affirmative! In my mind, the resolution is simple: that the United States government officially recognize the Native Hawaiian as an indigenous people and accord them the same rights, no more, than those accorded the Native Americans. Native Hawaiians deserve the right to self-determination!

As in any grouping of peoples, there will be those who are extremists! There is no denying that there are extremists within the Native Hawaiian community whose actions and comments will incite concern among the general population! Be assured that the extremists in this group may be loud but their numbers are small and the vast majority of Native Hawaiians will now and forever be American patriots.

Last but not least: in 1893, a particular people and their culture were denied their future by an illegal action supported by the U.S Government! Is allowing them the rights denied by that illegal action racist? Under the circumstances, I think not! I believe that the Native Hawaiians are genuinely concerned about the welfare of their people and about the continuing erosion of their culture! I believe that granting the Native Hawaiians indigenous status will allow them to persevere and grow into stronger citizens of the United States than ever before!

Sincerely

Dan Kaopuiki III
Major, US Army (Retired)
2325 N 187th St, Seattle, WA 98133

Center for Gifted & Talented
Native Hawaiian Children

HAWAI'I
Head Office
University of Hawai'i at Hilo
200 West Kāwili Street
Hilo, Hawai'i 96720-4091
Phone (808) 974-7678
Fax (808) 974-7681

West HAWAI'I
University of Hawai'i Center,
West Hawai'i
81-964 Haleki'i Street
Keālakekua, Hawai'i 96750
Phone (808) 322-4867
Fax (808) 322-4855

MAUI
Maui Community College
310 Ka'ahumanu Avenue
Kahului, Hawai'i 96732-1617
Phone (808) 984-3364
Fax (808) 242-6153

Lāna'I
Lāna'i High & Elem.School
P.O. Box 630630
Lāna'I City, Hawai'I 96763
Phone (808) 565-7910 ext.288
Fax (808) 565-7904

MOLOKA'I
Moloka'i Education Center
P.O. Box 488
Kaunakakai, Hawai'i 96748-0488
Phone (808) 553-9993
Fax (808) 553-8108

O'AHU
University of Hawai'i at Mānoa
Li'uokalani Center
Department Services 8214
Honolulu, Hawai'i 96822-2205
HILO (808) 956-9410
Fax (808) 956-9240

May 8, 2007

The Honorable Byron Dorgan, Chairman,
The Honorable Craig Thomas, Vice-Chairman and
Members of the Senate Committee on Indian Affairs

Aloha,

On behalf of the over 2,000 students, families and staff of Nā Pua No'eau, Center for Gifted and Talented Native Hawaiian Students, I am writing to express our support for S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act (NHGRA) of 2007, and ask that you vote yes to support passage of S. 310/H.R. 505.

Protection of Native Hawaiian culture, as well as existing Native Hawaiian programs is critical for future generations. Perpetuation of distinct, living cultures requires self-determination, and that is necessary for the Native Hawaiian culture as well. Enactment of NHGRA protects this greater self-determination, and thus the distinct culture. Our Center, Nā Pua No'eau, provides Hawaiian children an opportunity to build upon their distinct history and culture. NHGRA protects our Center□s effort to determine a pedagogy that embraces and perpetuates its history and connection to its culture.

Reaffirmation of the special legal and political relationship between the U.S. and the Native Hawaiian people as a whole, acknowledges Native Hawaiians with their unique culture, values, history, assets and institutions can best determine and implement solutions to solve problems specific to Native Hawaiians.

Our children and families urge your support.

Mahalo for your leadership and support.

Sincerely,

David K. Sing, Ph.D.

The Honorable Byron Dorgan, Chairman
The Honorable Craig Thomas, Vice Chairman, and
Members of the Senate Committee on Indian Affairs

May 8, 2007

Dear Sirs,

The Hawaii Carpenters Union, Local 745 of the United Brotherhood of Carpenters and Joiners of America, urges the passage of S310, the Native Hawaii Government Reorganization Act of 2007, as amended to address prior concerns.

We count among our union membership individuals of both Native Hawaiian and non-Native Hawaiian ancestry. Both contribute to our Hawaii economy and community. We do not divide our 8,000 members and their families along ancestral lines, and see that S310 does not do so. Rather, recognition of Native Hawaiians as indigenous people within our state will release potentials of human and economic growth.

Further, S310 does not seek to turn back the clock to the 1893 overthrow of a sovereign Hawaii government, as documented in the apology resolution, Public Law 103-150. It's passage will allow all of us to move ahead, drawing together existing policies and programs that partially acknowledge the unique circumstances of Native Hawaiians, into cohesive and more effective administration. Fragmented negotiations and litigation can be moved towards comprehensive government to government settlement and implementation.

There are in Hawaii citizens of Native Hawaiian ancestry experienced in all aspects of culture, from governance and law to business and the arts. We believe that upon recognition, a governing entity will be well able to note the best of Native American and Alaska Native history, but forge unique approaches to advancing the standing of Native Hawaiians within the governance of our state and nation. Hawaii has, after all, been acknowledged as having developed unique social relations based on a sense of equality and human dignity.

Please register our union as joining the many organizations and individuals in Hawaii, and the Congressional legislators of both parties, in support of the passage of S310.

Sincerely,

Ronald I. Taketa
Financial Secretary and Business Representative

cc Office of Hawaiian Affairs
Department of Hawaiian Home Lands
Tricia Mueller, UBCJA Political Director

ALASKA FEDERATION OF NATIVES

May 2, 2007

The Honorable Byron L. Dorgan, Chairman
The Honorable Craig Thomas, Vice-Chairman
Committee on Indian Affairs
United States Senate
838 Hart Office Bldg.
Washington, DC 20510

Dear Senators Dorgan and Thomas:

RE: Legislative Hearing on S.310, The Native Hawaiian Government Reorganization Act of 2007

On behalf of the Board of Directors of the Alaska Federation of Natives, I am writing to express our strong support for passage of S. 310. The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska. Its membership includes over 200 villages (both federally-recognized tribes and village corporations, 13 regional Native corporations and 12 regional nonprofit and tribal consortiums that contract and run federal and state programs. AFN has consistently expressed its unqualified support for enactment of a bill that would provide for recognition by the United States of a Native Hawaiian governing entity. This bill does that and we urge its passage.

The United States has a unique legal and political relationship with the indigenous people of Hawaii, and that relationship is forged in a history of treaties, the Admission Act of Hawaii, hundreds of federal statutes and Executive Orders. Since the annexation of the Territory of Hawaii, Native Hawaiians have been treated by Congress in a manner similar to American Indians and Alaska Natives. Congress has passed over 160 statutes to address the conditions of Native Hawaiians and has repeatedly recognized the United States' political and legal relationship with Native Hawaiians. S.310 would formally extend the federal policy of self-governance and self-determination to Native Hawaiians, thereby providing parity in federal policies toward American Indians, Alaska Natives and Native Hawaiians.

The Congress and the Executive Branch committed themselves to pursue a reconciliation between the United States and the Native Hawaiian people in the 1993 Apology Bill (Public Law 103-150), which acknowledged America's role in destroying the legal government of the Hawaiian people. The Departments of Justice and Interior have called upon Congress to "enact further legislation to clarify Native Hawaiians' political status and to create a framework for recognizing a

government-to-government relationship with a representative Native Hawaiian governing body," U.S. Depts. of Justice and Interior, *From Mauka to Makai: The River of Justice Must Flow Freely*, p. 4 (Report on the Reconciliation Process between the Federal Government and Native Hawaiians, October 23, 2000). S.310 would grant long-delayed justice to the Native Hawaiian people. It will allow Native Hawaiians to become more self-sufficient and to develop programs that best serve their members, lessen dependency on the federal government and ensure greater participation in the national economy.

S.310 sets up a process for the reorganization of the Native Hawaiian governing entity, including the development of a base roll of the adult members of the Native Hawaiian community and the election of a Native Hawaiian Interim Governing Council charged with developing the organic governing documents of the entity. Upon recognition of the Native Hawaiian governing entity, the United States, Hawaii and the Native Hawaiian governing entity would enter into negotiations designed to reach agreements on such things as transfer of lands, natural resources and other assets and the exercise of governmental authority over any transferred lands. Any agreements reached on these issues would have to be submitted to Congress as recommendations for proposed amendments to federal and state law that will enable the implementation of the agreements.

S.310 contains language successfully negotiated with the Hawaii Congressional delegation, the Hawaii State Attorney General and officials from the Bush Administration in 2005. It would require no new federal outlays since federal programs for Native Hawaiians are already in place and are generally funded out of non-Interior Department accounts. The bill makes clear that Native Hawaiians are not eligible for programs and services and thus do not compete with program funding for American Indians and Alaska Natives. It also makes clear that the Native Hawaiian governing entity will not be authorized to conduct gaming. The bill enjoys broad support throughout Indian country and bipartisan support in the Congress. Hawaii's Governor, Linda Lingle, testified in support of federal recognition for Native Hawaiians in 2003 and 2005.

AFN strongly supports passage of S.310 during this Congress. It will enable Native Hawaiian people to engage fully in the United States' policy of self-determination and self-governance. The bill is vital to the future of the Native Hawaiian people.

Sincerely,

Julie Kitka

Julie Kitka
President

/chd

cc: The Honorable Daniel Akaka – Fax: 202-224-2126
The Honorable Daniel K. Inouye – Fax: 202-224-6747
The Honorable Lisa Murkowski – Fax: 202-224-5301
The Honorable Ted Stevens – Fax: 202-224-2354
The Honorable Don Young – Fax: 202-225-0425

Dear committee members:

There is concern in this community that there has not been a single study done about the negative social/economic impacts that the Akaka bill could have on the native Hawaiian community, and the spillover effects that an adverse outcome could have on the non-native Hawaiian majority in the State of Hawaii.

The proponents of this legislation have not put forth a position paper that outlines the advantages that the Akaka bill would have for native Hawaiians, yet this issue is vitally important to our small community. My concern is that the advantages both social and economic are not readily apparent, but the disadvantages are all too obvious, and should certainly be addressed. Here are some of the concerns that come readily to mind.

The administration and certain segments of Congress have expressed concerns about the constitutionality of this legislation. In view of these concerns, is there a possibility that the bill could be delayed by legal challenges that address the question of constitutionality? And could these challenges delay implementation indefinitely while they are being resolved?

The legislation prevents the Hawaiian nation from introducing any forms of legalized gambling, which is providing the mainstay of revenues for the American Indian tribes. Where then will the new sovereign nation of Hawaii generate the revenues needed to run the nation and care for its citizens? Will it by necessity compete with State of Hawaii businesses by offering tax-free goods and services free of federal and state taxes? Will it be permitted to allow nonunion foreign nationals to produce goods and provide services at lower cost to compete with businesses located in the United States? What will be the economic impact on the state of Hawaii of having 50% of its land and the revenues generated by these lands transferred to the Hawaiian nation? Could this have an adverse impact on the Hawaii economy, and if so, how severe will it be? What will the impact the on non-Hawaiian spouses, adopted children, and non-Hawaiian in-laws, of being denied citizenship in the new Hawaiian nation because of their race?

One of the major reasons for given for introducing the Akaka bill was to protect Hawaiian racial entitlements, which appeared to be jeopardized by the Supreme Court decision, Rice versus Caetano. Will this create a permanent underclass of native Hawaiians, who will be entitled to welfare assistance based on their race, even when their Hawaiian blood quantum has diminished to almost nothing? If welfare dependence is not good for non-Hawaiians of every race, how could it possibly be good for Hawaiians?

Is there reason to be concerned that the Akaka bill could have severe social and economic consequences for the non-Hawaiians living in a significant smaller State of Hawaii? And if the creation of the new Hawaiian nation harms the economy of the State of Hawaii, is there a possibility that this could generate racial discord and animosity in a state that has always been a symbol for racial harmony and cooperation?

The people of Hawaii deserve answers to these and a host of other questions. Before this legislation passes, Congress should determine the benefits and shortcomings of this legislation by initiating extensive and exhaustive economic and social analysis to guarantee that creating a sovereign nation of native Hawaiians does not adversely impact the economic and social structure of the State of Hawaii, which will be home to Hawaiians and non-Hawaiians for generations to come.

Mahalo and aloha for your consideration

James Growney,
US citizen and native Hawaiian

To Whom It May Concern:

I am against the Akaka Bill.

I have lived in Hawaii on Oahu for three years. I am what the so called natives call a haole (white guy).

When I first arrived here I expected to find one of the fifty states in the UNITED States of America. Instead I found a segment of the population that has not interacted in a positive way with me ONCE in three years. I could not figure out what was going on at first. I finally asked another person of European descent if they had noticed this hostility from the so called natives. They said yes and proceeded to tell me of the areas that I should not go to under any circumstances at night and some even during daylight hours. I was shocked to learn of this danger to my well-being.

I know that the supporters of the Akaka Bill will deny the existence of this prevailing attitude toward haoles. I suggest that anyone doubting the problem only look at the local newspaper and read of the injury or deaths suffered by people just because they were light skinned.

The local cable TV has public access channels with spokespersons campaigning against what they consider to be the white oppressors. The State of Hawaii funds to the tune of millions of dollars the Office of Hawaii Affairs that is behind this separatist movement.

They are also one of the main supporters of the Akaka Bill.

The native spokespersons complain loud and long about the social and economic condition of their group. They say little about the drop out rate of their children in schools run by and for them, the high birth rate among young native women and absentee fathers.

All their problems, according to them, are somebody else's fault.

If what I read in the newspapers is true the actual native population here is below 20%, in some cases listed below 10%. To give them effectively complete control over one of the fifty United States without being subject to the ballot box on a frequent basis, in my opinion, is the wrong thing to do. It is genuinely scary to an older person such as me.

Bruce L Bush

I am writing in strong support of Hawaiian Sovereignty.

It is crucial Hawaiian culture be preserved and we as United States citizens recognize past wrongs done to Native people.

Those who argue that this will drive wedges between people and lessen the bond of Hawai'i as a state overlook the history and need to preserve a culture that was pushed aside.

Native Hawaiians have no other place to go to if the culture is not preserved. In addition, there are endless studies that show the disparity between Indigeneous and nonIndigeneous people on the Islands.

Recognizing sovereignty would allow the same benefits that Native American tribes have, including more involvement in self-determination in many areas, including economic survival.

It is the right thing to do and ensures a history of our country not be forgotten or ignored.

The Aloha spirit has so much more to it than large hotels and development. As a country we need to correct past wrongs when we can or at least attempt to even the

playing
Differences
embraced
common
(there is
can be found.

field.
can be
and
ground
much)

Sovereignty is not a threat but a graceful strength our country needs to uphold.
Thank you for listening.

Mahalo.

Jennifer Therese Doyle
Child Protection

Date: April 30, 2007

Re: Formal Testimony for the Record regarding
Senate Hearing on S. 310, May 3, 2007

To: Senate Committee On Indian Affairs,

Citizens Equal Rights Alliance (CERA) is a coalition of community education groups in 28 states that organized in the mid-80s to assist tribal members struggling with their tribal governments. More recently, since the passage of the Indian Gaming Regulatory Act in 1988, CERA is growing exponentially with community groups forming to contend with tribal jurisdictional intrusions upon non-members, and the trend of

off-reservation casinos attempting to locate in urban areas. Our entire mission and focus is to promote and protect Constitutional and civil guarantees of equal rights and equal protection for all citizens.

We submit for the record, the oral remarks of Dr. William B. Allen, former Chairman of the U.S. Civil Rights Commission, available on the link below, and our written comments herein. We urge each of you to take to heart, Dr. Allen's comments specific to the Akaka Bill, as he noted in his remarks:

Trust and Consequences
[See: www.trustandconsequences.com, "Video Links"]

The Pledge of Allegiance which is a federal statute at U.S. Code, Title 36, Chapter 10, Section 172, is part of what is under attack with Senate Bill 310 and H.R. 505:

"I pledge allegiance to the Flag of the United States of America..."

Senators and Congressmen of the United States, unmindful of their own respective pledges of allegiance to the country in which they hold elected office, contrary to their own sworn Oath of Office, and in clear violation of the U.S. Constitution, support legislation to separate and segregate one specific ethnic population in contradiction to the pledge of allegiance by forming a separate, race-based government requiring a redirected allegiance to a separate government.

"And to the republic for which it stands..."

Far too many members of Congress would enact S. 310 and H.R. 505, repudiating the requirement of a republican form of government for the 400,000 Native Hawaiian U.S. citizens. These congressmen, by their intent to pass this legislation clearly state that our "republic for which it stands," stands for nothing. Or worse, laws can be enacted on behalf of the highest bidders based on their political contributors.

"One nation, Under God, Indivisible...."

Senators Akaka, Cantwell, Coleman, Dorgan, Graham, Inouye, Murkowski, Gordon Smith, and Stevens, and Congressmen Abercrombie, Bordallo, Case, Falomeomavaega, Grijalva, Moran, Rahall and Don Young—by their endorsement of S. 310 and H.R. 505, promote and foment a race-based governance system to dismantle the One Nation of the United States while claiming to uphold their Oath of Office and the United States Constitution. Every American citizen should be outraged at such dishonorable thought and conduct among federal elected officials.

"With liberty and justice for all."

S. 310/H.R. 505 will separate and segregate Native Hawaiians, denying to them the Constitutional and civil protections and civil liberties guaranteed under a republican form of government. These bills are modeled after the Indian Reorganization Act (IRA) of 1934, and like the IRA, will expand destruction and balkanization that this county is currently experiencing because of federal Indian policy. Is Congress so pleased with federal Indian policy that it wishes to now expand this system to other racial groups? If so, what limits this race-based expansion, and keeps our country "indivisible?"

Justice will be denied to ethnic Hawaiian citizens and to all other citizens of the United States by elected officials whose own integrity and allegiance is apparently redirected away from the best interests of the whole cloth of the United States. Race-based balkanization is a force capable of destroying most countries, and especially ours, with our tremendous diversity. Such efforts as this legislation border on sedition.

VOTE NO!

Sincerely,

Elaine D. Willman, National Chair
Citizens Equal Rights Alliance
P.O. 1280
Toppenish, WA 98948

Honorable Senators of the Indian Affairs Committee,

I am writing in reference to S.310 – the Native Hawaiian Government Reorganization Act of 2007 which seems to have reappeared after being defeated last year. While I am not a resident of Hawaii, I visit often and have friends, both Native and other, who live there.

The act S.310 was defeated with sound legal arguments last session, and were echoed by the feelings of the people of Hawaii. It appeared even to those of us in the Continental US to be discriminatory and divisive. It also seemed unconstitutional.

This bill has not changed that much in character, if at all. If the measure passed, it would have extensive effects on Hawaii, particularly in economic and social areas. The people need to have a vote in this, not just the political representatives.

I hope you have the fortitude to remove this bill from the table.

Respectfully,

Barbara A. Bower
209 Barcroft Drive
Yorktown, Virginia 23692

Senators,

Not dividing Americans along racial, ethnic, or ancestral lines must be an inviolable 1st principle of our federal government.

Thank you,

Leo Kocher
5530 Ellis Ave.
Chicago, IL 60637

Dear Committee Chair:

As a Columnist for MidWeek magazine (Oahu's most widely circulated weekly publication; 275,000 households) the following is my most recent column on the proposed Akaka Bill (S-310), and expresses the feelings the majority (by objective poll) citizens of Hawaii, the overwhelming support by Hawaii's politicians who fear the loss of government money without the Bill notwithstanding.

An April 29th Editorial in the Honolulu Advertiser commences with this paragraph; "The Akaka Bill is back on the table in Washington, D.C. No other piece of legislation has greater potential to change the political and social landscape in Hawaii." Surely any legislation with such impact should at a minimum first have the approval of all of Hawaii's people through a statewide plebicite.

Thank you for your consideration.
Gerald Coffee, Captain, US Navy (Ret.)

COFFEE BREAK Apr. 16th, '07

Most of us here in Hawaii have encountered the curious mainlander who goes ga-ga when we reveal that we live in Hawaii. Then, "Hey man, what's it like to live in Paradise?" And I usually reply; "Living in Hawaii seems to encompass all the intrigue, surprise, and richness of living in a foreign country, but with none of the inconveniences of a foreign tongue, funny money, or weird food. The blend of various races results in a smooth melange of social graces. Aloha Fridays and first birthday luaus, Pau Hana beer, Pigeon English, slippahs and rainbows tend to smooth the the hard edges of Western culture. And the Aloha spirit, it's really tangible; it's in the tropical air!"

I have felt this way about Hawaii since I first stepped off the plane 32 years ago. My family and I looked down on the beach from the window in our room at the Moana and shared in in the color and excitement of one of the biggest outrigger canoe regattas of the year. We knew instantly that this was a special place.

As a Squadron Commander and living on base at Barbers Point, we frequented the beaches of the Waianae Coast, made friends easily with families in Nanikuli, appreciated barefoot Hawaiian weddings at Makua Beach, learned the ways of the imu, kalua pig and poi, haku leis and puka shells, slack key and spontaneous hulas. We embraced our local friends at squadron "open houses", change-of-command ceremonies, and beach parties. We developed a deep understanding of Hawaiian history and culture. Ultimately, we built our home at Maili, bought lau laus and poki at Tomuras, and supported the Waianae Coast Health Center. I love Hawaii and it's differences from the U.S. mainland. And I love Hawaiians who embrace the code of Aloha and have taught it to me.

I support the Hawaiian Homelands program because it helps Hawaiians stay connected to the land and their heritage, but I'm also saddened that--until now--it has been so badly mismanaged, even under a Hawaiian governor. Although I disagree with OHA's spending priorities, I support income to OHA from ceded lands because that's what was agreed upon decades ago, and I think it's fair. I support the admissions policy of Kamehameha Schools because as a private entity receiving no government funding I believe it has the right to choose it's own policies.

But I do not support the Akaka Bill, and here are the reasons why.

* With but a few exceptions, by every objective measure the Hawaiian race and culture is thriving like never before; in music, dance, the arts, and the language. Politically, there have never been more legislators, judges, and community leaders with Hawaiian blood than now. Economically, average income for Hawaiian families has never been higher and in some cases exceeds that of other races; even Caucasians. Those achieving the greatest economic success have assimilated, and look forward. Those with the least success have remained separate, and look backwards. Hawaiians deserving government economic assistance can always receive it on the basis of need, just as those

of other races. In short, the Akaka Bill is unnecessary.

* The Akaka Bill will divide the people of Hawaii into different classes of citizens; Hawaiians and non Hawaiians; and this at a time when we need to be united as never before both to solve our local problems and to maintain our collective national security. Since Akaka models his proposal on the Native American political entity, we can expect the same excesses that have already occurred with them; immunity from state and local taxes, immunity from established law enforcement, immunity from zoning and environmental laws, immunity from political campaign contribution limits. This is actually happening on the mainland today.

* Over-reaching claims of ownership of public resources as exemplified by OHA's Clyde Namu'o, who recently claimed that all of Hawaii's well water originated as surface water which is a state "public trust resource" subject to Native Hawaiian's traditional fishing and gathering rights, and therefore OHA owns most of Hawaii's fresh water!!!...ownership which could pass to a "sovereign Hawaiian government" if the Akaka Bill passes. And this is just the beginning.

I oppose the Akaka Bill precisely because I love Hawaii and the Hawaiian people. Without the equality, trust, mutual respect and appreciation within our existing system--which manages to stay above race most of the time--I truly fear Aloha will die!

I oppose S.310 for the following reasons:

The bill would not re-create a previous government because the previous government allowed Caucasions , Asians, and others to be full voting citizens and government officials. This racially exclusionary government would not.

If the Indian governments are any example, this new government will have no separation of powers, be closed to the press, closed to the public and beyond the reach of the state, yet funded by taxpayer dollars.

After hundreds of years of treating Indians differently from the mainstream we can see that it does nothing to bring them out of poverty- in fact, it causes the problem. The Akaka Bill will make things worse . Native Hawaiians would fare better by following the path all poor immigrants take to education and success witghout the "benefit" of racially exclusionary programs. That is what works for all.

It is insulting to claim that Native Hawaiians are somehow inferior to the rest and cannot succeed unless they have their own closed, segregated government. Segregation and apartheid have never been a good idea- even if you claim it is with

good intent. We don't need any more perpetual victim groups.

Betty Perkowski
106 Hangman Hill Rd.
North Stonington CT 06359

From: Henry Miyamoto
To: testimony@indian.senate.gov
Sent: Sunday, April 29, 2007 11:29 PM
Subject: Hearing 5/3/07 on S.310, Testimony

No particular class of people should be recognized differently from any other American. That Native Americans and Native
Alaskans have been accorded separate recognition was and is wrong! Awarding Native Hawaiians recognition would be wrong
for the 3rd time.

Here are my reasons for that belief:

First, simply being the first settlers of the land does not give a person/tribe the right to claim millions of acres. That person/tribe must have actually improved and lived on every inch of land, then they might have a claim. Where has it been shown that each and every acre of land was lived-on, worked and made better? Giving each claimant/tribe acreage proportionate to their labors on such land should have sufficed, not the vast acreages awarded by our foolish government.

Second, if land claims are the result of actual purchase of these lands and/or sweat equity on every square foot of land, then proof
must be presented before any government recognition and the awarding of millions of acres, as was done for Native Americans.
It is ridiculous to say, "we were here first so millions of acres belong to us, thus the United States government must recognize and
award title to those lands for my tribe."

Third, if any land claimed was the result of killing other humans, as happened with Native Americans and Native Hawaiians
engaging in territorial battles, then that should automatically disqualify claims for those blood lands.

Fourth, the Native American reservation lands have not been utilized properly for all Americans to appreciate and enjoy.
Social and infrastructure problems abound. S. 310 (the Akaka Bill) means additional taxpayer dollars (subsidies) will be necessary
to provide Native Hawaiian support by the "unrecognized" Americans in our nation.

Fifth, Americans look upon our constitution as a model for fairness serving all. Is "Recognition" only for some?

Respectfully,
Miyamoto 4-29-07

Chris Decker

I am against the Akaka Bill because of it's use of an arbitrary 1% Hawaiian blood prequalification to join Akaka's racially exclusive nation. Here's why:

I personally know a "25% Hawaiian" who was born and raised on the mainland, has a distinct southern accent, and spent the first twenty five years of his life in Florida. Now, having moved to Hawaii, he's elligible to enroll his 12.5% Hawaiian children at Kamehameha School (the official "Hawaiians only school"), while I don't even need bother. You see, even though my children are born and raised in Hawaii, they are only 50% Okinawan 50% Caucasian, lacking the required drop of blood from the "preferred race".

All this concern over blood-quantum percentage is ridiculous and racist. Your either Hawaiian, or your not. The Akaka bill should apply to 100% Hawaiians, born and raised in Hawaii. Senator Akaka has done great work for Hawaii over the years, but he should be ashamed to have this bill named after him.

To: U.S. Senate Select Committee on Indian Affairs
Re: Testimony Opposing S.310
Hearing Date May 3, 2007

SUMMARY: S.310, the Akaka bill, would legalize a host of illegal racially exclusionary programs now coming under court challenge. It would set up a recipe for racial conflict as bloods vs. non-bloods struggle over who gets which pieces of a dismembered State of Hawai'i. That's bad enough. But in the process it would give money and political power to radicals whose long-term goal is to rip the 50th star off the flag -- the secession of Hawaii from the U.S.A. And it would invent a new theory of the Constitution leading inevitably to the further balkanization of America into racial enclaves. Hawaii

has already gone far down the road of racial separatism. It has over 160 federally funded programs, two state government agencies, and numerous private institutions, which are all racially exclusionary (including Kamehameha Schools with assets between $8-15 Billion). Some secessionists oppose the Akaka bill because they say it's a sell-out; but other leaders of the independence movement support it as a way to get "reparations" from the "oppressors" during a "transitional period." A book published March 1 explains all this in detail. "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State" by Kenneth R. Conklin, Ph.D. See http://tinyurl.com/2a9fqa for a detailed table of contents and the entire Chapter 1 ("The Gathering
Storm").

Aloha kakou e na po'e komike.
Ikaika loa ko'u ku'e i ka pila S.310, ka "palapala a Akaka."

Aloha committee members.

I am very strongly opposed to the bill S.310, the "Akaka bill."

I am Kenneth R. Conklin, Ph.D., a retired professor of Philosophy. Hawai'i has been my home for 15 years. I speak Hawaiian language with moderate fluency, and participate in some aspects of Hawaiian culture. My area of greatest scholarly expertise has now become the issue of Hawaiian sovereignty. In the election of November 2000 I was the first person with no native blood ever to run as a candidate for trustee of the Office of Hawaiian Affairs, placing 4th out of 20 candidates for one seat on the board.

In his Senate speech on January 17, 2007 while introducing S.310 Senator Akaka said: "Mr. President, a lack of action by the U.S. will incite and will only fuel us down a path to a DIVIDED Hawai'i. A Hawai'i where lines and boundaries will be drawn and unity severed. However, the legislation I introduce today seeks to build upon the foundation of reconciliation. It provides a structured process to bring together the people of Hawai'i..."

With all due respect, Senator Akaka got it backwards. The clear purpose of his bill is not to unite the people of Hawai'i but to divide us. It is not "to bring together the people of Hawai'i" but rather to separate us along racial lines. The bill authorizes creation of a government that is racially exclusionary, whose members and officers must meet a racial test by passing scrutiny of a committee of genealogists established in the bill itself. The bill then authorizes the newly created racial government to negotiate for money, land, and legal jurisdiction -- a recipe for "us vs. them" racial conflict as bloods vs. non-bloods fight to determine who gets which pieces of the dismembered State of Hawai'i.

This bill is about singling out by race a thoroughly assimilated and widely scattered group of individuals. They share nothing in common, and are indistinguishable from the rest of the people, except for the fact that they possess at least one drop of Hawaiian native blood.

Hawaiian culture and language are the core of Hawai'i's multiracial rainbow -- thousands of people with no native blood participate actively, while many "Native Hawaiians" choose not to participate at all. The Kingdom of Hawai'i was a multiracial nation in which only 40% of the population had any native blood at the time of the revolution of 1893. Throughout the history of the Kingdom most cabinet officers were Caucasian, nearly all the judges were Caucasian, and roughly 20-30% of all the members of the Legislature (both appointed and elected) were Caucasian. The right to vote and hold office was never restricted to ethnic Hawaiians alone. Yet S.310 proposes to create a "Native Hawaiian Governing Entity" unlike any that ever existed since Hawai'i became a unified nation in 1810. The Akaka bill violates the multiracial character of the Kingdom and of today's State of Hawai'i by requiring all the members and officers of the Akaka tribe to have native ancestry, as verified by a team of genealogists.

The Akaka bill repeatedly cites the apology resolution of 1993 (PL 103-150) as justification. That misguided resolution contains numerous historical falsehoods and half-truths which were never scrutinized by Congress, since it was passed without committee hearings and without debate on historical topics.

Congress has twice engaged in careful consideration of what the U.S. owes ethnic Hawaiians, especially in light of the events of 1893 that resulted in the overthrow of the Hawaiian monarchy. On both occasions Congress concluded that the U.S. owes "Native Hawaiians" exactly what it owes everyone else; nothing more and nothing less. (1) In 1894 the U.S. Senate Committee on Foreign Affairs held two months of hearings, taking sworn testimony in open session under cross-examination. Its 808-page "Morgan report" concluded that the U.S. neither conspired with the revolutionists beforehand, nor aided them during the revolution. (2) The Native Hawaiians Study Commission spent more than two years gathering expert comments from historians, cultural experts, and social scientists, and delivered its final report to the Senate and House on June 23, 1983. The Commission found that Native Hawaiians have higher rates than other ethnic groups for indicators of dysfunction in health, education, income, etc. The commission concluded that the U.S. has no obligation (and indeed it would be bad public policy) to remedy those problems in any way other than the usual assistance given by government to all people afflicted with difficulties. For discussion of both the NHSC and Morgan reports, and links to the full text of both documents, see http://tinyurl.com/f4cqt

S.310 is not about recognizing a small group of Indians on a contiguous patch of land in

some remote area far from surrounding population.

Ethnic Hawaiians comprise 20% of the entire population. The live in all neighborhoods, work at the same professions and jobs, pray in the same churches, and play the same sports, together with everyone else. Their "tribal" lands (the "ceded lands" plus Kamehameha Schools' land holdings) would comprise about 50% of the entire state, and would be located in a very large number of widely scattered enclaves throughout all the islands. The word "apartheid" seems quite appropriate for describing the situation, reminiscent of the race-based laws and Bantustans of pre-Mandela South Africa. The partitioning of India to create Pakistan comes to mind, as an exchange of populations would be needed (what has lately come to be called "ethnic cleansing") if "Native Hawaiian" lands were to be populated by a majority of "Native Hawaiians."

The primary purpose of this bill is not merely to recognize ethnic Hawaiians as an "indigenous people." It is not, as the bill's sponsors say, merely to provide equality or parity among Native Americans, Native Alaskans, and "Native Hawaiians."

The primary purpose of this bill is to suddenly make legal a plethora of illegal racially exclusionary institutions and programs. These institutions and programs have grown wealthy and powerful over the past 30 years, to the point where the entire political establishment of the State of Hawai'i has fallen under their domination. Of course the government of Hawai'i and its large institutions favor S.310 as a way to maintain their power structure and to ensure the continued flow of federal dollars through their overflowing coffers.

Hawai'i already has over 160 federally funded programs that are racially exclusionary, for the benefit of ethnic Hawaiians. In addition the State of Hawai'i has two government agencies providing benefits exclusively to ethnic Hawaiians, controlling perhaps a Billion dollars in financial assets plus 305,000 acres of "Homelands" plus about 60 square miles now owned by the Office of Hawaiian affairs on two islands. In addition there are a large number of private institutions providing benefits exclusively for ethnic Hawaiians; most notably Kamehameha Schools whose assets are somewhere between 8-15 Billion dollars (depending how its vast land holdings are valued).

The Akaka bill is a brand new kind of bill, based on an unprecedented theory of the Constitution. It is not a simple federal recognition of an Indian tribe. The theory is that Congress has the power under the Indian Commerce Clause to single out any group of so-called "indigenous" people whose ancestral lands were ungulfed by the United States; authorize them to form a tribe-like governing entity even if they never were organized that way before; and empower them to negotiate for the transfer of money, land, and jurisdictional authority. If that can be done for ethnic Hawaiians then it can also be done for ethnic Mexicans seeking to establish a Nation of Aztlan -- all persons of

Mexican ancestry possessing at least one drop of Aztec or Mayan blood and living in those portions of the U.S. that were formerly part of Mexico. Hundreds, perhaps thousands, of heretofore unknown Indian tribes would spring up as groups of "indigenous" people not now eligible to join an existing tribe would demand the right to form a new tribe of their own. Perhaps the concept could be extended to other groups not indigenous to America but whose history makes us sympathetic to the historical injustices they have suffered and their current neediness -- how about creating a Nation of New Africa for all descendants of America's African slaves?

Passing the Akaka bill would accomplish the following highly undesirable purposes: (1) It would give a legal stamp of approval to programs that are currently illegal and coming under court challenge; (2) It would give added financial and political power to virulent racial separatism which is already growing strong in Hawai'i; (3) It would fuel a drive for ethnic nationalism whose ultimate goal is the complete secession of Hawai'i from the United States; (4) It would put Congress on record supporting a new theory of the Constitution that would lead to further racial balkanization throughout America.

On March 1, 2007 my book was published:
"Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State." Please see http://tinyurl.com/2a9fqa for a detailed table of contents and the entire Chapter 1: "The Gathering Storm." I encourage every member of this committee to purchase the book and read it carefully.

As noted above, the government and large institutions of Hawai'i favor S.310. Please rescue our people from being dragooned into an apartheid regime by a bunch of "fat cats."

Repeated surveys have shown that 67% of all Hawai'i's people, including about half of all ethnic Hawaiians, are opposed to the Akaka bill. See results of a survey published July 5, 2005 which phoned every household in Hawai'i http://tinyurl.com/cwxgg and another similar survey released May 23, 2006 http://tinyurl.com/k5hxc . See also "Akaka Bill
-- Roundup of Evidence Showing Most Hawaii People and Most Ethnic Hawaiians Oppose It" at http://tinyurl.com/omewe . Perhaps the strongest evidence that ethnic Hawaiians themselves do not support this bill is the fact that only about 15% of the 401,000 ethnic Hawaiians elibigible to sign up on a racial registry have done so during a period of more than three years of a massive outreach program that included perhaps millions of dollars of advertising on TV, radio, and newspapers, plus mailouts, signup tables at shopping malls and community events in Hawai'i and across America.

But why should you have to rely on surveys and reading of tea leaves to figure out whether Hawai'i's people want to partition their state?

As you elected officials know very well, the most clear-cut survey of public opinion is the one provided by secret ballot voting on election day.

The Akaka bill is the most important piece of legislation affecting the State of Hawai'i since the 1959 statehood vote. Our people deserve the right to be heard on this issue before Congress forces something upon us that we do not want.

While it is true that federal recognition of Indian tribes is never an issue for voter referendum, it is also true that no Indian tribe comprises 20% of a state's entire population (indeed, no state has 20% of its population being Indians of all tribes combined). Supporters of the Akaka bill will readily acknowledge that S.310 is not about creating an Indian tribe.

Therefore the normal procedures for recognizing Indian tribes should not be applied to this bill, and a plebiscite is clearly in order.

For several years opponents of this bill have been demanding that a referendum be held on election day to determine the will of the people.

Hawai'i has no procedure for voter-initiated referendum. But the Legislature has the power to place a referendum question on our ballot.

Despite repeated demands for a referendum on the Akaka bill, our arrogant political leaders have refused. They said holding a referendum would cause a delay. But if they had agreed to a referendum in November 2004 or 2006, the results would now be known!

Here are my three wishes, in order of priority:

1. Please defeat S.310.

2. If you support S.310, please give respect to the people of Hawai'i by postponing any action on the Akaka bill until such time as a statewide ballot referendum has been held.

3. If you support S.310 and feel you cannot wait for a referendum to make your decision, then please at least insert an amendment into the bill requiring that the bill will have no force or effect unless the people of the State of Hawai'i approve it in a general election by a majority of all ballots cast (blanks on this question count as "no" votes).

Thank you for considering my views on S.310.
Aloha.

Kenneth R. Conklin, Ph.D.
46-255 Kahuhipa St. Apt. 1205
Kane'ohe, HI 96744

Honorable Senators of the Indian Affairs Committee,

Some of your esteemed colleagues appear to insist on beating a dead horse. This scam, S.310 - the Native Hawaiian Government Reorganization Act of 2007, was defeated in the last Congress, not because of partisanship, but simply because it is unjust and unconstitutional. It appears that now, because of the change of Congressional control, the sponsor believes that his proposal has somehow changed its character.

It would be redundant to iterate the constitutional and legal arguments that were clearly spelled out in the past session. Those have not changed. Neither have the sentiments of the people of Hawaii, both those who support its passage and rest of us who oppose it as discriminatory, divisive, and duplicitous, not to mention its unconstitutionality.

This measure, if enacted, will have profound political, social, and economic effects on our state. It seems only reasonable that the people of Hawaii should be given an opportunity to express their desires through a referendum. "Popular sovereignty" is the historical term, some of you may recall. The bill's sponsor and the other members of this state's Congressional delegation, and our Governor as well, have insisted on bypassing this simple test.

Please, let us not continue this ridiculousness any longer. Table this bill until the state of Hawaii conducts a referendum. That way there will be no doubt about the will and wisdom of the people.

Mahalo for your consideration.

Respectfully,

THOMAS M. FAIRFULL
1950 A 9th Avenue
Honolulu, HI 96816

I oppose the "Akaka Bill." As a Hawaii resident, I beg you to vote against it. I have two major reasons for this opposition:

1. I believe in equality of ethnic Hawaiians. That is what they are entitled to, nothing more, nothing less. The Akaka Bill would give them special benefits at the expense of the rest of us. Whether ethnic Hawaiians in general have higher or lower incomes, better or worse education, etc., is irrelevant. Hawaiians, as individuals, must make their way in life as do the rest of us.

2. The Akaka Bill would establish a new bureaucracy. And this bureaucracy would need to be paid -- at the expense of the rest of us. Moreover, the bureaucracy would continually lobby for the expansion of their roles and for more tax monies to be sent their way. There is too much pork barrel in the federal budget now.

Please vote against the Akaka Bill, which would establish new costs, growing like a cancer, and delay true equality for all in the state of Hawaii.

Mark Terry
Box 240819
Honolulu HI 96824-0819

We are against this bill as it is typical of the "powerful few" in Hawaii who use all means to accomplish their monetary gains. This Bill is a ruse to cover one of the real reasons - one to establish gambling in Hawaii. Many attempts have been made by the same "Click" in the past - including even horse racing.

The People of Hawaii - Native and Kama'aina have already voted these issues down. We can forgive Senility but not Greed.

We vote NO for Bill S. 310

Robert L.& Nancy Sue Airhart

Hi, This is my thoughts in a nutshell after living in Hawaii for 23 years and seeing how apthetic native Hawaiians are, HOW CAN THEY PUSH FOR SOVEREIGNTY WHEN THEY CAN'T EVEN GET EVERYBODY TOGETHER FOR " KAU INOA"? Native Hawaiians are so split up they can't get together to decide on anything including their own future. Where were they in the last 100 years when all the voting was going on . The U.S. DIDIN'T STEAL ANYTHING FROM THEM, THEIR KINGS AND QUEENS STOLE THE LAND FROM THEM AND SOLD IT OR GAVE IT AWAY. Sorry

steve curty

An Alaska Native is defined as one who has 25% or more Alaska Native blood. Alaskan Natives are a collection of about 267 Federally recognized tribes.

The Akaka Bill, S.310, allows any person with any percentage of Native Hawaiian blood to be considered a Native Hawaiian. This is simply wrong; it should be the same as it is for Alaskan Natives.

Also, I do not believe that Hawaiians meet the regulatory requirements of the Department of Interior for Federally recognized tribes.

Timothy C. Titus

SENATE COMMITTEE ON INDIAN AFFAIRS

Senator Byron I. Dorgan, Chairman, Senator Craig Thomas, Vice Chairman

TESTIMONY IN OPPOSITION TO S.310 THE NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2007

Hearing Date: May 3, 2007
Time: 9:30 AM
Place: 838 Hart Office Building, Washington, DC 2051

Thank you for allowing me to present testimony in strong opposition to S. 310 the Native Hawaiian Government Reorganization Act of 2007.

We believe that the important part of Hawaiian history which provides a clear balance to the Native Hawaiian debate is the 1894 U.S. Senate Committee on Foreign Relations, Report No. 227. The Senate Committee held hearings between Dec. 27, 1893, and Feb. 13, 1894, receiving 24 sworn testimonies, including Mr. Blount's, and 46 notarized

affidavits making clear the events in Hawaii between Jan. 14 through 17, 1893.

The U.S. Senate Committee on Foreign Relations presented the report that was received and approved by the U.S. Senate on Feb. 26, 1894.
The conclusion of the Senate Committee is that the United States was not involved or participated in the overthrow of Queen Lilioukalani.

The change of government from a Constitutional Monarchy to the Republic of Hawaii was the removal of Queen Lilioukalani and replacing her with Sanford Dole as the interim President of the Republic of Hawaii. The change of control did not modify any land ownership in Hawaii. The lands privately owned under the Kingdom of Hawaii remained in control of its owners under the Republic of Hawaii. The only adjustment was in public lands called crown lands, where revenues went to the Monarchy.
This crown lands was returned to the public lands inventory controlled by the Provisional Government and later the Republic of Hawaii.

The Republic of Hawaii, by its action freed all the commoners of Native Hawaiian blood from control of the Alii class. The testimony presented at the U.S. Committee on Foreign Relations on January 2, 1894 by Mr.
Zephaniah Swift Spalding from Kauai presented the love he had for Native Hawaiians by providing them lease lands to grow taro and other crops. Also, he testified that he "gave" lands and provided the skilled workmen to work with the Native Hawaiians in building their church and schools on these gifted lands. I remember Mr. Charles Rice "gifting" a piece of his land to the Lihue Japanese Christian Church. My grandmother lived on that property that was part of the Rice dairy across the street of the now famous Hamura Saimin that was "gifted" to the Church in the 1930's.

The Akaka Bill is clear that it requests a "special" treatment for Native Hawaiians from the non-Hawaiian citizens of the State of Hawaii. The Akaka Bill attempts to lower the living conditions of Native Hawaiians to the same level as other Native Americans and truly place them at the bottom of most socioeconomic statistics in Hawaii.

The U.S. Commission on Civil Rights report presented a fair and accurate conclusion about the Akaka Bill by recommending against passage of the bill in 2006. The Commission did not ignore "undisputed history" that suffering, political and cultural devastation were foisted upon Native Hawaiians by their own people, as the state Attorney General says in his response "U.S. Commission on Civil Rights Report on the Akaka Bill Fails Native People of Hawaii."
The "Findings" section of the Commission report was left out at the strong request of the Akaka Bill supporters. Anyone reading the Akaka Bill knows that it is raced-based.

The state Attorney General confirms the question of special interest legislation that face all leaders in decision making by stating that, "The Commission ignores the fact that

Congress has already recognized Native Hawaiians to a large degree, by not only repeatedly singling out Native Hawaiians for special treatments, either uniquely, or in concert with other Native Americans, but by acknowledging on many occasions a 'special relationship' with, and trust obligation to, Native Hawaiians."

I believe that most serving in Congress and all the citizens of Hawaii truly appreciate the contributions of the Native Hawaiians, but by abusing the love and respect of Native Hawaiians by incrementally passing laws to become the basis of recognition of Native Hawaiians as a racial group is not "pono."

The Commission does suggest that the Akaka Bill does not fall within the power of Congress to have Native Hawaiians recognized because of existing law and rules. Native Hawaiians fail to meet the test established for the recognition of Native Americans. The Republic of Hawaii retained the intent of the 1887 Constitution of the Kingdom of Hawaii with amendments required to recognize the Republic. Also, the Republic of Hawaii retained all the members of the House of Nobles and Representatives that at the time were controlled by Native Hawaiians.

The Commission has accurately stated that the Native Hawaiian entity would fail to meet several established criteria for recognition:

The entity must have continuously been identified as an entity since 1900. The Republic of Hawaii, the Territory of Hawaii and the state of Hawaii have been the identified as the entity in Hawaii from 1900.

The entity must have existed predominantly as a distinct community.
Hawaii from Jan. 17, 1893, has been a diverse community consisting of many racial groups and cultures including the Native Hawaiians, an integral part of the diverse community.

The entity must have exercised political influence over its members as an autonomous entity. Again, since Jan. 17, 1893, the Republic of Hawaii, the Territory of Hawaii, and the state of Hawaii exercised political influence over all the citizens of Hawaii including members of the host culture.

The state Attorney General understands that the only protection of civil rights for the Native Hawaiian Governing Entity is the protection under the United States Constitution and its laws. The Secretary of the Interior should not be given the authority to determine if the organic governing documents will protect citizen civil rights of the new Native Hawaiian Governing Entity.

There has never been any need for a formal recognition of an entity to preserve the Hawaiian language, identity, and culture of Native Hawaiians. I am confident that the

citizens of Hawaii will never allow anyone to threaten the language, identity and culture of the Native Hawaiians.

The constant echoing by the state Attorney General and others that Native Hawaiians suffered and that the Akaka Bill simply seeks to provide some remedy for that suffering is simply not true. The constant spreading of untruth by the state Attorney General and others create hostility from my family members of Native Hawaiian blood toward them by being identified as a suffering people. They have all excelled as free Americans.

James Kuroiwa, Jr.
Director
Hawaii LECET
1617 Palama Street
Honolulu, HI 96817

It disheartens me that such a bill would be introduced. An Indian, obtains artifacts through many traditional and religious practices - inheritance, gifts by memorial, trade, etc. We have sensitive and gracious rights as outlined in our treaties. When laws, as outlined in this Bill tries to inhibit our daily and yearly traditional and religious practices is like asking a member of a Christian Church to show valid identification issued by their church in order to possess a bible or wear a crucifix. Indians don't practice religious days on just particular days like a Sunday. Every day is a religious day for Indian people. My father was a Chief until he died; my mother comes from Treaty Chiefs and Chiefs before the Treaty. This knowledge I share with you was handed down from generation to generation.

So it is my hopes, that you politicians protect our inherit right as the 1st peoples of this land. Thank you.

Respectfully,

Leona A. Ike,
Wasco/Yakama/Warm Springs Tribes.

Thomas J Macdonald
46-428 Holokaa Street
Kaneohe, Hawaii 96744

April 24, 2007
Senate Committee on Indian Affairs
Washington, D.C.

Re: Hearing 5/3/07 on S. 310: Native Hawaiian Government Reorganization

Dear Committee Members,

If you vote to approve the Native Hawaiian Government Reorganization Act, you will be approving a "pig in a poke." Because no-one can predict what the consequences of this Bill's passage will be for the State of Hawaii and its citizens. The Bill contains few specifics. It only authorizes "negotiations" between yet un-named bureaucrats in the Department of the Interior, un-named politicians in Hawaii, and un-named native Hawaiians, as to how the lands and other assets of the State will be carved up and handed to a new, racially discriminatory, native Hawaiian Government, which will then write its own laws and regulations for its newly-created "citizens."

Vital and basic governmental matters, including criminal jurisdiction, civil jurisdiction, and who will be subject to which state and local taxes, will be decided in these negotiations, but non-native-Hawaiian citizens of the State of Hawaii, who are a majority of the population, will not be allowed to vote for or against the outcome of the negotiations.

The U. S. Civil Rights Commission in 2006 recommended against passage of an earlier, but nearly identical, version of this Bill, or "any other legislation that would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded varying degrees of privilege."

The Committee should be aware that due to widespread racial and ethnic intermarriage over several generations, most of the "native Hawaiians" who would be benefited by the Bill have less than 25% Hawaiian blood, and many have less than 1% Hawaiian blood. People who are only 1/128 Hawaiian qualify under this Bill as "native Hawaiians" and will receive preference in receiving government benefits over non-native Hawaiians who have much greater needs.

This Bill is unAmerican, unfair, and unconstitutional.

This matter should not have reached the Congress before all of its specific provisions were "negotiated" and could be evaluated on their merits. As it is, the Congress is being asked to sign a blank check that will lead to endless litigation, violent racial strife, and ultimately destroy the paradise that is the State of Hawaii.

Sincerely yours,

Tom Macdonald

Dear Senators and Congress,

Please don't rip our state apart with the Akaka bill! There has been no public hearings held on this version and the last public input was over
5 years ago. Sen. Akaka has pushed this even thought the vast majority of the citizens here do NOT want it. Even the native hawaiians do not want it. Ask the Senator to submit it for a vote before the citizens of Hawaii. Sorry but the truth as we see it is that the bill leads to sedition. And in fact there are organizations here today who are and have committed sedition and made treasonous statements. I would encourage the FBI and Justice department to look into that. (please see www.hawaiiankingom.info for some examples). What this bill and the very vocal _minority_ who have repeatedly stated that they "hate America" and that they are "not Americans", want is total independence from the United States. Many of us feel strongly that we will not allow this and if that means having another civil war over it and we need to take up arms to protect and defend our state, sadly so be it. The bottom line is this... We will not allow them to rip the 50th star off the flag!

We believe the bill to be highly racist and the antithesis of everything America stands for. As you know a vote was held in 1959 with over 94% of the citizens, including the majority of native hawaiians, voting for statehood. This after Hawaiian royalty literally begged the USA for admission for over 60 years. Further many of us believe that the myth of the overthrow is just that... it is a politically correct re-write of history. There was a revolution by the people who lived here because the Queen wanted to re-establish her monarchy. Do Hawaiians need help? Yes but based on need and not the color of their skin. Additionally I would submit that they already have a governing entity and its called the Office of Hawaiian Affairs and takes millions of dollars away from our state each year. They also have one of the largest private trusts in the world in the Bishop Estate so there are more than enough resources for them they are just badly mismanaged.

I would welcome the opportunity to speak further on this issue and I trust the congress in its wisdom will do the right thing for all and not the vocal few.

Lastly I'll leave you with these holy words... 'One nation, under God, _indivisible_ with liberty and justice for all!"
God Bless America.

Hawaii Nei USA - Then, Now, ALWAYS!

Thanks for listening,

Tom McAuliffe
45934 Kam. Hwy.
Suite C-218
Kaneohe, HI

To: Honorable Bryan Dorgan
Chairman of the Senate Committee on Indian Affairs

From: Earl F. Arakaki
91-030 Amio Street
Ewa Beach, HI. 96706

Opposition to S.310

"Is you is? Or is you ain't?"

The Akaka bill will soon be given consideration by the U.S. Senate...again.

Its based on racial discrimination, pure and simple. Therefore, those who ain't had better pay attention.

In most parts of the world discrimination is based on what you is. However in Hawaii its about what you ain[1]t.

In pre-civil rights southern U.S. racial discrimination was based on who you is. One could have been 99% caucasian and 1% negro ancestry and considered black and subject to racial segregation.

In nazi Germany, if you had a drop of Jewish blood you were discriminated against based on what and who you is.

In 21st century Hawaii, the Native Hawaiian sovereignty movement is based on what a person ain[1]t. Without that one smidgen of Hawaiian ancestry you ain[1]t going to qualify to automatically have it both ways. You ain[1]t going to enjoy special rights PLUS the usual rights afforded every American citizen.

Because all forms of discrimination unfairly identifies people and discriminates for what they is which they have no control over, the concept obviously is developed in hell. In Hawaii its reversed and identifies people for what they ain[1]t. Kinda like looking at the word [3]lived[2] in a mirror.

Aloha,

My name is Garry P. Smith, I am a 30 year resident of Hawaii, a retired Navy Commander and a part Nez Perce indian. I strongly oppose passage of the so called Akaka Bill.

The Akaka Bill will divide our wonderful melting pot of Hawaii into two groups, those with a drop of Hawaiian blood traceable to 1778 and those who do not have this magic drop of blood. It will separate programs and probably taxes between individuals strictly based on race and not on need.

Currently, if you live on Hawaiian Homelands, which are small developments within other developments (not like a reservation at all) you pay a grand total of $100 per year in a fee in lieu of property taxes yet you receive all the same city services your neighbor down the street get but has to pay $2500 per year for. The requirement to own property in these Hawaiian Homeland communities is that you have Hawaiian blood.

If the Akaka Bill should pass more situations like this are likely to be made available as the Hawaiian community has a vote that the politicians see as a swing vote if they can offer them something in return, like exemption from taxes.

Please do not allow the Akaka Bill to spoil our paradise. Please do not pass the Akaka Bill out of committee.

Garry P. smith
91-321 Pupu Place

Please do not vote for this bad piece of legislation. The Hawaii Congressional Delegation should be asked to explain why they have not held a referendum within the State of Hawaii on the Akaka Bill. This Bill is divisive, it is not supported by the majority of the people in Hawaii, and it is Un-American.

Marcus Tius
1347 Akiahala Street
Kailua, Hawaii 96734

Please vote no and work against the passage of the Akaka bill S310. The Hawaiians that I know here are against it. They say that it may have been appropriate at the time it was formulated but not at this time. Much federal, city, and state support has been given to the Hawaiian community and the Akaka bill would be unfair to the rest of us non Hawaiians. Also, most of the Hawaiians here are more non Hawaiian than Hawaiian. Much of the Hawaiian culture is being preserved and passed on by non Hawaiians; putting so much control carte blanche into the hands of Hawaiians who at this time cannot agree among themselves on what to do with this power and have so many radical and angry elements is dangerous for the citizens of Hawaii and the United States. With an independent government in our midst, we non Hawaiians would not have any say on what is decided on that would affect us in our own neighborhood. Please do not let the Akaka bill S310 pass.
Thank you for your help. Lenora Springer

Association of Property Owners and Residents of The Port Madison Area
P.O.Box 926 Suquamish, WA 98392

May 9, 2007
Senate Indian Affairs Committee,

Dear Senators,

We consider the Akaka Bill to be one of most divisive and unconstitutional bills ever proposed Congress. The division of United State citizens into racial enclaves is reprehensible. It is bad enough that you have done it to citizens with Indian ancestry, an action for which you will som be called to account on. To further compound the harm to America by extending this travesty Hawaiian citizens is unconscionable. Your oath of office demands better.

Sincerely,

William Whiteley, President

Aloha Senate Select committee on Indian Affairs,

I do not support the Akaka bill s 310. I do not believe that Hawaiians need special recognition for their race. There are many races living and working here in the islands who contribute to our state's well being. Many generations of Philippine, Portuguese, Japanese, and Chinese to name a few have made their homes here. There are also many other Pacific Islanders here and more peoples for SE Asia too. Since all these peoples including Hawaiians and Indo Europeans have intermarried and had many generations of children it is difficult to know what race they are. Should we give special native American Rights to all of them..

I live very close to a Hawaiian homeland subdivision. I wish you could see it. These are lovely homes and nice lots. These are not poor destitute peoples. Kamehameha School (for Hawaiians only) is also within two miles of my house. I wish you could see it as well. It is a beautiful campus, lovely new buildings probably very well appointed but since it is a locked campus I can not go there. I think the media likes to portray the Hawaiian peoples as downtrodden alcoholic drug users needed a big leg up. This is not my experience. I know there are many special programs and monies for "Hawaiians" but I believe these programs have become a business employing lots of folks. I really wonder what monies get where to do what. There are people in need but they are of all races and usually a mixture. Homes are expensive here....everything cost more.

When you think of Hawaii please think of all it's citizens...not just one race. Aloha, Annette Wagner, Kula Hawaii

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As a third generation Hawaii resident and American citizen, I am opposed the S.310, otherwise called the Akaka Bill.
The Akaka Bill is unconstitutional and based solely on race.
Those of Hawaiian ancestry already have as many rights as the rest of us because they are American citizens.
To recognize them with special privileges because of their race is wrong. The Akaka Bill will sepetate us by race, bestow special privileges to Hawaiians and destroy the Hawaii we know and have helped made today.
Rick Toledo
Hilo, Hawaii

Dear Sirs:

The Akaka bill is very bad legislation and contrary to the multiculturalism and equal treatment deserved by alll US citizens. PLEASE vote AGAINST it. Culture is not government. This bill would give governmental control to a single culture, at the expense of other US citizens, who would not be allowed a voice or vote in the government created by this legislation. It is the antithesis of what the US was created to be -- which was to be a government in which all US citizens could participate equally, without preferences in race, age, cultural background, etc.

Thank you.

Bill and Linnea Smith
2808 Leeward Way
Bellingham, WA 98226

I view the Akaka Bill as one of the most outrageous proposals considered in recent times. It classifies citizens by race, defying the express provisions of the 14th Amendment. We need to find more ways to bring our diverse citizenry together, not find ways to distinguish them and treat them differently. It should be defeated. Thank-you for consideration of my views, Paul Reid

Paul D. Reid
The Reid Group
P.O. Box 987
100 West Genesee St.
Lockport, NY 14095

Dear Sirs, Madams, I urge you to pass this absurd bill; (S-310). Only then will there be an adequate number of Americans totally frustrated with the "super citizen" status afforded the native peoples. Passage of this bill will add the Native Hawaiians to the "Super" class. Note: Attached please fined a list of other possible candidates for "super" status and a secondary list of citizens to consider as "lower class".
I would thank you for your thoughtful consideration of the negative ramifications of this bill. Dennis E. Swanson. 17218 SE 376th St. Auburn, WA 98092.

Dear Senate Committee Members,

The Akaka bill is based on race, pure and simple. For that reason alone it should be defeated. It is an attempt to divide the people of Hawaii along racial lines. It will generate an "us vs. them" racial conflict to see who gets what in taxpayer money. We already have a reputation for being one of the highest taxed states in the nation.

Hawaii is a melting pot of all races. We all live in harmony and togetherness. The passage of the Akaka bill will change that for the worst!

Most of the people in Hawaii are opposed to the Akaka bill (67% according to a survey done by the Grassroots Institute of Hawaii and released May 23, 2006). That is why our political leaders do not want a referendum to be held on this bill. They know the people of Hawaii would say NO!

Hawaii has been my home for 28 years. I have enjoyed the spirit of aloha and brotherhood that we have here. Please do not send us into racial strife. Vote against the Akaka bill.

Thank you and aloha,
Bruce Combs
249 Ainahou St.
Honolulu, HI 96825

To Whom it May Concern,

I completely oppose S-310. It is absolutely wrong to created different rules and "systems" for people based on race. This is discrimination to all others not receiving the same benefits. Equal protection of the law can no longer apply. Our country is already suffering as it is being divided by race and culture. Indian law is the perfect example. We now have Indian gambling dollars controlling our elected officials.

VOTE NO on S-310.

Kathy Cleary
PO Box 936
Los Olivos, Ca. 93441

Sirs,

We are writing to urge you to abandon any support for the Akaka Bill.

I am a long time resident of Hawaii and my wife is Kauai born and raised. We both are appalled at the ideas contained in the Akaka Bill and the encouragement towards racism and special rights based on race...at the expense of the civil rights of others, that this bill would end up fostering.

As the Pastor of one of the largest churches on the island, I have worked tirelessly to help people see past race and gender and to encourage a colorblind mentality that focuses together on things that move us all forward.

My wife was raised and works in dentistry on the west side of the island. She is well versed in the issues at hand and even walked away from a medical group aimed to help specifically Hawaiians (created with State money) when the other members (who had a small fraction of Hawaiian blood) informed her that she was actually an outsider since she is of Japanese heritage. (5th generation Kauai born, which didn't make her "local" enough for their purposes)

I must tell you, the Akaka Bill moves in the wrong direction. It will encourage division, sectarian violence and fan an "us and them" way of thinking that will harm the people of these islands.

I am not sure what is motivating our politicians to push this bill. I suspect money, political capital or perhaps some darker prod, but I can tell you that this bill is NOT in the best long term interest of the rank and file citizens of this state or nation.

Please, please, dump this bill once and for all.

Sincerely,

Rick Bundschuh
Pastor, Kauai Christian Fellowship
Lauren (Kanna) Bundschuh DDS
PO Box 633
Lawai, HI. 96765

To: U. S. Senate Committee on Indian Affairs
From: Harold and Marilyn Brunstad
Subject: SB S.310

We are deeply concerned about the ramifications that would be created in our American society by the subject legislation. The creation of sovereign states within our American society that lead to unequal rights and privileges delineated along ethnic and cultural lineage is disturbing and will likely lead to heated ethnic clashes.

Who are the people promoting this venture and what is their agenda?

We are seeing the evolving ethnic clashes that are occurring between the Native Americans and the rest of our American society by the apologetic interpretations and extension of historic legitimate and respectful treaties with many tribes that are morphing into areas that did not historically even exist and are driving a social wedge between Native Americans and the rest of our multi-ethnic society.

We are proud of our life-long associations and brotherhood with Native Americans and short-term association with the Hawaiian people and cultures. We would not like to see these relationships extinguished.

Where is legislation such as this taking us?

We strongly urge that this bill not be supported by this committee.

Harold and Marilyn Brunstad
1178 State Route 12
Montesano, Washington 98563-9621

From: Robert Bunn
Sent: Tuesday, May 01, 2007 8:35 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Hearing 5/3/07 on S.310, Testimony in Opposition

Dear Senators:

I have lived in Hawaii continuously since 1938, and have no Hawaiian blood.

People of Hawaiian or part-Hawaiian descent have always had the same privileges and rights as others. They have never been confined to any reservation, and the rights of the former Hawaiian monarchy were transferred successively to the Provisional Government, the Republic of Hawaii, the Territory of Hawaii, and now to the State of Hawaii. The former "Crown Lands" became inalienable by the monarchs in 1866 (and treated like other government lands), and have been subject to control by the government ever since.

Hawaii has been benefitted by the Federal Hawaiian Homes Act of about 1922, which provides special benefits That act requires that the persons to be benefitted be of at least 50% Hawaiian ancestry, and the benefits are limited to lesing rights to a finite amount of lands.

The proposed "Akaka Bill" mentioned above, is to be created to provide a special recognition, and special benefits, to persons of "Hawaiian Ancestry". **It is fatally flawed by requiring no blood quantum for such special benefits**. A person with only 1/10,000th of 1% of Hawaiian ancestry is considered a "Hawaiian" for purposes of the above bill, and of the Office of Hawaiian Affairs, which already provides special benefits for those "Hawaiians".

For enrollment as a federally recognized member of most Indian tribes, 50% of blood quantum is required (the Apaches, for example). A few allow enrollment with only 25% blood quantum. If one looks at Thomas Jefferson's rules on who is Negro, once the quantum was less than 25%, they were considered white, or at least non-Negro. Those same Jefferson rules still seem to be applied in many government determinations of qualification for black advantaged programs.

To allow special racial benefits for many part-Hawaiians, where the blood quantum is so small as to be negligable (any fraction at all, the Bill, and the Office of Hawaiian Affairs, says) is to unfairly discriminate against all the rest of us who live in Hawaii.

Of Hawaii's about 1,200,000 residents, about 300,000-400,000 persons claim (so I read) to have some Hawaiian blood quantum. If however, one looks at the Hawaiian Homes Commission rules, only about 10,000 to 20,000 persons are of 50% Hawaiian blood. Thus, the rest are of smaller to miniscule blood quantums.

Giving a huge portion of Hawaii's population a special race-derived group of benefits over all the rest of us who claim no Hawaiian heritage, is highly discriminatory, and unjustified.

Please vote against the above bill, or any variation of it, at least so long as it has no substantial blood quantum requirement for being considered an "Hawaiian", for benefit purposes.

From: Kathy Brown
Sent: Monday, April 30, 2007 9:08 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Hearing 5/3/07 on S.310, Testimony

Please do not bring the Akaka Bill up for a vote! In 2007 to set up a separate government for a small group makes no sense. There is an "entitlement" philosophy among native Hawaiians here in Hawaii and we can only believe that they think there will ultimately be money involved in establishing a separate government (the details of which are exceptionally sketchy). The US is based on equality among citizens but this will create inequality with special privileges for those of Hawaiian racial background. Why create dissension in a society that should be looking at each individual as important no matter what race? And shouldn't every citizen be treated equally? This legislation can only open up a huge can of worms for the state and the federal governments. It's time to put this bill to rest permanently!!!

Dear Senate Committee Members ,

The Akaka bill is based on race, pure and simple. For that reason alone it should be defeated. It is an attempt to divide the people of Hawaii along racial lines. It will generate an "us vs. them" racial conflict to see who gets what in taxpayer money. We already have a reputation for being one of the highest taxed states in the nation.

Hawaii is a melting pot of all races. We all live in harmony and togetherness. The passage of the Akaka bill will change that for the worst!

Most of the people in Hawaii are opposed to the Akaka bill (67% according to a survey done by the Grassroot Institute of Hawaii and released May 23, 2006). That is why our political leaders do not want a referendum to be held on this bill. They know the people of Hawaii would say NO!

Hawaii has been our home for 26 years. We have enjoyed the spirit of aloha and brotherhood that we have here. Please do not send us into racial strife. Vote against the Akaka bill.
Aloha from David and Hope Doyle

Dear Sir:

I would like to express my disapproval of the Akaka Bill as very devisive to the State of Hawaii. As a 37 year resident of Hawaii, who has raised a family here, I believe attempting to establish a conflicting government will create havoc. I never received special benefits for my children as the local Hawaiians do from the Federal Gov't. We had to work for everything. I just don't believe native Hawaiians are owed anything for which I will ultimately be paying for.

PLEASE KILL THIS BILL BEFORE IT BANKRUPTS US.

Thank you.
Raymond Beauchemin, Retired

Please expunge the Akaka bill once and for all. This is one of the worst bills introduced in years.

It is divisive and based on entirely false and twisted "facts" presented by Senator Akaka himself. As has already been shown, the information presented several year ago to Congress regarding the 19th century revolution was not factual. Congress bought the rewrite of Hawaiian history hook line and sinker...as did President Clinton.

The revolution took place because the Queen wanted to overturn the Islands' legal constitution. American military did not participate in the revolution, although they did act to protect American citizens has they have done in other countries countless times.

Most people of Hawaiian ancestry do not want a separate identity. They are proud of their American citizenship and do not view themselves as members of a separate country. They do not want a return to the Alii system of control. This bill is only being pushed by a few people who think they are Alii and can benefit financially from the changes proposed in this bill. They see the money generated by casinos on Native-American lands and hope to ride this money train. They rewrite history to meet their own selvish ends and ignore or reject as false actual historical records.

I have written my Senators several times, and they respond like broken records: regurgitating the same lies from their rewrite of history.

T. M. Allard
91-179 Makale'a Street
Ewa Beach, HI 96706

Please do not force us to become a state of two peoples.....those with official favor by virtue of their race and those without official favor. Supporting the Akaka Bill will destroy Hawaii.

Thank you.

Jeff Crawford, Ph.D.
Consulting Psychologist
Executive Assessment & Development
2269 Okoa St.
Honolulu, Hawaii 96821

Please do not pass the Akaka bill. It goes against everything that is unifying in our country. It is outrageous to think of granting sovereignty to a certain group within our country, with all the divisiveness that is implied in that action.! Geraldine Furnia

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Sirs,

Bill S.310 is just a race based entitlement and is wrong as sin.Most of us in Hawaii oppose this bill , it will forever devide the community.

Timothy Healy
1511 Nuuanu Ave #90
Honolulu, Hi. 96817

To the elected servants of the United States Senate and House of Representatives:

1. S-310 is in disobedience to the United States Constitution's Article IV, Clause 4-Republican form of Government, Property Clause, Necessary and Proper Clause, and *Bolling v. Sharpe, 347 U.S. 497 (1954*) and lastly, Article VI, Clause 3-Oath of office.

2. Any vote approving such a measure is in disobedience to the above Constitutional tenets and *Bolling* and as such is usurpation of Constitutional authority denied to Congress.

Respectfully,

Paul R. Jones

8531 N. 30th Drive
Phoenix, AZ 85051-3903

Dear Sirs;

As Hawaii citizens whose great great grandfather came to Hawaii in 1852, we strongly oppose the Akaka Bill and believe it is based on a twisted sense of History and facts.

This Bill would only benefit a small group of power hungry people, most of whom only have a small amount of Hawaiian Blood in their veins as compared to our American Indians.

The Bill will only cause a set back in race relations and the Aloha Spirit of our beautiful Islands.

Aloha, Johnny and Joan Johnson

My Dear Senators:

Approval of S310 is the road to establishment of yet another quasi government to government relationship that is enjoyed by a multitude of U.S. Indian Tribes. These relationships, of very questionable constitutional legality, are detrimental to the other citizens and local governments in the tribal areas. All U.S. citizens have a vote in their local, state, and federal governments. Granting special rights to individual groups dilutes the rights of the people outside these groups. Please, do not allow another special group special rights. This would merely increase the complexity of government that is already burdened by too much bad legislation.

Thank you,

George McCullough
17662 Division Ave NE
Suquamish, WA 98392

As a longtime resident of Hawaii, I strongly oppose S.310, the so-called "Akaka bill." Please vote no.

Thank you.

Joann McCabe
P.O. Box 4813
Hilo, HI. 96720-0813

Dear Senate Committee Members ,

The Akaka bill is based on race, pure and simple. For that reason alone it should he defeated. It is an attempt to divide the people of Hawaii along racial lines. It will generate an "us vs. them" racial conflict to see who gets what in taxpayer money. We already have a reputation for being one of the highest taxed states in the nation.

Hawaii is a melting pot of all races. We all live in harmony and togetherness. The passage of the Akaka bill will change that for the worst!

Most of the people in Hawaii are opposed to the Akaka bill (67% according to a survey done by the Grassroot Institute of Hawaii and released May 23, 2006). That is why our political leaders do not want a referendum to be held on this bill. They know the **people of Hawaii would say NO!**

Hawaii has been my home for 39 years. I have enjoyed the spirit of aloha and brotherhood that we have here. Please do not send us into racial strife. Vote against the Akaka bill.

Thank you and aloha,
Bob and Setsuko Speck
652 Kumukahi Pl.
Honolulu, HI 96825

Gentlemen,

Please DO NOT SUPPORT S310 which discriminates against Americans. Please keep Hawaii a viable State with the benefits and responsibilities of American citizenship.

Thank you

Bob Smolik
Aiea, Hawaii

PLEASE LISTEN TO HAWAII RESIDENTS BEFORE ACTING.

No action should be taken on S.310 until the people of Hawaii have an opportunity to discuss this bill and the implications enactment of S.310 would have for our state.

Avoiding public discussion on S.310 is the only way the supporters of S.310 can keep quiet the many problems enactment of S.310 will create for the people of the State of Hawaii and for the United States.

Insist that S.310 be the subject of a full hearings in Hawaii as a precondition for full consideration by any Congressional Committee.
Only after a Committee has the transcript of a full public hearing held in Hawaii will the Committee be able to fully understand and consider the ramifications of S.310.

Vote no on S.310 at the May 3, 2007 Committee meeting and continue to vote no until the citizens of Hawaii can discuss S.310 in a public meeting open to all interested persons.

Regards,
Paul E. Smith
Paul E. Smith
2650 Pacific Heights Road
Honolulu, Hi 96813

Dear Senate Committee Members ,

The Akaka bill is based on race, pure and simple. For that reason alone it should be defeated. It is an attempt to divide the people of Hawaii along racial lines. It will generate an "us vs. them" racial conflict to see who gets what in taxpayer money. We already have a reputation for being one of the highest taxed states in the nation.

Hawaii is a melting pot of all races. We all live in harmony and togetherness. The passage of the Akaka bill will change that for the worst! We are too small to be 2 nations and times are too dangerously to further divide ourselves into subgroups with differing agendas.

Most of the people in Hawaii are opposed to the Akaka bill (67% according to a survey done by the Grassroot Institute of Hawaii and released May 23, 2006). That is why our political leaders do not want a referendum to be held on this bill. They know the people of Hawaii would say NO!

Hawaii has been my home for 8 years. I have enjoyed the spirit of aloha and brotherhood that we have here. Please do not send us into racial strife. **Vote against the Akaka bill.**
submission by,
Saralyn Ready
1 Keahole Place #3410
Honolulu, HI 96825

From: Brigette Kuhn
Sent: Sunday, May 06, 2007 10:38 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: opposition to the Akaka Bill

Dear Senate Committee Members ,

The Akaka bill is obviously based on race. For that reason alone it should be defeated. It is an attempt to divide the people of Hawaii along racial lines.
It will generate an "us vs. them" racial conflict to see who gets what in taxpayer money.
We already have a reputation for being one of the highest taxed states in the nation.

Hawaii is a melting pot of all races. We all live in harmony and togetherness.
The passage of the Akaka bill will change that for the worst!

Most of the people in Hawaii are opposed to the Akaka bill (67% according to a survey done by the Grassroot Institute of Hawaii and released May 23, 2006).
That is why our political leaders do not want a referendum to be held on this bill. They know the people of Hawaii would say NO!

I moved her 14 years ago to enjoy the "Aloha" spirit.
This bill only dissolved this spirit. Please do not send us into racial strife. Vote against the Akaka bill.

Dr Kuhn

Please **VOTE NO ON S. 310 "The Akaka Bill".**

My wife and I own property in Hawaii and live there part of the year. We have always been impressed with the 'Aloha' spirit we experience when we are on the islands. We were distraught to hear there is currently a bill in Congress, The Akaka Bill (S. 310), that would destroy that feeling and destory the United States as we know it today. It appears a few radical Hawaiians are conspiring to undermine our vibrant democracy by creating special powers and privelage for themselves.

Native Hawaiians deserve no more or no less than any citizen in this country. We are all native from some country if each of us go back far enough. American's do not owe anyone anything to make them more special. We do not want to experience a two-class system in Hawaii as they are promoting. The Akaka Bill classifies citizens by race, defying the express provisions of the 14th Amendment. We are all equal and that is guaranteed by our Constitution.

Please **VOTE NO ON S. 310** to maintain the land we love and keep our great country united.

Robert M and Mary Kay Passenheim
13748 Georgia Drive
Apple Valley, MN 55124-7625
and
Country Club Villas
78-6920 Alli Drive #109
Kailua-Kona, HI 96740

Aloha Senator Dorgan and honorable Members of the Senate Committee on Indian Affairs.

Papa Ola Lokahi (POL) is the Native Hawaiian Health Board recognized in federal statute under P.L. 100-579, reauthorized. The board wishes to extend a specific aloha to Senator Daniel K. Akaka, keiki of ka `aina, for his tireless work on this issue and to Senator Daniel K. Inouye for his on-going support of Native Hawaiian health and wellbeing.

POL's first president, Myron B. Thompson, was a tireless leader whose vision for his Native Hawaiian community was firmly based upon his view of the great importance and value of traditional values in guiding existent and future generations. His son, the reknown navigator, Nainoa Thompson, expressed it well at the recent international Indigenous health conference *Healing Our Spirit Worldwide* held in Edmonton, Canada, in August 2006. In discussing the role of traditional Indigenous values, he stated:

It will be about memory of extraordinary wisdom, extraordinary hope…It will be about us telling you who we are. Because for what little I have traveled in the world, it seems to me though being with Native people, we are way more alike than we are different. Beyond the trivial differences of geography and even language and other issues, what is common is that we are all Native to the planet earth, and it will be those Native values which will finally take care of it and remove the fear of where we are going.

Two traditional values of extreme importance which relate directly to the health and wellbeing of Native Hawaiians are the concepts of *pono* and *kuleana*. *Pono* can best be defined as 'righteousness' or 'goodness.' This value is central to good health and wellbeing. *Kuleana* can be defined as 'responsibility for' or 'ownership of.' Again, a major concept associated with personal responsibility for good health and wellbeing.

These two values also have direct political meaning in regards to Native Hawaiians striving for greater self-determination and governance. In a political sense, the relationship between Native Hawaiians and the United States can not be restored or brought back to a sense of *pono* until the United States accepts its *kuleana* for past actions and moves to address them. In recent decades, the US Congress has been cognizant of the great health disparities effecting Native Hawaiians, and POL is grateful for the support it and the Native Hawaiian Health Care Systems have received in beginning to address long standing health and wellness issues in the Native Hawaiian community. Yet, the very foundation of the political relationship between the United States and Native Hawaiians remains to be restored. The political litany of the relationship includes:

- In 1893, the landing of US Naval forces at the bequest of the US Minister in support of American businessmen who undertook the overthrow of the legally constituted monarch, Queen Lili`uokalani, and the government of the Kingdom of Hawai`i; and the extending of recognition to a provisional government without public majority consent and in violation of existent treaties between the United States and the Kingdom of Hawai`i;
- In 1898, the United States annexing Hawai`i, by resolution, despite the US Congress having received petitions with over 95% of the Native Hawaiian population (38,000 out of an estimated 40,000 people) indicating their desire to remain independent;
- In 1900, the United States receiving title to over 42% of Hawai`i's lands (1,750,000 acres of Crown and government lands out of a total of 4,110,720 acres of land in the islands) through the Organic Act; and
- In 1959, not offering to the people of Hawai`i the option of independence as required by United Nations charter, but rather only providing the options of continued trusteeship as a territory or statehood.

Despite this litany, Native Hawaiians remain firmly supportive of the American principles espoused in the US Constitution and have contributed greatly to American society. Native Hawaiians have distinguished themselves

as military men and women and have fought for and died for the United States in every major war and conflict from the War of 1812 to our present conflicts in Iraq and Afghanistan. Native Hawaiians have traveled the world under the American flag as merchant mariners since the first arrival of American vessels in Hawai`i in the 1790s. Native Hawaiians have greatly enriched the American fabric and today are found in every state of the United States, bringing with them their rich culture which has included a multitude of personal and community values as well as such well-known and respected activities as hula, outrigger canoe paddling, and participation in such professional sports as football and soccer.

POL strongly supports the continuing actions of Native Hawaiians to petition the United States for self-determination and governance as Indigenous peoples of what is now a state of the United States. Queen Lili`uokalani in her abdication notice provided the roadmap for the United States to restore a sense of *pono* with Native Hawaiians and thereby making it the *kuleana* of the United States to do so.

I Lili`uokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom. That I yield to the superior force of the United States of America who Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.
Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority ***until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives*** *and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands* (Lili`uokalani, 17 January 1893).

While the Queen, herself, can not be 'reinstated,' the essence of her being as representative of a self-determining and self-governing people can. After 114 years, it is time for resolution; for with resolution will be great gains in the health and well-being of Native Hawaiians.

Hardy Spoehr, Executive Director
Papa Ola Lokahi
Submitted, Friday, May 4, 2007

May 2, 2007

Dear National Policymaker,

We are writing to call your attention to a deeply important and controversial bill pending once again before Congress. It is the Akaka bill, (S. 310/H.R. 505, Native Hawaiian Government Reorganization Act Of 2007). It would create a separate sovereign government of, by and for one race (native Hawaiians); break up and give away much of the land owned by the State of Hawaii; and possibly set a precedent for similar separatist actions by other ethnic groups in the mainland United States.

The bill's supporters say it would just give native Hawaiians the same legal status as native Americans, who have their own sovereign tribal governments, with their own legislatures, laws, courts, taxation powers, and government officers. They want to use Indian legal precedents, but not necessarily results.

Opponents point out that U.S. courts have ruled that native Americans cannot qualify for tribal recognition merely because they share a common ancestry. They must also have a long-standing autonomous governing entity and reside in a separate, distinct community, neither of which requirements are met by native Hawaiians. Native Hawaiians have for over 150 years lived in racially mixed communities and have indeed intermarried to such an extent that Hawaii is widely known as one of the most racially integrated places in the entire world.

Supporters of the bill maintain that the grant of sovereignty, along with lands and other assets currently owned by the State Of Hawaii, would simply redress wrongs committed by non-native Hawaiians before the Hawaiian islands were annexed to the United States in 1898.

Opponents point out that those with less than one percent Hawaiian blood will qualify as "Native Hawaiians" and qualify for the benefits of citizenship in the new sovereign Hawaiian nation. In addition, the provisions of the bill open a pandora's box of potential problems because details are to be negotiated with no limits specified.

At present there is much uncertainty as to how much popular support exists in Hawaii for the sovereignty movement. Supporters point to polls that purport to show overwhelming popular support. Opponents point to other polls that show overwhelming opposition to the bill, and point out that there is at present no plan to give the citizens of Hawaii, who voted 94% in favor of statehood in 1959, an opportunity to vote on this issue.

We are finding that the more people are educated about this proposed bill, the more questions they ask about specific, real results should the bill pass. Most of those questions are unanswerable.

Because this is such a controversial and confusing issue, we are asking you to inform yourself very carefully about these issues and possibly propose constructive amendments, before you vote on the Akaka bill.

At the least, the bill should be amended to require a plebiscite of Hawaii voters before any separate nation could be approved at the national level.

Warm Regards,

Richard O. Rowland, President
Grassroot Institute of Hawaii

Chris Derry, President
Bluegrass Institute

Matt Kibbe, President
FreedomWorks

Sam Slom, President
Small Business Hawaii

Elaine Willman, President
Citizens Equal Rights Alliance

Grover Norquist, President
Americans for Tax Reform

Ron Williamson, President
Great Plains Public Policy Institute

Gregory Blankenship, President
Illinois Policy Institute

Lewis Andrews, Executive Director
Yankee Institute for Public Policy

John McClaughry, President
Ethan Allen Institute

To the SCIA,

I wrote this letter to my two Wisconsin Senators, Feingold and Kohl last year when this divisive bill was introduced. I offer it again to the SCIA.

Scott Seaborne
962 Westfield Ln
Neenah, WI 54956

I wrote some weeks ago urging you to vote against passage of the Akaka bill (S.147). I am writing again to remind you that I oppose this legislation because of my knowledge of current federal Indian policy.

I ask, where is the evidence that federal Indian policy has been beneficial to this nation in general or Indian people specifically? Based on the very poor federal record as trustees for Indian people, why would you want to impose that same failed system on descendants of the original Hawaiian people?

The great tragedy of hurricane Katrina may well provide this nation with a much-needed insight that separating people – only if economically creates risk. I am heartened that the people of this nation recognize that the economic apartheid of our poor creates life-threatening risks and economic isolation. It is gratifying to see the national grassroots effort of the rank and file citizenry to rise up and shelter these devastated people.

Please, Senator, take note of the reaction of your fellow citizens who demonstrated, by their actions, they consider the victims of this disaster to be their fellow countrymen and neighbors. I'm convinced this tragedy will eventually show that we truly want to be one people and one nation. I believe this nation can achieve greatness only if we agree that we share a common identity as fellow Americans. Please don't separate us by legalizing apartheid and group rights over individual freedom and a unifying national identity.

Please vote to oppose S. 147

To: US Senate Committee on Indian Affairs

This piece of legislative trash is not worthy of attention of any American and should never have reached the Senate. This bill is all about taking, not about uniting. We have too much taking and separation in America already. What is it about the word United in United States of America that is so hard for everyone to understand. No race, ethnicity, social rank, color, religion or education deserves special treatment over another.

Native Hawaiians deserve no more or no less than any citizen in this country. We are all native from some country if each of us go back far enough. American's do not owe anyone anything to make them more special. This is more political nonsense rhetoric. Free people do not impose themselves on others.

While people can certainly honor and celebrate their ancestry, it does not give them the right to special privileges over everyone else.

The government has caused much of this political pandering by special groups by not learning how to say NO. Politicians have turned this once free country into a social state by their divisive behavior. All of us free & independent people are sick of those politicians who use the government as a pig trough to get into our pockets and lives.

VOTE NO ON S. 310.

Jack Venrick
Enumclaw, WA
Citizens Alliance for Property Rights www.proprights.org
National Association of Rural Landowners www.narlo.org
American Policy Center www.americanpolicy.org

Date: April 30, 2007

Re: Formal Testimony for the Record regarding
Senate Hearing on S. 310, May 3, 2007

To: Senate Committee On Indian Affairs,

Citizens Equal Rights Alliance (CERA) is a coalition of community education groups in 28 states that organized in the mid-80s to assist tribal members struggling with their tribal governments. More recently, since the passage of the Indian Gaming Regulatory Act in 1988, CERA is growing exponentially with community groups forming to contend with tribal jurisdictional intrusions upon non-members, and the trend of off-reservation casinos attempting to locate in urban areas. Our entire mission and focus is to promote and protect Constitutional and civil guarantees of equal rights and equal protection for all citizens.

We submit for the record, the oral remarks of **Dr. William B. Allen, former Chairman of the U.S. Civil Rights Commission**, available on the link below, and our written comments herein. We urge each of you to take to heart, Dr. Allen's comments specific to the Akaka Bill, as he noted in his remarks:

Trust and Consequences
[See: www.trustandconsequences.com, "Video Links"]

The Pledge of Allegiance which is a federal statute at U.S. Code, Title 36, Chapter 10, Section 172, is part of what is under attack with Senate Bill 310 and H.R. 505:

"I pledge allegiance to the Flag of the United States of America..."

Senators and Congressmen of the United States, unmindful of their own respective pledges of allegiance to the country in which they hold elected office, contrary to their own sworn Oath of Office, and in clear violation of the U.S. Constitution, support legislation to separate and segregate one specific ethnic population in contradiction to the pledge of allegiance by forming a *separate*, race-based government requiring a redirected allegiance to a separate government.

"And to the republic for which it stands..."

Far too many members of Congress would enact S. 310 and H.R. 505, repudiating the requirement of a republican form of government for the 400,000 Native Hawaiian U.S. citizens. These congressmen, by their intent to pass this legislation clearly state that our "republic for which it stands," stands for nothing. Or worse, laws can be enacted on behalf of the highest bidders based on their political contributors.

"One nation, Under God, indivisible...."

Senators Akaka, Cantwell, Coleman, Dorgan, Graham, Inouye, Murkowski, Gordon Smith, and Stevens, and Congressmen Abercrombie, Bordallo, Case, Faleomavaega, Grijalva, Moran, Rahall and Don Young—by their endorsement of S. 310 and H.R. 505, promote and foment a race-based governance system to dismantle the One Nation of the United States while claiming to uphold their Oath of Office and the United States Constitution. Every American citizen should be outraged at such dishonorable thought and conduct among federal elected officials.

"With liberty and justice for all."

S. 310/H.R. 505 will separate and segregate Native Hawaiians, denying to them the Constitutional and civil protections and civil liberties guaranteed under a republican form of government. These bills are modeled after the Indian Reorganization Act (IRA) of 1934, and like the IRA, will expand destruction and balkanization that this county is currently experiencing because of federal Indian policy. Is Congress so pleased with federal Indian policy that it wishes to now expand this system to other racial groups? If so, what limits this race-based expansion, and keeps our country "indivisible?"

Justice will be denied to ethnic Hawaiian citizens and to all other citizens of the United States by elected officials whose own integrity and allegiance is apparently redirected away from the best interests of the whole cloth of the United States. Race-based balkanization is a force capable of destroying most countries, and especially ours, with our tremendous diversity. Such efforts as this legislation border on sedition.

VOTE NO!

Sincerely,

Elaine D. Willman, National Chair
Citizens Equal Rights Alliance
P.O. 1280
Toppenish, WA 98948

May 15, 2007

Senator Byron Dorgan, Chair
Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

Dear Senator Dorgan:

I write to have my strong opposition to S.310 (the "Akaka Bill") entered into the Congressional Record as part of the testimony and commentary on S.310. I write as well to urge you and your colleagues to oppose passage of S.310.

Proponents of S.310 claim that this legislation is merely to provide a process for Native Hawaiian people to reorganize a government so that they may conduct government to government relations with the federal government—just like other "Native American" tribes. Proponents also claim that Congress has the authority to single out Native Hawaiians in such a manner because of what has come to be called "plenary power" over Indian affairs.

I write to insist that Congress does not have plenary power over Native Hawaiians, for historical facts about the Kingdom of Hawaii, the creation of private property in 19th Century Hawaii, and the chain of events that lead to the annexation of the territory of Hawaii directly problematize claims of congressional plenary power over these matters.

S.310 claims that, like Indian tribes, the Kingdom of Hawaii had treaties with the United States throughout the nineteenth century: see Section 2. Findings (4). This sets the stage for casual readers of this legislation to believe that Hawaiians are just like Indians and that Congress' power to treaty with Indians is also what led to these treaties with the Kingdom of Hawaii. This belief is in error, for these treaties were enacted with a kingdom that was first recognized in the mid-19th century through treaties with England and France; these treaties were secured through the diplomatic journeys of American missionary turned kingdom official William Richards and a young chief, Timothy Haalilio, both sent by King Kamehameha III. The United States entered into treaties with the Kingdom of Hawaii somewhat belatedly, only after European powers made clear that they were treating with the Kingdom. Thus, the kind of treating that the United States did with the Kingdom of Hawaii looks much more like the treaties formed between nations in the family of nations than those treaties between Indians and the federal government. Thus, the historical record speaks a different truth than S.310's framing of those treaties.

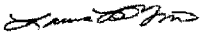
Furthermore, the Kingdom of Hawaii was not a tribe, nor do Native Hawaiians constitute a class of persons with exclusive rights to be the successors to the Kingdom of Hawaii. The Kingdom of Hawaii in the nineteenth century had a multi-ethnic citizenry. Important ministers in the

kingdom's government were foreign-born, some of whom swore allegiance to the king, some of whom maintained their natal citizenship. Therefore, the descendents of non-Native Hawaiian citizens of the Kingdom of Hawaii must certainly at least have the opportunity to contest the exclusive creation of "Native Hawaiians" as the sole class of persons affected by the overthrow of the Kingdom of Hawaii and the subsequent transformation of the territory and its resources into a legal possession of the United States and then a state of the union.

S.310 also attempts to pave the way for future land settlement of claims to what are referred to as the "Ceded Lands," currently held in trust by the State of Hawaii on behalf of the federal government. Proponents of this legislation would like you to believe that Native Hawaiians should formally be declared the sole claimants because they are the indigenous people of the land known as Hawaii. But S.310 proponents are producing the most egregious historical fiction here by erasing the entire history of the Kingdom of Hawaii's existence as a modern nation state, with a diverse citizenry and full allodial title to its government lands—the "Crown Lands" which are now referred to as the "Ceded Lands." No such exclusive claims by Native Hawaiians exist, and at the very least, we must expect challenges to this conflation of indigeneity with citizenry.

This poorly conceived legislation distorts the historical record to facilitate a political result; such a distortion, embodied in S.310, sets the stage for bad law. This legislation and its constitutionality will most certainly be contested, and for good reason. Bad cases make for bad law, and the legal singularity of the Hawaiian situation will certainly make for mischief in federal Indian law, despite the most ardent wishes of this bill's supporters that this bill will pave the way for Native Hawaiians to find legal relief in the arms of federal Indian law cases like Morton v. Mancari and others.

Very sincerely,



Dr. Laura Lehua Yim

San Francisco State University
1600 Holloway Avenue
San Francisco, CA 94132

He Hawaii Imi Loa from Kane`ohe, Hawai`i

TESTIMONY OF EMMETT E. LEE LOY, ATTORNEY AT LAW,
IN OPPOSITION TO S. 310
FOR THE RECORD OF THE U.S. SENATE COMMITTEE
ON INDIAN AFFAIRS

Emmett E. Lee Loy
Attorney at Law
758 Kapahulu Avenue, #429
Honolulu, Hawaii 96816
Tel. No. (808) 922-0455
Fax. No. (808) 922-0422

Tuesday, May 1, 2007

Chairman Byron Dorgan and
Vice-Chairman Craig Thomas
U.S. Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Fax. No. (202) 228-2589

Aloha Chairman Byron Dorgan, Vice-Chairman Craig Thomas and Members of the Senate Committee on Indian Affairs:

Please include this testimony into the record for your consideration on whether or not your Committee will recommend passage of S. 310.

S. 310 is one of the worst pieces of proposed legislation ever drafted in the history of both the United States and Hawaii.

S. 310 poses a direct threat to the native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920 (person that are *at least* one-half to full blood native Hawaiians) because of S. 310's watered-down, diluted and overbroad definition of "Native Hawaiian" contained in Section 3 of S. 310.

Because of this diluted definition of "Native Hawaiian," you should all be made acutely aware that S. 310 poses a direct threat to the bona-fide native Hawaiians already treated pursuant to the Hawaiian Homes Commission Act (HHCA), 1920, and the Act to Admit Hawaii as a State (Admission Act), 1959, more specifically, Sections 4 and 5(f) of the Admission Act.

Please stop to consider that where the HHCA and Sections 4 and 5(f) were enacted by Congress back in 1921, to treat the

catastrophic effects of the commoner native Hawaiians, formerly known as the makaainana caste, for being dispossessed of their ancestral lands by the corrupt Kingdom of Hawaii in the Great Mahele of 1848----in stark contrast----S. 310, the Akaka bill, appears to be nothing more than a ploy to get monies from the U.S. treasury on the specious claim that "Native Hawaiians" (really what we refer to as the "toe-nail" so-called "Native Hawaiians," you know, the minimal quantum quantum, pin-prick, one-drop of Hawaiian blood, haven't had a native Hawaiian in their family tree for several generations, kind of 1/8th, 1/16th, 1/32nd, 1/64th part and less) are suffering some form of an imaginary or nebulous harm resulting from the overthrow in 1893.

This distinction is critical. To be unaware of this important distinction is a fatal defect in this hoax called S. 310.

The effort to collapse the distinction between the bogus claim of an alleged deprivation of a political right from the 1893 overthrow **versus** the property right belonging to the closest relatives by degree of kinship and heirs to the native Hawaiian tenants that got cheated by the Kingdom of Hawaii in the Mahele of 1848, (and which undelivered property rights are encumbered in the HHCA of 1920 and Section 4 and 5(f) of the Admission Act,) is what S. 310 is all about.

The assimilated, acculturated, sophisticated and educated "toe nails" that Akaka and Inouye refer to as "Native Hawaiians" in their bill, really have nothing to do with the bona-fide native Hawaiians treated pursuant to the HHCA of 1920, except on paper the "toe nails" are masquerading as "Native Hawaiians" when in fact they are more something else other than native Hawaiian and are simply pushing the Akaka bill to take over the identity and lands of the bona-fide native Hawaiians (not less than one-half).

Please observe that the we believe the real reason Inouye is so strident to sell the Akaka bill is to allow his client, the State of Hawaii, to release themselves from the agreement or compact of Section 4 of the Admission Act, 1959, to administer the HHCA lands and resources for the betterment of the conditions of native Hawaiians as defined in the HHCA, 1920.

For years in the ongoing debate over various previous versions of S. 310, this above-stated motivation by your Senators Inouye and Akaka has been overlooked and obfuscated.

Dressed up to make the Akaka bill appear to be in the best interest of native Hawaiians as defined in the HHCA, S. 310, if passed by Congress would have an absolutely devastating effect upon the bona-fide native Hawaiian communities that continue to survive in Hawaii today despite the efforts of State of Hawaii officials, including our Senators, who have consistently sought to diminish, degrade, erode, marginalize and, with S. 310, are on the verge of obliterating the protections accorded the native Hawaiians treated under the HHCA, 1920.

S. 310, the Akaka bill, threatens to take away the lands of the bona-fide native Hawaiians encumbered in the HHCA and Sections 4 and 5(f), and give these undelivered lands and resources to the much larger group of more than 400,000 "toe-nail," so-called "Native Hawaiians," under the Akaka bill.

By a conservative estimate there are perhaps not more than between 30 to 35,000, native Hawaiians as defined in the HHCA of 1920; that is, persons of at least one-half to full blood native Hawaiian. The precise number is unclear and the State of Hawaii for their own reasons has sought, and to this day continue to hide this number.

Honorable Members of this Committee, please, during your recess, go and ask Senators Akaka and Inouye: How many native Hawaiians are there in Hawaii today that meet the criteria of not less than one-half native Hawaiian? This will help you and Senators Inouye and Akaka begin to understand just how far S. 310 is over-reaching; a concept both seem oblivious to as expressed in S. 310.

In contrast, there are now more than 400,000 persons who claim any amount of Hawaiian blood, including persons with as little as 1/64th, 1/128th and 1/256th part and less Hawaiian. The Kamehameha Schools (another institution run by the toe-nail Hawaiians) is already bragging about how this figure is expected to balloon to more than 800,000 before the year 2020.

Also, Congress should consider the **hidden costs** associated with suddenly inventing, out of thin air, a make-believe Indian tribe and then just as suddenly "federally recognizing" such a large number of people, over 450,000---the majority of whom really do not even consider themselves to be native Hawaiian at all.

For example, someone who is 1/16th part-Hawaiian and 15/16ths

part Pilipino, or Chinese or Japanese or Caucasion pretending to be "Native Hawaiian:" Why aren't they Pilipino, Chinese, Japanese or Caucasion? The answer to this question is real simple: They are circling the public trough and growing in numbers having had their expectations artificially raised all these recent past years with a promise of some kind of pay-off or "reparations." They want to cash in on the overthrow.

Another way to look at this is if, say for example, someone is 1/16th part-Hawaiian and they are, for some reason suffering, they are not suffering because of that 1/16th part-Hawaiian.

Clearly, the effort behind the Akaka bill is an attack on the United States Treasury. They are after money. Proponents not only want compensation based on the specious claim of harm by the overthrow, they are also zeroing in on and after taking the undelivered lands of my clients.

Let me put it this way: If Congress is duped into signing off on this S. 310, Congress is not going to cut-off a piece of Manhattan Island and give it to the toe-nail Hawaiian tribe. No. They are going to try to take my clients' undelivered share of lands and resources encumbered in the Hawaiian Homes Commission Act, 1920.

Perhaps the most offensive aspect by proponents of the Akaka bill is that their effort attacks the United States. Since the United States set aside lands and resources for my clients under the HHCA and Sections 4 and 5(f), an attack on the United States is an attack upon my clients as well because it was the United States that set aside the lands for my clients under the HHCA and Sections 4 and 5(f).

The Kingdom of Hawaii gave my clients nothing. Take a close look at the Great Mahele of 1848: It's all there.

Honorable Chairman Dorgan, Vice-Chairman Thomas and Members of this Committee, as you can tell by this testimony, there is so much more to say but for now, I wanted to thank you for including this into your record in opposition to S. 310.

So long as you Members of this U.S. Senate Indian Affairs Committee know the difference between a "toe-nail" "Native Hawaiian" versus a "native Hawaiian as defined in the Hawaiian Homes Commission Act of 1920" (at least one-half to full blood), you can understand this struggle is for real and to the end.

My suggestion is that this Committee scratch the past seven (7) years of miserable failure that is the brief history of S. 310 and start with a clean slate.

A good place to start is having the definition of "Native Hawaiian" changed back to "native Hawaiian as defined in the Hawaiian Homes Commission Act of 1920."

This Testimony Respectfully Submitted this 1st day of May, 2007 by,

Emmett E. Lee Loy

Your Honors:
I don't believe this bill is going to change things for the better. The Native Hawaiian does get recognition. I support the Hawaiian Home Lands program because it helps Hawaiians stay connected to the land and their heritage but it has been badly mismanaged even under a Hawaiian governor. I disagree with OHA's spending priorities but support income to OHA from ceded lands. I support the admissions policy of Kamehameha Schools because as a private entity receiving no government funding I believe it has the right to choose its own policies.
I cannot support the Akaka Bill because the Hawaiian race and culture is thriving like never before in music, dance, the arts and the language. There have never been more legislators, judges and community leaders with Hawaiian blood than now in Politics. Economically, average income for Hawaiian families has never been higher and in some cases exceeds that of other races, even Caucasians. Those achieving the greatest economic success have assimilated and look forward. Those with the least success have remained separate and look backward. Hawaiians deserving government economic assistance can always receive it on the basis of need, just as those of other races. The Akaka Bill is unnecessary.
At a time when we need to be united as never before both to solve our local problems and to maintain our collective national security the Akaka Bill will divide the prople of Hawaii into different classes of citizens, Hawaiians and non-Hawaiians.
Since Akaka models his proposal on the Native American political entity we can expect the same excesses that have already occurred with them: immunity from state and local taxes, immunity from established law enforcement, immunity from zoning and environmental laws, immunity from political campaign contribution limits. Recently OHA's Clyde Namu'o claimed that all of Hawaii's well water originated as surface water, which is a state "public trust resource" subject to Native Hawaiians traditional fishing and gathering rights, and therefore OHA owns most of Hawaii's fresh water. This ownership could pass to a "sovereign Hawaiian government" if the Akaka Bill passes.
If you don't live here you truly believe we are living in a "Paradise". But to those of us who do live here it is a struggle due to cost. It takes all of us working together to make it work. Something our elected officials haven't figured out yet.
Respectfully,
William Lovell
94-1446 Lanikuhana Ave
#406
Mililani, HI 96789

Dear Sir:

Supporters of S. 310 claim some form of sovereignty is due Hawaiians because of the 1893 overthrow of the Monarchy. Their claim is that Hawaiians were deprived of their "right" to self-determination by the actions of outsiders. The Hawaiian kingdom established by Kamehameha I had always been multi-ethnic. The opening line of the Kingdom's first Constitution of 1840 states: "'God hath made of one blood all nations of men to dwell on the earth,' in unity and blessedness. God has also bestowed certain rights alike on all men and all chiefs, and all people of all lands." The "God" referred to here is the Christian God of the New Testament, not Kukailimoku, Kane, Pele, Lono or the many others that exist in the Hawaiian pantheon.

The Akaka Bill would establish a government based on racial nationalism. Fundamental to racial nationalism is the idea that certain ethnic groups "own" specific geographically areas. This doctrine holds that real property is owned collectively by the race instead of individuals who are free to sell or trade their property to whomever they choose. Land was "publicly" owned in traditional Hawaiian society. This meant that land was owned by the ruling elite, the Alii. Kamehameha I gave land to those American and Englishmen who helped him in his wars of unification, while retaining the authority to revoke the gift.

Lorrin A. Thurston was one of the principals of the overthrow of 1893; his four grandparents were missionaries who came to Hawaii in the early nineteenth century. A hundred years later Lorrin's grandson, Thurston Twigg-Smith was asked by a Hawaiian boy: "Why did your grandpa steal my land?" The boy's older sister then asked: "Yeah, and why did he steal our culture, too?" The children's mother was beaming approvingly; her youngsters have learned the lessons of racial nationalism all too well. These two questions illustrate the basic premises of both the Akaka Bill and racial nationalism.

The first question's basis is the idea that rights are collective in nature. In the liberal view the purpose of government is to protect the rights of the individual against transgression by criminals. A large part of these rights are property rights, including the right to own, improve and trade land. The citizen is sovereign in the liberal state. The liberal government ensures the right to property by codifying this right into law and providing a process of acquiring and documenting title to land. During the period of 1848-1852 King Kamehameha III did just that with the Great Mahele which divided the land between the Crown, the royalty and the commoners. After the overthrow of 1893 Crown i.e. government land was transferred to the Republic. The so-called "ceded lands" are now held by the state of Hawaii. The liberal philosophy upholds individual rights to life, liberty and property. The racial nationalist view upholds that rights are conferred by membership in a particular ethnic group.

The second question posed to Twigg-Smith illustrates another premise of the racial nationalist: the inability to distinguish race from culture or values from insignificant biological differences. As Thomas Sowell observed in Conquests and Culture: "Cultures are not museum-pieces. They are the working machinery of everyday life." By 1840, as noted above, Hawaiian culture had greatly changed as a result of contact with European ideas. The story of cultural change due to contact with other societies has become the subject of study by the discipline of world history. Cultural values evolve over time and are open to anyone who accepts them.

The ideas that animate the Akaka Bill would turn the clock back over two-hundred years to an allegedly better time. The Akaka Bill is not the representative of a bright future, but the harbinger of an atavistic tribalism. To see the future the Akaka Bill promises Hawaii look at the violence, disorder and racial hostility occurring in Fiji.
Grant Jones

I am of 50% Hawaiian blood, so that I qualify by blood to be a Native Hawaiian according to the definition in Statehood Admission Act (1959) to "home" ownership within the 200,000 acres of homestead land set aside for administration by the State of Hawaii through the Department of Hawaiian Homelands (DHHL). However, I am not entitled to pass the "home" I have on the residential lease that I have for the next 99 years to my children because they may only succeed to the time left on my own lease time after my death, and they are not qualified to apply for that "home" because they are less than 50% blood quantum.

However, they may qualify for the "Native Hawaiian" reclassification as a beneficiary for what the Office of Hawaiian Affairs may "hold" of anything that the State of Hawaii has given to it since the 1978 amendment to the Constitution of the State of Hawaii that constitutionally required that the State give to it 20% of the revenues, and since then the Office of Hawaiian Affairs has also received lands set aside to it by the State of Hawaii, such as whole subsections of districts (moku) qualified by definiton as ahupua'a. The recent conveyance of Waimea ahupua'a on this island (O'ahu) and the Campbell Estate geothermal lands in the volcano area of Hawaii islands during the term of this governor since the last election is an example of the enlarged conveyance originating in the 1978 constitution defining 20% public revenues as only the beginning of separating natural resources and lands away from the public domain of the State of Hawaii into the domain of a new division of land and revenue consigned to "Native Hawaiians" of less than 50% blood quantum.

The Akaka Bill before you now should remind of this fact that when the separation of land and power divides the revenue share of public taxes and other kinds of natural resources including lands that were at one time "communal" and "aboriginal" land tenures "before 1778 A.D." [U.S.P.L 103-150, referred to as the "Clinton Apology"] denies the definition of land tenures after 1778 A.D. {arrival of Captain James Cook in Kaua'i with his death later in 1779 A.D. February 14), and specifically after 1848 A.D. [Great Mahele land division establishing fee simple property rights to homeowners, including Chinese people in downtown Honolulu who could show they had occupied and lived in that area before later Chinese immigration after 1848 A.D., even though they had then no right to vote until some time later in history]...

The Akaka Bill retroactively will empower the return of public lands, as former kingdom or Crown lands since 1848 A.D. to the new sovereign Native Hawaiian government, so that a portion of the public lands will be reabsorbed that way and other natural resources and mineral rights, including whatever humans rights under the international definition that may come to be, all other items that would qualify as intellectual property rights and cultural rights of the indigenous peoples, even when their blood quantum may be significantly non-aboriginal Hawaiian by reductions over the last 200 years and since the most recent intermarriage statistics would justify as almost nil in quantum for qualify for benefits ad infinitum.

The supporters of this change also have enacted into legislation and public law at federal levels to recover all sacred aboriginal sites as first people's rights to burial effects, both bones and artifacts, while at the same time also establishing as state law under the same NAGPRA (Native American Graves Protection/Preservation Act, since 1990 to the present) that no DNA analysis shall be allowed on such bones recovered, to which my own response has been to publicly testify that DNA analysis is the only way to find evidence for whose bones are being recovered, as at Mokapu Peninsula in archaeological excavations. Suffice it to say that my only recourse as as Native Hawaiian (one-half) and other (one half European and Asian blood) has been to have the DNA tests down on my own and my brother's behalf to find our own connect to past ancestors, let Native Hawaiians do as they wish to prevent that to be done on burials while they do their own DNA to reassert their relationships to other Polynesians, while choosing to ignore the results which show conclusively their remote origins in non-Polynesian areas where their ancestors also roamed?

I therefore hope that you will act to preserve the union as of this state so within the United States as a whole before you do something which you may come to regret as a final dissolution of the federation as a republic rather than half fee simple and otherwise communal tenures of a rival aboriginal entity reorganizing the borders of states in the union, starting in Hawaii.

Very truly yours,

Rubellite K. Johnson

Submitted with this communication are statements I have made before in public testimony.

Dear Sirs:

In my recent communication to you I did not send you the other evidence for the Resolution 2002 which was submitted on the state level conferences as addenda to the 1999 Reconciliation by Nahoa 'Olelo o Kamehameha as part of the Mo'opuna o Kamehameha.

I submit it now so that is no doubt whatsover that the position taken by the Kamehamehas will be forthcoming no matter what the Native Hawaiian Sovereign Nation does do and even if the Akaka Bill does pass, there will be no way we, as descendants of the king whose land titles they were, originally, because Kamehameha III did not convey the original lands not won through the Kamehameha wars between 1782 (Mokuohai) and 1795 (Nu'uanu) but those which were the unconquered lands not included in the Great Mahele division between the titled chiefs and which remained as the private property of Kamehameha III from those that were unconquered titles of the Kamehamehas.

In other words, when the Native Hawaiians of Kau Inoa insist that they have aboriginal rights as communal tenures "before 1778 A.D." to cloud the issue of whose aboriginal tenures they really were before the Kamehameha conquests, no Kamehameha worth his salt today would let those who think they can procces those titles to aboriginal Kamehameha lands as of the titled ali'i "before 1778 A.D." and thus "before 1795 A.D." (Battle of Nu'uanu) and "before 1810 A.D." (ceding of Kaua'i) and "before 1848 A.D." (Great Mahele) and "after 1893 A.D" (so-called "illegal overthrow") and "after 1894 A.D. (Republic Hawaii) and "before 1898 A.D." (so-called "illegal annexation"...

So that they may treat those public lands formerly Crown Lands of the kings, Kamehameha III and IV, "before Kamehameha V" made them lands to be managed by the Crown Lands Commission after the changes he instituted between the 1864 Probate of his intestate brother's (Kamehameha IV) private estate and the 1865 Constitution he promulgated while succeeded to his royal office under the 1852 amended constitution (after 1848 Great Mahele) to which he succeeded under the Will of Kamehameha III (April 1853) as well as the aborted first Annexation Treaty of 1853 (December 1854 death of Kamehameha III)...

May I also include the reason why today's descendants of Kamehameha know they are losing their aboriginal lands to non-Kamehamehas on the basis that we are all of one "nation", reducing those rights which Kamehamehas still regard as their ancestral lands, rather than their "national" lands as "Native Hawaiians"...

That I believe the Kamehamehas today are the homeless children of the kings and chiefs before 1778 A.D., nonetheless.

So if you give our lands to anybody you think should qualify because they held rights to those lands of the Kamehamehas "before 1778 A.D", then let them Kau Inoa to that right. They may prove that relationship by genealogy or by DNA.

No harm done if it turns out everybody of any Hawaiian blood quantum is a descendant of Kamehameha the Great,no matter how little blood quantum exists in their toenails today.

Thankyou very much,

Rubellite Kawena Kinney Johnson

A RESOLUTION SUBMITTED TO THE
STATE OF HAWAII LEGISLATURE
FOR
LEASE TO FEE CONVERSION OF HAWAIIAN HOMESTEADS
AUGUST, 2002

BY
THE EQUITY ROUNDTABLE CITIZENS GROUP

HONORABLE MEMBERS OF THE HAWAII STATE LEGISLATURE, SENATE AND HOUSE OF REPRESENTATIVES, AND MEMBERS OF THE UNITED STATES LEGISLATURE, SENATE AND HOUSE OF REPRESENTATIVES:

WHEREAS the matter of lease to fee conversion of large estates owned by Hawaiian trusts has gained recent public attention regarding the status, for example, of Lili'uokalani Trust's residential holdings;

WHEREAS it is understood that lease to fee conversion laws have been passed requiring the Bishop Estate to surrender the fee title to its residential lessees since passage of the law in the 1970s, effecting that transition by law and also by judicial precedent, and

WHEREAS lease to fee conversion of crown and public lands was legislated in the *Hawaiian Land Act of 1895* to create inalienable homesteads from crown and government lands open to all applicants for a minimal registration fee and residency, of at least 27 years continual occupancy thereafter, viz:

> "...In view of the eveident need of the country for **a class of small land-holders, owning and cultivating their respective holdings,** as a basis of national prosperity and a desirable factor in our political growth, I commend to your consideration a liberal policy in the administration of public lands, whereby industrious persons with small means may have special opportunities of ***acquiring permanent holdings,*** and the disposition of tracts of land **for sale or for lease on long terms, shall be discouraged...**"
>
> "...The **Crown Lands,** being now at the disposal of the Government, it is part of wisdom as well as of patriotism to make provision in the legislation necessary to their proper management, for convenient facilities ***for the settlement thereon,*** as well as on the **original Government lands,** of industrious persons..."
>
> "...Such legislation may well **fix residence on or improvement of lands, or both,** ***as a condition of title.*** And inasmuch as many of our population are not skilled in the accumulation and retention of property, a provision where those desiring to do so should have an opportunity of acquiring inalienable homesteads would be of great value to them as well as to the state."
> [Sandford Ballard Dole, President, Republic of Hawaii, in Roster of Legislatures of Hawaii 1841-1918, 1918: 227-228].

Whereas the Constitution of the sovereign Kingdom of Hawaii in 1893 was not overthrown and the regulation of private and public property was not changed by the overthrow of the office of the sovereign, which office had been subject to constitutional laws governing successorship to the crown in the several constitutions of 1840 and those amended, of 1852, 1864, and 1887, viz:

"...All officers under the existing Government [*note, i.e., Provisional Government] are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following-named persons [*note, i.e., the queen, Lili'uokalani and cabinet members]...

"...**All Hawaiian laws and constitutional principles not inconsistent herewith shall be continued in force until further order of the executive and advisory councils...**" [Proclamation, Provisional Government, January 17, 1893 in Dole, Sanford Ballard, Memoirs: 89].

Whereas the Provisional Government transferred revenues from the Crown Lands administered by the Crown Lands Commission (1865 - 1893) into the treasury of the Provisional Government, without conveying the Crown lands, and;

Whereas the Republic of Hawaii in 1894 conveyed the subject Crown Lands into the public domain by the Constitution of 1894, declaring that they were no more subject to a trust administered by the Crown Lands Commission since 1865, and;

Whereas the leases of lands commenced by Kauikeaouli (Kamehameha III) and his heir (Alexander Liholiho) as to his private estate were long-term leases of 99 years and more, such leases continuing after the overthrow of the monarchy in 1893, and;

Whereas the Act of 1865 (Lot Kamehameha V) creating the Crown Lands Commission restricted the commissioners to leasing of lands for no more than 30 years (1865 - 1893). and;

Whereas the Treaty of Annexation of 1898 by the Joint Resolution (Newlands) of the United States Congress, Senate and House of Representatives, the President of the United States approving, and which process had been declared constitutional by the Supreme Court of the United States [Chief Justice Marshall (1828) ruling in American Insurance Co. vs. Canter, and American Insurance Co. vs. Ocean Insurance Co. of New York, 1828; in Morris, Richard B. and Henry Steele Commager, Jeffrey B. Morris, Encyclopedia of American History, 1976: 159, 242, 247-248; see also pages 225-228, the admission of Texas into the United States in 1844], and;

Whereas by the Treaty of Annexation (1898) the Republic of Hawaii ceded the Crown and public lands to the United States as a ***territory*** and not as a state in the union, thus forming what is now referred to in federal and state law as **" Ceded Lands"** or the Ceded **"trust" Lands,** assuming that the role of the State of Hawai'i is as a "holder" of such trust lands, rather than

the owner of the fee title, which is yet debatable, and;

Whereas the Office of Hawaiian Affairs in recent cases against the State of Hawaii has challenged the State's right or power to sell lands that various interpretations have called **"national lands"** of the **Native Hawaiians,** as the original fee title holders and owners with rights of reversion, borrowing a phrase used by William Alexander, surveyor of kingdom lands under the monarchy, describing the "crown and public lands" after they had been conveyed to the United States in the 1898 Annexation Treaty, and;

Whereas the so-called "national lands" may be understood as constituting lands in the so-called "Ceded trust lands" category of public lands administered by the United States Department of Interior throughout the time of the Territory of Hawaii under the Organic Act (1900-1959);

Whereas such public lands under the territorial government, were subject to the Organic Act (1900) and the Constitution of the United States, whereby "ceded lands" were treated not only as "government property" but also as continuing **"inalienable homestead lands"** under the ***lease to fee conversion*** principle of the Hawaiian Land Act of 1895 [Republic of Hawaii], and;

Whereas the homestead lands were granted from expiring leases of private lands held since the Great Mahele (1848) by Kauikeaouli (Kamehameha III), Alexander Liholiho (Kamehameha IV) [1848-1863] as well as lands originally part of government lands from the Great Mahele (1848) to the present as public domain, and;

Whereas the same category of homestead lands under so-called "general leases" were thus continuous ***lease to fee conversions*** provided by the governments [*i.e., Republic of Hawaii, Territory of Hawaii, Department of the Interior, United States federal government) to which any applicant could qualify without blood quantum or ethnicity requirements directed by law, whereby the conditions as met within a prescribed, limited period of continual residency qualified the registered recipient for the fee title, as outright purchase or as probate recognizing fee ownership through inheritance from the deceased lessee to his heirs, through the county and territorial court proceedings, or other legal authority, and;

Whereas the Hawaiian Homes Commission Act of 1920 presented by Delegate Jonah Kuhio Kalaniana'ole to the United States Congress restricted homesteads in the category of **"Hawaiian Home Lands"** as set aside for Hawaiians qualified by a required 50-100% blood quantum [[*Note: a condition imposed by the U.S. Congress to rehabilitate the Hawaiian race] on lands which were then returning as expired leases to the absent Crown from sugar plantations under the Territory of Hawai'i, and;

Whereas subsequent leases under the Hawaiian Homes Commission Act were constructed in accordance with former Kamehameha "crown land" leases as 99-year leasehold contracts, rather than the limited 30-year leases contracted by the Crown Lands Commission (1865-1893), and;

Whereas the lease rates of $1.00 per acre for 99 years were consonant with

nominal registration fees consistent with rates established in the United States homestead laws of no more than $1.00 to $1.25 per acre, or roughly equal to a nominal registration fee of $99 for the lease period of 99 years for a Hawaiian Homes homestead lease (1900 to 2002 A.D.), commensurate with established terms of United States rates since the American Civil War, viz.:

(1) **Homestead Act 20 May 1862,** promoting westward agricultural expansion (American Civil War):

"...1862 20 May Homestead Act offered any citizen or intending citizen who was the head of a family and over 21 years of age 160 acres of surveyed public domain after ***five years of continuous residence*** and payment of registration fee ranging from $26 - $34. As an alternative, land under the act could be acquired after 6 months residence at $1.25 an acre. Such homestead were to be ***exempt from attachment for debt"*** (*emphasis added) [Encyclopedia of American History, Bicentennial edition, by Morris, Richard B. et. al., 1976: 636];

(2) 21 June 1866 Southern Homestead Act was designed to provide free 160-acre farms in Southwestern states to freed slaves...By 1872, when repealed, only 4,000 black families had received lands" [Ibid.: 636];

(3) 1904 Kincaid Home Act, provided for grants of 640 acres of desert land in Nebraska after 5 years' residence and improvements, valued at $800, extended, 1909, to the rest of the public domain " [Ibid.: 638];

(4) 11 June 1906 Forest Homestead Act provided for the opening at the discretion of the Secretary of Interior, of forest lands of agricultural value under the provision of the Homestead Acts" [Ibid: 638];

(5) 19 June 1909 Enlarged Homestead Act, to satisfy Western cattle interests, increased the maximum permissible homesteads to 320 acres in portions of Colorado, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and Arizona. Of these, 80 acres were to be cultivated. Timber and mineral lands were specifically excepted" [Ibid.: 638];

Whereas the Hawaiian Homes Commission Act of 1920 only stipulated that the registrants be of 50-100% Hawaiian blood quantum for the 200,000 acres thus set aside in the 1920 Hawaiian homestead act as United States federal homestead law, commensurate with other historic enactments opening the public domain to farming, forestry, and residency, thus:

We believe that it was not the intent. either of Delegate Jonah Kuhio Kalaniana'ole or on the part of the the United States federal government, to specifically deny to Hawaiian homesteaders, as is now denied to them by the State Department of Hawaiian Homelands and the State of Hawaii government, the entitlement to the fee title after a period of continuous residency, occupancy, and use, as provided by law, inasmuch as they would also, and still do at the present time, qualify for the fee as their equal right of representation under the Constitution of the United States of America as well as the Hawaiian Land Act of 1895 and all other United States federal homestead

acts and laws enacted since 1862 by federal and local (Republic of Hawaii) governments, and;

Whereas the Statehood Admission Act of 1959 admitting the state of Hawaii into the union made a proviso binding upon the State of Hawaii since 1959, for ***"the development of farm and home ownerhsip on as widespread a basis as possible"*** from public lands returned by the federal government to the state for the***"betterment of conditions for Native Hawaiians..."***, viz:

> "...[S[ubject only to **valid rights then existing..."** [1959 Statehood Admission Act, USPL 86-3 Stat 4 (18 March 1959) Sections 5 (f) under (b) (c) and (d) (under section f);

Therefore it should follow that **valid rights "then existing"** for Hawaiian homesteading lessees had been qualified by the Hawaiian Land Act of 1895 before subsequent annexation to the United States in 1898 and before setting aside of some lands for native Hawaiians under the Hawaiian Homes Commission Act of 1920, which after annexation to the United States in 1898 and before admission of Hawaii as a state in the union in 1959 came under equal protection of United States constitutional and corresponding federal homestead laws which may be considered as supporting native Hawaiian **valid rights now existing**, thus:

BE IT RESOLVED:

(1) That the State of Hawaii shall ascertain its corresponding obligation to protect the rights of Hawaiian homesteaders on the historic precedents of existing Hawaiian and American homestead laws granting the fee title to homesteaders after a requisite minimum period of residency (at least 27 years under the Hawaiian Land Act of 1895), and;

(2) That Hawaiian homesteaders who qualify at this time should be granted the fee title to their homesteads, including farms, homes, and pasture lands, and other accommodations or improvements thereon, forthwith;

(3) Nor shall the 1978 amendment to the State of Hawaii constitution providing for the Office of Hawaiian Affairs to "hold all the personal property of Native Hawaiians given to it by the State of Hawaii" be regarded as an impediment to the right of individual Native Hawaiian homesteaders to activate their own property rights to acquire the fee to their homesteads under the United States Constitution and the Admission Act of 1959.

(Signed and dated by supporters of the Equity Roundtable Resolution):

_____

Name, Date, Address

_____

_____

_____

Prepared statement by Kaleihanamau Johnson

"No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and mammon." (Matthew 6:24)

The proposed legislation would ask individuals, with a strand of a particular racial inheritance, not to reject the government under which they have lived their lives but to choose to add a second layer of government to it. Jesus would say that this is not just unwise, it is impossible.

To begin with, the United States of America is not just a government; it is an idea. The idea is individual liberty. I know because I lived in Venezuela for ten years. I fled that country four years ago, bringing my children but leaving behind my husband, in order to breathe the air of freedom again. I wanted to give to my children, not a superior set of welfare programs but, the opportunity to grow up in a land where economic success was not just possible but was to be encouraged. I left behind a growing political climate which would feed on the economically successful.

Moreover, the proposed "Native Hawaiian Governing Entity" is not a government; it is a social welfare program. It is an attempt to unify the administration of a set of programs which have worked their way into our society over the past century. Although the insidious nature of welfare systems to establish a class of perpetual recipients has been well recognized and the recent efforts of Congress have been to get people off the welfare roles, the Akaka Bill would do just the opposite. It would provide a race-based criterion for enshrining such a class.

The notion of a racially distinct Native Hawaiian Community is a fiction. It was a fiction in 1893 at the overthrow of the Kingdom of Hawaii. Even then there had been many generations of dilution of Hawaiian bloodlines. It should go without saying that, after another century of interbreeding, bloodlines are even more dilute. But there does persist a Hawaiian spirit. This spirit transcends bloodlines and does not require a government for its perpetuation. Many of those who possess the Hawaiian spirit are completely devoid of Hawaiian ancestry. It insults them to deny this American process of integration.

The Akaka Bill Speaks of sovereignty of the Native Hawaiians. Here is another myth. Before 1894 there was no such sovereignty. The various Constitutions of the Kingdom of Hawaii make clear that the sovereignty resided in the reigning monarch. The constitutions also make clear that there were no citizens of Hawaii, only subjects. This is not an arbitrary choice of words; the history of the word 'subject' is steeped in servitude. Despite the attempts to appear enlightened by incorporating guarantees of liberty, patterned after the American Bill of Rights, Hawaiian commoners were servants of the Ali'i, or chiefly, class. It was the Queen who lost sovereignty at the overthrow of the Monarchy, not the Hawaiian people.

David Malo lived during the time when human sacrifices were performed; before the kapu system was abolished in 1819. He was one of the first native Hawaiian scholars schooled at the Lahainaluna Seminary of the first class beginning in 1831. Malo wrote:

> The condition of the common people was that of subjection to the chiefs, compelled to do their heavy tasks, burdened and oppressed, some even to death. The life of the people was one of patient endurance, of yielding to the chiefs to purchase their favor.... It was from the common people, however, that the chiefs received their food and their apparel for men and women, also their houses and many other things. When the chiefs went forth to war some of the commoners also went out to fight on the same side with them.... It was the makaainanas also who did all the work on the land; yet all they produced from the soil belonged to the chiefs; and the power to expel a man from the land and rob him of his possessions lay with the chief.

Just as the Hawaiian commoners of old did not deserve to live subjected to authoritarian chiefs, Hawaiians of today do not deserve to live subjected to authoritarian legislators and executors. We are Americans and our rights are recognized by the U.S. Constitution and Bill of Rights.

It has been argued that the Akaka bill, if passed by Congress, will be used as the means to secession from the United States. In observance of current politics in Hawaii, sovereignty is a probability that looms ahead of us. Proponents of Hawaiian sovereignty recognize only those who descend from the inhabitants of these islands prior to the arrival of Captain Cook in 1778 regardless of the fact that the Hawaiian Kingdom recognized all persons of other races as subjects.

Some of the greatest minds in history came together to found a republic based on good principle. As Americans we can disagree on everything save the one document that stands as superior above all others that states "...[t]hat all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness..." It is absurd that anyone would settle for less than what they already have: freedom.

Robert K. Fukuda
Attorney
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April 28, 2007

To The Members Of The Indian Affairs
Committee Of The United States Senate

I wish to submit the following written ststement as testimony against S 310, now pending in your Committee. All the American citizens living in Hawaii who are opposed to this legislation are without representation in the Congress because all four of our U.S. Congressmen and Senators and our Governor are proselityzing for its passage , and we have no recourse but to express our opposition directly to you. Also, millions of dollars of State and Federal funds have been spent for the most expensive lobbyists and attorneys and travel expenses to promote this Bill, but not a single cent has been allotted to support the arguments against this Bill. All expenses of opponents of this Bill, including the undersigned, have been paid for individually and personally.

I am a third generation American of Japanese ancestry. Both of my grandfathers came to Hawaii to work on the sugar plantations at the invitation of Hawaiian King Kalakaua at a time when there were not enough native men who were able or willing to do the work to support the economy of the Kingdom. I am an attorney, former Deputy Attorney General of the Territory of Hawaii, elected Representative in the First Hawaii State Legislature, and also a former United States Attorney for the State of Hawaii. My father served in the United States Army in World War One, and I served in the Army in World War Two as a Japanese language translator and Interpreter. My family has now lived continuously for five generations and 122 years. I believe I have sufficient personal and legal knowledge and experience to testify against this Bill.

This Bill proposes to create a new Hawaiian nation and government, whose citizens would be restricted to persons whose ancestry includes any amount, however small, of blood quantum of natives who lived in the Hawaiian Islands before their discovery by English Captain James Cook in 1778. This is beyond any serious debate an attempt to create a race-based nation and government.

First, a compelling argument against this Bill is one of simple history. Throughout the history of the Hawaiian Kingdom, there was never any Constitutional or statutory restriction of Hawaiian citizenship to persons of the Hawaiian race. This is a historical fact which the backers of S 310 will not publicly acknowledge, but cannot truthfully deny. To create a new Hawaiian nation whose citizenship is based on race, where no racial restriction existed in the preceding Hawaiian Kingdom is simply a political attempt to disregard history and create an unacceptable racial discrimination and segregation in an American State, where the U.S. Constitution and laws against racial discrimination must remain paramount.

Hawaii is the most racially and culturally diverse and integrated State of our nation. From the time of its discovery, the Hawaiian Kingdom allowed the free immigration of people of all races and all nations. The population of Hawaii now includes the descendants of people who came here from the United States,

England, Scotland, Ireland, France, Germany, Sweden, Russia, Spain, Portugal, Australia, New Zealand, China, Japan, Korea, the Philippines, Porto Rico, other Pacif Islands, and more recently Vietnam and Thailand, and the progeny of all the mixed marriages of all of these racial and ethnic groups. The Hawaiians may be the most racially mixed group in Hawaii because they have been here the longest with the most opportunities to marry people of other races. The number of persons of pure Hawaiian ancestry is now less than one percent of the population, and therefore the very existence of a Hawaiian race can probably be challenged legally and scientifically. A notable example of the racial diversity in Hawaii is Barack Obama, who was born and went to school in Hawaii, and whose sister and grandmother still live here.

Second, this Bill would segregate the entire population of an American State by race, and result in severe and irreparable damage to existing race relations in Hawaii. The result on my own extended family will bw a true example. My grandparents, my parents, my wife, my children and my grandchildren were and are all Asian, and although we have lived in Hawaii continuously for 122 years, we have no Hawaiian blood. However, one of my father's sisters married a man who was one-half Hawaiian, and therefore my cousin was one-fourth Hawaiian. If this Bill becomes law, my cousin's children and descendants will be entitled to all the legal and economic benefits that will be given to Hawaiians, while my children and descendants will get nothing, simply because of an accident of birth, which is precisely why the Constitution and laws of the United States prohibit discrimination on the basis of race or color. Nobody in my family had anything to do with the overthrow of the Hawaiian Kingdom or the Annexation of Hawaii, and my cousin and I were both born long after Hawaii became an American Territory, yet this Bill will reward my cousin's children and descendants with benefits for "injuries" they never suffered, while my children and descendants will be punished for "crimes" they never committed, by denying them the same rewards.

It is extremely ironic that Senator Inouye is supporting this Bill. We both fought a foreign enemy overseas and against racial prejudice and discrimination in America, We both saw signs that said "Whites Only". If this Bill passes, we will see signs that will say "Hawaiians Only". It will mean racial prejudice and discrimination all over again, with a different color scheme, this time in favor of one minority and against all the other people of all other races who live in Hawaii.It will affect not only my extended family, but also every person who lives here.

Third, the proponents of this Bill argue that it does nothing more than recognize the existence of Hawaiians as an indigenous race of people, as we have done previously for native American and Alaskan tribes. This portrayal of S 310 is not correct. All of the Indian Reservations in the United States and Alaska are confined geographically to discrete, defined areas of a State. This Bill proposes to create a new Hawaiian nation with the exact boundaries of the original Hawaiian Kingdom, i.e. the entire State of Hawaii. As a corollary, consider creating an Indian Reservation covering the entire State of New York, including all five boroughs of New York City. It is both politically and legally impossible for two nations with separate Constitutions, laws and official languages to occupy the same land mass and the same sea and air space.

Fourth, the underlying, and unexpressed, purpose of this Bill is to circumvent and eliminate judicial scrutiny of existing and future Federal and State programs which are designated by race only for Hawaiians. By creating a new Hawaiian nation, and a pseudo-diplomatic relationship with the United States, this Bill would

secure continued future grants of Federal and State lands and money for the exclusive use and benefit of one race of people to the exclusion of all other people living in Hawaii by characterizing all the programs as a form of foreign aid. The largest private landowners in Hawaii are native land trusts, and not American companies. The biggest of these organizations is the Kamehameha Schools Trust, which has a present value of over six billion dollars and an annual tax free income of several hundred million dollars. One of the results of the passage of S 310 will be to allow all racially designated programs like the Kamehameha Schools to avoid all American restrictions by transferring the assets and programs to the exclusive jurisdiction of the Hawaiian nation.

There are other, serious legal questions implicit in this Bill, which have had little or no consideration and discussion: 1) Does the Congress have any power or authority to create a foreign nation with the same boundaries as a State, and cede Federal and State lands and make monetary gifts to that nation; 2) What forum will decide the multitude of legal and practical problems which will immediately arise from dual citizenship, conflicts of laws, privileges and immunities; 3) Can the Congress surrender or modify the exclusive jurisdiction of the United States over the sea and airspace surrounding the entire State of Hawaii; 4) If S 310 becomes law, can the Hawaiian nation treat it as an international treaty, beyond the authority of the Congress to make unilateral amendments later; 5) Can the Hawaiian nation appeal the decision of any U.S. forum to the United Nations; 6) Can the Hawaiian nation become a member of the United Nations as a new emerging nation.

Despite the inspired hyperbole of the supporters of this Bill, Hawaiians are not an oppressed and victimized race and this State is not a third-world colony. Since the time of the Hawaiian Kingdom, Territory and State, Hawaiians have succeeded professionally, politically and economically. The sponsor of S 310 is Senator Akaka, a Hawaiian U.S. Senator. There have been thousands of Hawaiian doctors, lawyers, politicians, judges, professors, teachers, Olympic medalists, NFL football players, Grand Champion Sumo Wrestlers, singers, dancers, musicians and other professionals. There have been Territorial and State Governors, Mayors, a former Chief Justice and several Associate Justices of the Appellate and Supreme Courts of Hawaii who have been Hawaiians. The present Lieutenant Governor of the State is a Hawaiian. The Hawaiian language, history and culture are thriving and being taught in public and private schools and the University of Hawaii and in no danger of being lost or extinguished.

Nothing good has ever come out of a race-based nation. The worst examples were the Aryan nation of Nazi Germany and the Yamato nation of imperialist Japan. Pride of race can be constructive in the preservation of the language, history and culture of Hawaiians. Arrogance of race in the form of a race-based Hawaiian nation will divide and destroy all the Aloha and interracial harmony that has made Hawaii a special place up to now. If S 310 succeeds in creating a race-based nation with racial segregation and discrimination where none existed before, it will be a social and political disaster for Hawaii and the United States. It will officially create and support a form of Apartheid in America, while we continue to denounce racism publicly. It will also approve the partition of a State and the creation of a foreign nation within the borders of the United States, in violation of the Constitutional plan of a single nation composed of sovereign states.

Americans have big hearts and Congress has deep pockets and will no doubt continue to make appropriarions for the benefit of Hawaiians. The problem has been caused by the designation of the beneficiaries by race. This problem can be avoided by designating the beneficiaries to be the descendants of all persons who were living in Hawaii on January 17, 1893, the date of the overthrow of the Hawaiian Kingdom, but with strict limitations of income and property ownership. If, as the Hawaiians claim, they are at the bottom of the economic scale, most, if not all of the benefits will go to them. On the other hand, persons like me, who had ancestors living here during the days of the Kingdom, but who do not need any assistance, would not qualify for any benefits.

As you know, the Hawaiians are not the only minority that want their own nation. There are millions of Hispanic persons living in California, Arizona, New Mexico, Texas, Nevada, Utah and Colorado who claim their lands were stolen from their ancestors by America. This is the same argument made by the Hawaiians in their demand for "sovereignty". What argument can you devise to allow the creation of a Hawaiian Nation, but deny the creation of a Hispanic nation?

S 310 is not a Bill for collegiate back-scratching. It has dead-serious implications for the historical American Union of One Nation, Under God, indivisible, with Liberty and Justice for all. It calls for a clear-headed defeat in the United States Senate.

Robert K. Tukuda

Aloha to the Senate Select Committee on Indian Affairs

I understand that one issue under consideration
is: How would passing S.310 (The Akaka bill) affect potential claims by other so-called "indigenous" groups, especially in the Southwestern states?

On May 15 I published an article in "Insight Magazine" at http://tinyurl.com/23xo6p

Here's a paragraph from that article.

The Akaka bill to create a phony Indian tribe for ethnic Hawaiians threatens all America because it is based on a new theory of the U.S. Constitution which would encourage and accelerate the racial balkanization of our nation. The theory is that the Indian Commerce Clause authorizes Congress to single out any ethnic group (especially if they are "indigenous") and give them group rights similar to an Indian tribe, even if the group has never functioned as a tribe and even if its members are widely scattered and thoroughly assimilated into the general population. If that theory applies to ethnic groups in general, the Amish could seek tribal status, along with Louisiana Cajuns; and perhaps a Nation of New Africa for all of America's blacks. If the theory is restricted to so-called "indigenous"
people whose ancestral lands were engulfed by the United States, then America's people of Mexican ancestry (most of whom have a drop of Aztec or Mayan blood) could demand the right for MEChA to form a Nation of Aztlan controlling those parts of America which formerly belonged to Mexico.

As you know, there is great concern today about illegal immigration from Mexico, and concerns about a possible "reconquista" of former Mexican territories through influx of immigrants whose loyalties are to Mexico. All political leaders who are worried about that must then also be worried about the impact S.310 would have on providing a legal rationale that would empower those seeking federal recognition of a Nation of Aztlan.

Here's a longer comparison between Aztlan and Hawaii, taken from my very large webpage

"Hawaiian Nationalism, Chicano Nationalism, Black Nationalism, Indian Tribes, and Reparations -- Akaka Bill Sets a Precedent for the Balkanization of America"

at http://tinyurl.com/72214

A VIEW OF HISTORY SHARED BY HAWAIIAN AND CHICANO ACTIVISTS

The following three paragraphs may sound to people in the Southwestern U.S. like the viewpoint of MEChA or Nation of Aztlan; and they may sound to people of Hawai'i like the viewpoint of Hawaiian sovereignty activists. Actually these are the views of both groups, and are similar to the views of other ethnic nationalist movements in America.

The activists claim to be indigenous to a certain area because they have at least one ancestor who lived somewhere in that area (in a range of hundreds of miles) prior to Western contact.
Although someone's percentage of native blood may be very small, he nevertheless claims to be an aboriginal, indigenous, native person of that area.

The history of that area following Western contact goes something like this: Natives suffer extreme population decline (some call it

genocide) because of newly introduced Western diseases. Gradually white people of European and American ancestry arrive in increasing numbers, and "impose" their culture, religion, language, legal system, money economy, and private property ownership, "forcing" the native people to assimilate to this strange new way of life. The white people bring in other non-natives, from Asia and Africa, as laborers. Eventually white people end up owning most of the property and running most of the government. Other non-white immigrants also get well-established. Natives end up at the bottom of society. At some point the U.S. stages an armed invasion to support a total takeover by the white oligarchy. After a few years or a few decades the area is officially annexed by the United States and sooner or later becomes a state.

But in recent years a growing awareness of historical heritage produces special pride in people who have any degree of native ancestry.
Some people of native ancestry choose to identify more closely with their native ancestors than with their other ancestors, even when their native blood quantum is very small. An activist's pride in his native ancestry is accompanied by anger at historical injustices committed by his own white, Asian, or African ancestors against his native ancestors. The newly self-proclaimed indigenous people demand the right to self-determination, nationhood, and reparations from the United States for the "crimes" committed against them more than a century ago.

Ethnic Hawaiian activists might think the above three paragraphs describe themselves. But no.
Those paragraphs describe people who have at least one ancestor of Mexican-Indian blood. The area where they live is not the State of Hawai'i, but rather the States of California, Arizona, New Mexico, and Texas; and perhaps parts of other nearby states. As anyone who has studied American history knows, the lands of those states were formerly part of Mexico, and were obtained as a result of military conquest in a war with Mexico, or through treaty or purchase. And before the Spanish conquest and creation of Mexico those lands belonged to the indigenous people who lived there (especially the Aztecs), and whose descendants still live there today.
The immigrants who came and took over the land, and the newer immigrants who came since then, freely chose to come (except for African slaves dragged there by their owners), and freely chose their new nationality as Americans. But the surviving "natives" of today never chose to be invaded or engulfed by a foreign culture or nation. Some radicals among them say they owe no allegiance to the United States, and they assert "indigenous rights" under "international law" to self-governance and independence.

** There's a LOT MORE information about MEChA immediately following the above-copied paragraphs.

Thank you for taking my views into consideration.

Ken Conklin

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Mark Bennett holds the title of Attorney General of the State of Hawaii. He is supposed to represent ALL the people of Hawaii. Shame on him for supporting S.310, the Akaka bill, whose purpose is to divide the people, land, and resources of Hawaii between those who have native blood and those who do not. Shame on him for proposing to violate the civil rights of all who lack native ancestry and the civil rights of those with native blood who refuse to join the Akaka tribe. His testimony for the May 3 hearing of the Senate Indian Affairs Committee is an abomination. (Hawaii Reporter, May 1, 2007
http://tinyurl.com/yqsypr)

The Akaka bill explicitly calls for negotiations among the Native Hawaiian Governing Entity (tribal council) and the state and federal governments to see who will get which pieces of a shattered State of Hawaii. The negotiated agreement is not required to be ratified by either the members of the tribe nor by the citizens of Hawaii. Our legislature has been outrageously generous already in handing over enormous resources to OHA, DHHL, etc. Does anyone imagine they will have any backbone in defending the rights of non-natives?

So here's what happens. Those who join the tribe continue to be citizens of the state. Thus 20% of our population can participate on both sides of the negotiations. For example, state Senator Clayton Hee, formerly Chairman of OHA, can use his right hand (citizen of Hawaii) to take land and money from the state, and give it to his left hand (tribal member) on behalf of the tribe.
Talk about conflict of interest!

Members of the tribe get all the benefits of the tribe AND all the benefits of the leftover state, while non-members get only the benefits of the leftover state. Thereby we have tribal members as first-class citizens while everyone else is merely a second-class citizen. This sets up a hereditary elite, violating the Constitution's prohibition against titles of nobility. Those people who have a drop of native blood but who reject racism make the very honorable choice not to join the tribe -- a decision which causes them and their descendants to lose the first-class status to which the Akaka bill entitles them.
This is political extortion -- either join the tribe or lose your benefits!

Mr. Bennett spent a lot of his testimony to claim that the Akaka bill is not unconstitutional.
Clearly he's worried about it. I'm not a lawyer, but I can see what's going on.

The Akaka bill is not a simple recognition of an Indian tribe. This is the creation of a brand new fake tribe out of thin air, where no tribe has ever existed before. Bennett says the Akaka bill would simply put Native Hawaiians on a par with Native Americans and Native Alaskans. But he fails to mention that neither "Native Americans" nor "Native Alaskans" are federally recognized. Recognition goes to about 562 individual tribes, each with their own separate and distinct membership rolls, tribal councils, and set of laws. "Indians" are not recognized as a racial group -- most Indians do not belong to any tribe and would not be eligible to join one.
"Native Hawaiians" would be the only racial group to be recognized in its entirety, as one single entity. At more than 401,000 members (7 years ago in Census 2000) it would be America's largest "tribe."

Bennett cites legal decisions upholding the right of Congress to re-recognize a tribe which was previously de-recognized (terminated). He seems to say that the overthrow of the monarchy was the termination of the Native Hawaiian tribe which the Akaka bill would now re-recognize.

But the "tribe" which was the Kingdom of Hawaii was multiracial. All persons born in Hawaii or naturalized into the Kingdom were subjects (citizens). By the time of the revolution in
1893 only 40% of the population had any native blood.

Bennett dismisses this inconvenient truth by saying that the generosity of the Native Hawaiians in welcoming non-natives should not now be held against them to deny federal recognition to a racially exclusionary group. But it wasn't merely generosity by natives to newcomers. It was equity. It was an exchange of full equality in return for expertise and financial investment.
The Kingdom was built with the help of
Caucasians, and included Caucasians as cabinet members and legislators (both apponted and elected). Tens of thousands of Asian laborers contributed sweat-equity and some also became Kingdom subjects. There were non-natives among the King's closest advisers and governing officials from before the Kingdom was unified in 1810 right up until the revolution of 1893.
Kamehameha The Great appointed Englishman John Young to be Governor of his home Hawaii Island.

In recent years there have been struggles within the Seminole and Cherokee tribes regarding the status of the Freedmen. There were black slaves owned by tribes, who later became free. The Freedmen were full members of those tribes, with voting rights and financial benefits. Just a few weeks ago there were court hearings over the Cherokees' expulsion of 2800 Freedmen descendants
-- black people expelled by vote of the tribe because they lack Cherokee native blood. The Cherokee, and Seminoles, probably do not have the legal right to expel them. Mr. Bennett's careless dismissal of non-native rights to belong to an Akaka tribe puts him in the position of expelling the non-natives even before the extinguished tribe has been re-recognized and given a chance to exercise self-determination.

The Akaka bill actually relies on a whole new theory of the Constitution, which goes like this.
Congress has the power to single out any group of so-called "indigenous people" whose lands have been engulfed by the United States, and create a tribe for them even though they were never organized as a tribe. Just think how many hundeds or even thousands of brand new Indian tribes will spring forth as millions of people with a bit of Indian ancestry who are not now eligible to join any tribe decide to band together and invent one. Just think about people with a drop of Mexican ancestry ("indigenous"
because of Aztec or Mayan blood) living in those states which were formerly part of Mexico, deciding to come together and create a Nation of Aztlan (the organization MEChA is already pursuing that effort). That's the Pandora's box whose lid Mr. Bennett seems eager to open.

Two books are recommended, which focus directly on this issue of the balkanization of America in general and Hawaii in particular:

Elaine Willman, "Going to Pieces: The Dismantling of the United States of America." (privately published, 2006, Equilocus, P.O. 1280, Toppenish, WA 98948). The Citizens Equal Rights Alliance has its website at http://www.citizensalliance.org/ To obtain a copy of Willman's book go to
http://tinyurl.com/38och8

Kenneth Conklin, "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State" (print-on-demand, E-Book Time, March 1, 2007). Detailed table of contents and entire Chapter 1 "The Gathering Storm" free at http://tinyurl.com/2a9fqa or order book direct from publisher at http://tinyurl.com/3yhjp7

Testimony of Chief Maui Loa, submitted May 2, 2007 via email to Senate Indian Affairs Committee regarding the so-called Akaka bill of Senator Inouye, Kamehameha Schools and the state of Hawaii Office of Hawaiian Affairs through Senator Akaka.

The Akaka bill is the latest in a bizarre, arrogant and utterly unnecessary scheme on the part of Senator Inouye to subvert perfectly good existing U.S. Indian Land Doctrine, policy and law by subrogating it through eliminating already recognized native Hawaiians (since 1921) by replacing us with state Democratic party bureaucratic hacks who are what we call "toenail Hawaiians": descendents of Asian immigrants to Hawaii during Plantation days who are living a pipe dream.

They are only "qualified" based upon their loyalty to the Democratic Party programs agenda and based on their loyalty to the Indian Missionary School, Kamehameha Schools, and based on having been included in the pals of Dan Inouye: they believe in the fiction that Hawaiian kingdom law is superior to U.S. Indian Land Doctrine, policy and law.

These are the same crooks and liars who are as we speak using color of law to alienate the little specks of land we managed to hold on to (including my own land) all these decades in the absence of strong enforcement of existing U.S. Indian Land Doctrine, policy and law because the Democratic Party ruled Hawaii and congress both up to the Newt Gingrich revolution.

The testimony of AG Mark Bennett is proof of the scheme. Notice how it switches from using the term capital "N" Native Hawaiian when discussing those who would *become* "Indians" to the legally correct term small "n" native Hawaiian when discussing us: those who already Indians because the U.S. recognized us

in 1921? The state is cleverly trying to create a more powerful second tribe, one made up of state law and kingdom law loyalists to counteract us and to obstruct the United States support of a federal law tribe.

Mark Bennett's testimony is incorrect when he describes my people as being "terminated". The Dawes Act policy of termination through land ownership was never carried out in Hawaii. The Ninth Circuit court of Appeals already ruled that the Indian Reorganization Act is not necessary in Hawaii since we were not terminated and since we still occupy trust land.

The only difference between us and everyone else is that the state interposed itself between the U.S. and us so it could protect the detritus of the Kingdom and the rest of the Asian American citizens of the state from any opposition to continuing to steal our land from under us using local law in gross violation of the Indian Non Intercourse Acts.

Note what the Ninth Circuit court of appeals said about us, the Hou Hawaiians, the tribe I have the honor to lead:

"There is also the question of whether native Hawaiians constitute one large tribe, perhaps retaining some form of internal governance by the Office of Hawaiian Affairs or the Hawaiian Homes Commission, or whether there are, in fact, several different tribal groups, such as the Hou Hawaiians. (See Price v Hawaii, 764 F2ds 623 (9th Cir. 1985); see generally Stuart, 106 Yale L.J. at 580-081." (The other two entities named are both state agencies).

Senator Dorgan has agreed with the Attorney General of the United States and the Secretary of the Department of Interior that the way to preclude further

exploitation by opportunists, including those behind this extremely ridiculous Akaka bill, is via bi-partisan legislation designed to comprehensively eliminate the kinds of ambiguity in legislative language and the kind of self-serving deceptive ignorance involved in the Akaka bill on the part of its supporters in their letter to Senator Dorgan of March 1, 2007 "The legislation strongly supports a comprehensive legislative package designed to strengthen the partnership between the Federal government and American Indians by moving from a litigation-oriented relationship to one of economic prosperity, empowerment and self reliance for tribes and individual Indians".

The Hou Hawaiians tribal band encourages the committee to defer supporting this aberration of a bill and instead support the comprehensive approach that is in the pipeline.

Otherwise, we are perfectly content to continue spending all our money and all our time legally battling those who seek to use you to destroy our birthright by substituting themselves for us so they can continue to steal our land using color of local law and continue to steal the funds congress meant for us alone.

This committee's time and effort would be better spent in the cause of cleaning up Indian Affairs as follow up to the Jack Abramoff case by investigating the schemes of Senator Inouye and Henry Guigni involving Patricia Zell on the inside and Patricia Zell's husband on the outside and Skip Hayward et al.

Maui Loa, Chief Hou Band of native Hawaiian Indians of Hawaii; President, Sovereign Nation of Hawaii™

Dear committee members:

There is concern in this community that there has not been a single study done about the negative social/economic impacts that the Akaka bill could have on the native Hawaiian community, and the spillover effects that an adverse outcome could have on the non-native Hawaiian majority in the State of Hawaii.

The proponents of this legislation have not put forth a position paper that outlines the advantages that the Akaka bill would have for native Hawaiians, yet this issue is vitally important to our small community. My concern is that the advantages both social and economic are not readily apparent, but the disadvantages are all too obvious, and should certainly be addressed. Here are some of the concerns that come readily to mind.

- The administration and certain segments of Congress have expressed concerns about the constitutionality of this legislation. In view of these concerns, is there a possibility that the bill could be delayed by legal challenges that address the question of constitutionality? And could these challenges delay implementation indefinitely while they are being resolved?
- The legislation prevents the Hawaiian nation from introducing any forms of legalized gambling, which is providing the mainstay of revenues for the American Indian tribes. Where then will the new sovereign nation of Hawaii generate the revenues needed to run the nation and care for its citizens? Will it by necessity compete with State of Hawaii businesses by offering tax-free goods and services free of federal and state taxes? Will it be permitted to allow nonunion foreign nationals to produce goods and provide services at lower cost to compete with businesses located in the United States?
- What will be the economic impact on the state of Hawaii of having 50% of its land and the revenues generated by these lands transferred to the Hawaiian nation? Could this have an adverse impact on the Hawaii economy, and if so, how severe will it be?
- What will the impact the on non-Hawaiian spouses, adopted children, and non-Hawaiian in-laws, of being denied citizenship in the new Hawaiian nation because of their race?
- One of the major reasons for given for introducing the Akaka bill was to protect Hawaiian racial entitlements, which appeared to be jeopardized by the Supreme Court decision, Rice versus Caetano. Will this create a permanent underclass of native Hawaiians, who will be entitled to welfare assistance based on their race, even when their Hawaiian blood quantum has diminished to almost nothing? If welfere dependence is not good for non-Hawaiians of every race, how could it possibly be good for Hawaiians?
- Is there reason to be concerned that the Akaka bill could have severe social and economic consequences for the non-Hawaiians living in a significant smaller State of Hawaii? And if the creation of the new Hawaiian nation harms the economy of the State of Hawaii, is there a possibility that this could generate racial discord and animosity in a state that has always been a symbol for racial harmony and cooperation?

The people of Hawaii deserve answers to these and a host of other questions. Before this legislation passes, Congress should determine the benefits and shortcomings of this legislation by initiating extensive and exhaustive economic and social analysis to guarantee that creating a sovereign nation of native Hawaiians does not adversely impact the economic and social structure of the State of Hawaii, which will be home to Hawaiians and non-Hawaiians for generations to come.

Mahalo and aloha for your consideration, James Growney, US citizen and native Hawaiian

Aloha, and thank you for keeping the record open for further testimony on the Akaka Bill (S.310).

Much of the difficulty with this bill and its supporters is that they are starting from false premises. In his opening statement, Senator Dorgan wrote:

"It allows for the Native Hawaiian people to once again have an opportunity at self-governance and self-determination."

Contrary to Senator Dorgan's implication, the Native Hawaiian people have both self-governance and self-determination this very moment, only not as a separate racial group. Also contrary to Senator Dorgan's implication, **there has never been any race-based government in the entire history of the Hawaiian islands, including before western contact in 1778, and in fact, the Hawaiian Kingdom's first constitution explicitly declared all people "of one blood", and maintained itself without reference to race.**

Senator Dorgan continues, stating:

"They were here long before my ancestors showed up. They had their own governments and provided for the general welfare of their people."

If Senator Dorgan will accept that the Hawaiian Kingdom was a government that "provided for the general welfare" of native Hawaiians, he should also respect that that government was not race-based. Although until 1893 the head of state had been native Hawaiian, the government **did not have any racial qualifications** for the office of the monarch, nor any of the offices of government. Had Bernice Pauahi Bishop accepted the monarchy from Lunalilo, her husband, Charles Reed Bishop, born in New York, could have ascended to the throne.

Simply put, we should respect the fact that the Hawaiian Kingdom was a legitimate and independent nation that was not race-based, and was not solely for native Hawaiians. To undo the civil rights afforded to people of all races in the Hawaiian Kingdom, and create a solely race-based entity for the first time in Hawaiian history, is misguided, misinformed, and wrong.

Senator Dorgan establishes some of his false premises:

1) Before any Americans settled on the Hawaiian islands, there existed a sovereign Native Hawaiian government.

False. Prior to 1778, there was no singluar native Hawaiian government - warring chiefdoms existed up till 1810, when Kauai finally surrendered to Kamehameha the Great. Not to mention that the unification of the Hawaiian islands was aided, abetted, and guided by non-native Hawaiians such as John Young. If we were to restore the government to before western contact, we should be restoring the original

chiefdoms, not the unified government created by the cooperation between natives and non-natives.

2) The United States recognized this sovereign Native nation, and negotiated 4 treaties with it.

Again false. The sovereign nation which the United States had treaties with, the Hawaiian Kingdom, was not a "Native nation". It was a multi-racial and multi-cultural nation that afforded equal rights to all of its citizens, regardless of ancestry. The Akaka Bill promises to undo the equality that existed in the nation we had treaties with.

3) Once non-natives began settling in Hawaii, the Native Hawaiian government allowed them representation in the government.

False. **The Kingdom of Hawaii government** allowed them representation - there was no "Native Hawaiian" government of any sort. From the very beginning of unification, John Young, the "white ali'i", was part of the government, and he was distinctly non-native.

4) But the non-natives wanted control of the Hawaiian government.

This is so terribly misleading it must be considered false - there were non-natives who wanted control of the Hawaiian government, but these included both Reform Party members interested in annexation with the United States as well as royalists interested in perpetuating a corrupt monarchy. Walter Murray Gibson was famously the "minister of everything", and worked his way into power by appealing to racial demagoguery with the support and friendship of King Kalakaua. Claus Spreckels, aka "King Spreckels", was a non-native who held King Kalakaua in deep debt, and used his influence to line his pockets a great deal. Queen Liliuokalani had a personal psychic of german descent who pushed her to support an ill-fated lottery bill that helped bring about her downfall.

To assert that somehow non-natives were vying for control of the government against natives is a blurred reading of history. Both royalist and annexationist parties had native and non-native supporters - frankly, the vast majority of commoners in the islands had little to do with the machinations of power by the elites. It wasn't until becoming a Territory of the United States, in 1900, that the franchise of voting was made without property requirements, and at that point more native Hawaiians than ever had "self-determination" and "self-governance". Before then, government was in the hands of the elites, be they native or non-native or mixed.

5) In 1893, the United States Minister utilized American soldiers to assist non-native revolutionaries in overthrowing the Native Hawaiian government.

False. If anything Minister Stevens simply refused to support Liliuokalani's government in a moment of constitutional crisis.

Liliuokalani had hand-picked a cabinet and forced through a controversial lottery bill and opium bill just before the 1893 Hawaiian Revolution. When she approached her cabinet with plans to abrogate the constitution she had sworn an oath to, they balked. She raged at them, and fearing for their lives, they approached their political enemies in the Reform Party. Once that was set in motion, her government was effectively over. The fact that Minister Stevens ordered troops landed to protect American lives and property, under strict orders of neutrality, may have depressed royalist morale, but it was a far cry from direct assistance.

6) Although President Grover Cleveland urged Congress to restore the Native Hawaiian Queen to power, the Senate Foreign Relations Committee ratified the actions of the non-native revolutionaries. The

Senate justified its ratification by describing the Native Hawaiian government as a domestic dependent nation, the same description given by the United States Supreme Court to Indian tribes in 1831.

Senator Dorgan is completely mistaken here - not once in the Morgan Report is the Kingdom of Hawaii described as a "domestic dependent nation". From the Morgan Report, p380-381:

"The independence of Hawaii as a sovereign State had been long recognized by the United States, *and this unhappy occasion did not suggest the need of renewing that declaration. The question presented in Honolulu on and after the 12th of January, 1893, was whether the Queen continued to be the executive head of the Government of Hawaii. That was a question of fact which her conduct and that of her people placed in perilous doubt until it was decided by the proclamation of a new executive. Pending that question there was no responsible executive government in Hawaii. On the 17th of January that doubt was resolved to the satisfaction of the American minister, and of all other representatives of foreign governments in Hawaii, in favor of the Provisional Government. This recognition did not give to the Government of Hawaii the legal or moral right to expel the troops of any government, stationed in Honolulu in the period of interregnum, until it had so firmly established its authority as to give to foreigners the security to provide for which these troops had been landed. Good faith and an honest respect for the rights of friendly nations would certainly require the withdrawal of all further interference with the domestic affairs of Hawaii as soon as that government had provided security that was reasonably sufficient for the protection of the citizens of the United States. But the Government of the United States had the right to keep its troops in Honolulu until these conditions were performed, and the Government of Hawaii could certainly acquiesce in such a policy without endangering its independence or detracting from its dignity. "*

The closest wording Senator Dorgan may be citing is on page 383-384:

"We have always exerted the privilege of interference in the domestic policy of Hawaii to a degree that would not be justified, under our view of the international law, in reference to the affairs of Canada, Cuba, or Mexico.

The cause of this departure from our general course of diplomatic conduct is the recognized fact that Hawaii has been all the time under a virtual suzerainty of the United States, which is, by an apt and familiar definition, a paramount authority, not in any actual sense an actual sovereignty, but a de facto supremacy over the country. *This sense of paramount authority, of supremacy, with the right to intervene in the affairs of Hawaii, has never been lost sight of by the United States to this day, and it is conspicously manifest in the correspondence of Mr. Willis with Mr. Dole, which is set forth in the evidence which accompanies this report.*

Another fact of importance in considering the conduct of our diplomatic and naval officers during the revolution of January, 1893, is that ***the annexation of Hawaii to the United States has been the subject of careful study and almost constant contemplation among Hawaiians and their kings since the beginning of the reign of Kamehameha I.*** *This has always been regarded by the ruling power in Hawaii as a coveted and secure retreat—a sort of house of refuge—whenever the exigencies of fate might compel Hawaii to make her choice between home rule and foreign domination, either in the form of a protectorate, or of submission to some foreign sovereign."*

Asserting that our de facto supremacy over the country made it a "dependent domestic nation" is clearly a stretch. In fact, the Morgan Report states on page 382:

"The United States has assumed and deliberately maintained toward Hawaii a relation which is entirely exceptional, and ***has no parallel in our dealings with any other people."***

Let me repeat that once more:

"HAS NO PARALLEL IN OUR DEALINGS WITH ANY OTHER PEOPLE."

One must assume that this includes Indian nations.

Senator Dorgan also fails to acknowledge that after being given the evidence of the congressional investigation completed by the Senate Foreign Relations Committee (http://morganreport.org), President Cleveland reversed his stance, and acknowledged both the Provisional Government and the Republic of Hawaii as the legitimate governments of the Hawaiian nation.

Attorney General Mark J. Bennett also relies on several false premises. Mr. Bennett states:

"Native Hawaiians are not asking for privileged treatment--they are simply asking to be treated the same way all other native indigenous Americans are treated in this country."

In fact, "native indigenous Americans" are not guaranteed tribal membership by the mere fact of their ancestry. The Bureau of Indian Affairs requires the satisfaction of 7 criteria before recognizing a tribe, none of which are present in the Akaka Bill. They are:

83.7a - The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900.
83.7b - A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times to the present.
83.7c - The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.
83.7d - A copy of the group's present governing documents including its membership criteria.
83.7e - The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.
83.7f - The membership of the petitioning group is composed primarily of persons who are not members of an acknowledged North American Indian tribe.
83.7g - Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship.

Far from asking for the same treatment, the Akaka Bill specifically avoids treating native Hawaiians the same way other "native indigenous Americans" are treated.

Mr. Bennett also states incorrectly:

"Native Hawaiians are not only indigenous, but also share with other Native Americans a similar history of dispossession, cultural disruption, and loss of full self-determination"

Hawaii had no Trail of Tears. Hawaii had no smallpox blankets, and no Little Bighorn, and no wagon trains of settlers moving in and taking territory.

The "cultural disruption" referred to was a choice of the native Hawaiians - their queen Kaahumanu, was the one who abolished the old religion and embraced the christian missionaries who visited in 1820. The adaptation of the native Hawaiian people to western ideas, values, government and technology was a voluntary disruption, and one of the greatest points of pride for the Hawaiian people.

Mr. Bennett's final abandonment of logic and reason happens when he states:

"Finally, some opponents of the bill contend that because the government of the Kingdom of Hawaii was itself not racially exclusive, that it would be inappropriate to recognize a governing entity limited to Native Hawaiians. This objection is absurd. The fact that Native Hawaiians over one hundred years ago, whether by choice or coercion, maintained a government that was open to participation by non-Hawaiians, should not deprive Native Hawaiians today of the recognition they deserve."

Apparently, according to Mr. Bennett, the integration of civil rights in a government is not something we should be worried about undoing. Perhaps he could also argue that the fact that white Southerners, over one hundred years ago, whether by choice or coercion, maintained a government that was open to participation by non-whites, should not deprive these people of separate racial recognition as existed pre-Civil war.

The progression of civil rights simply should not be undone by the whim of legislators and the claims of victimhood by racial separatists. One could hardly imagine limiting the Akaka Bill to include only males of certain property requirements, as was the case during the Kingdom of Hawaii. One could hardly imagine limiting the Akaka Bill to include only those of royal blood. Why would anyone imagine it was a good idea to limit self-determination by race?

Why on earth do people somehow assume that a fully integrated population, such as part-native Hawaiians, should be considered as a distinct racial entity? Most part-native Hawaiians have more in common with other Portuguese, Japanese, Chinese, Filipino and Europeans than they do with other part-native Hawaiians. Yet somehow Mr. Bennett can see his way clearly to segregating people based on this fractional amount of blood into a separate racial group.

Haunani Apoliona also engages in perpetuating false premises. She states:

"Within a little over 20 years of annexation, the Native Hawaiian population had been decimated. Native Hawaiians had been wrenched from their traditional lands, compelled to abandon their agrarian and subsistence ways of life, forced into rat-infested tenement dwellings, and were dying in large numbers."

Examining the Native Hawaiians Study Commission Report of 1983, which has a table on page 69 "ETHNIC STOCK: 1900 TO 1960", shows the following native Hawaiian and part-native Hawaiian population numbers:

1900: 37,576
1910: 38,409
1920: 41,713

Far from being decimated, the native Hawaiian population grew by several thousand during the years following annexation. Under the rule of King Kalakaua, from 1884 to 1890 the native Hawaiian population went from 44,232 to 40,622, making it arguable that native Hawaiian prosperity and health was significantly increased due to annexation.

Furthermore, our first two Congressional representatives from the Territory of Hawaii were native Hawaiian (Robert Wilcox and Prince Kuhio) - far from being disenfranchised, native Hawaiians were the largest voting bloc in the islands for years after annexation due to the restrictions on Asian voting. They controlled the Territorial Legislature, and dominated the government for decades.

Far from being wrenched from traditional lands, or compelled to abandon subsistence living, native

Hawaiians actively participated in the transformation of Hawaii into an industrial society. Nobody compelled them to do anything, nor forced anyone into "rat-infested tenement dwellings" (as opposed to rat-infested grass huts). Apoliona's creative fiction is simply that - imagination.

Hawaii is my homeland, and my family has been there for over 100 years, before the fall of the monarchy. Much of my family has part-native Hawaiian blood, and much of my family does not. All of my family deserves to be treated equally.

Please, I implore you, do not support S.310. Its justification is based on false premises, sincerely believed but factually incorrect. Its implementation would divide my people by race, and grant special privileges to an extremely integrated and heterogeneous group. It serves to divide rather than unite, abandons the civil rights granted to all people in the Hawaiian Kingdom, and mistakenly places native Hawaiians into a box that does not apply to them.

The people of Hawaii, of all races, have lived together as one people since the unification of the islands in 1810. The people of Hawaii, of all races, have enjoyed more and more self-determination throughout the years, as we have transformed from a Kingdom to a Republic, to a Territory, to a State. The people of Hawaii, of all races, deserve to be treated equally, with aloha for all.

Mahalo (thank you) for your time and attention to this matter.

Sincerely,

Jere Krischel

I urge you to vote against S. 310, the Native Hawaiian Government Reorganization Act of 2007 (the Akaka Bill).

The bill has several serious flaws and raises Constitutional issues about racial preferences. It's passage would open the door to chaos in the state of Hawaii by imposing two distinctly different governing 'entities' – one State and one Native Hawaiian – divided along racial lines and with potentially different laws and tax structures. Besides creating racial tensions, the strong potential for claims against property would disrupt a currently healthy business climate and create uncertainty among the non-Native Hawaiian citizens of our state.

Passage of this bill will further encourage those Native Hawaiian groups who advocate full Hawaiian sovereignty. There is serious concern that a Native Hawaiian government will initiate secession from the United States, in direct contradiction of the referendum that approved Statehood by an overwhelming majority.

You are being told by Hawaii's Congressional delegation and by Hawaii's Governor that there is strong support in our state for this bill. That simply is not true. While there has been no published scientific polling on this issue, every straw poll and survey indicates very strong opposition to this bill in Hawaii, even among many Native Hawaiian groups. Our State government has carefully avoided public debate or public referenda on this subject so that claims of popular support cannot be refuted. I urge you to challenge Senator Akaka and Governor Lingle concerning their claims that this bill is supported by Hawaii's citizens.

Please kill this bill.

Robert R. Kessler
444 Nahua St., PH 09
Honolulu, HI 96815

Aloha, and thank you for permitting written testimony, via post or E mail, until May 17, 2007.

My name is Toby Kravet. Though born in Boston, Massachusetts, I have been a citizen of Hawaii for the last thirty-six years, over half of my life.

I am strongly opposed to S. 310, commonly referred to as the Akaka Bill.

I cannot understand, and nobody has explained, how a new, semi-autonomous, native Hawaiian government, with it's own laws, possibly exempt from federal and state taxes, and with a land base cobbled together from individual, disparate, parcels of land on the various islands, could logistically work without creating major social and economic upheaval in the State of Hawaii.

When I moved to Hawaii 1970, everyone, including Hawaiians, seemed pleased and proud to be Americans. Today, however, we have a very vocal and visible minority within the Hawaiian community regretting or denying American citizenship and the legality of Hawaii's annexation and statehood. Some of these activists, who frequently proselytize in meetings, newspapers and public access television, are among the prime movers within the sovereignty movement and see a semi-autonomous government, which would ultimately result from S. 310, as the crack in the door towards total independence. Once passed, these activists are, more than likely, going to be driving the negotiations with the state and federal government for transfer of land and other assets, and I fear that all reason and moderation, whether or not desired by our elected leaders (intended protectors), will go out the window.

Further, despite testimony to the contrary, the United States of America is not obligated to recognize native Hawaiians in a similar fashion to American Indian Tribes and native Alaskan townships or settlements. The early settlers found the American Indians already organized in ethnically homogeneous political units referred to as tribes and, today, maintains government to government relationships with these units. The United States similarly recognizes the ethnically homogeneous Alaskan native townships or settlements which it "inherited" when it purchased Alaska from Russia. In Hawaii, on the other hand, long before the 1898 annexation and 1893 overthrow; indeed, beginning with the unification of the islands under Kamehameha the Great in the late 1700s and early 1800s, the population had become ethnically diverse, and non Hawaiians, largely Caucasions, were present at all levels of government, elected and appointed. Hawaii had naturally and voluntarily evolved as a cosmopolitan community. The ethnically homogenous native Hawaiian government envisioned by S. 310 would not be a resurrection of the pre-annexation past but a creation of something that never existed.

Finally, if one of the major purposes of S. 310, (and I understand that this is the case) is to protect a large number of social and economic benefit programs that are in place exclusively for native Hawaiians but under under current legal challenge because of constitutional issues (targeted towards a group identified by ethnicity), there may be ways to deal with this that are far less radical than creating an entirely new, ethnically based government. First, let's see if these programs duplicate others which are already in place for citizens who meet certain demographic criteria regardless of ethnicity. If not, maybe the eligibility criteria for these native Hawaiian programs could be widened so that non Hawaiians could apply. I seem to remember a number of federal health and social welfare programs in the 1960s and 1970s which, although they seemed to inordinately benefit a particular racial group, were, in fact, targeted, legally, towards certain inner city areas (where many members of the group resided) because those areas met specific demographic criteria.

Thank you for your time and consideration of these points.

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TESTIMONY OF THE
NATIVE HAWAIIAN CHAMBER OF COMMERCE
ON

S.310

For the hearing of the U.S. Senate Committee on Indian Affairs, scheduled for May 3, 2007.

Aloha, Mr. Chair and members of the United States Senate Committee on Indian Affairs, aloha kākou;

I am H.K. Bruss Keppeler, Chair of the Government Relations Committee of the Native Hawaiian Chamber of Commerce.

Founded in 1974, the Native Hawaiian Chamber of Commerce (NHCC) strives to encourage and promote the interests of Native Hawaiians engaged in commerce, services and the professions. NHCC members participate in a variety of economic, social and public affairs.

Mission Statement – To strengthen Native Hawaiian business and professions by building on a foundation of relationships, resources, and Hawaiian values.

In keeping with our mission, NHCC: Provides opportunities for networking among members, the people of Hawai'i and those engaged in business and industry, serves as a means to organize the Hawaiian business community into a viable economic and social voice and provides the necessary facilities for members' educational advancement in subject areas relevant to business, industry and commerce.

The Native Hawaiian Chamber of Commerce is <u>in</u> <u>favor</u> of the passage of S.310.

The first point that needs to be emphasized is that the Bill will not cause the restoration of the former monarchical government of Hawai'i. It will simply facilitate the recognition of a governing entity of yet another domestic Native American nation. The justification for the passage of the bill must concentrate on the fairness and justice represented in finally recognizing the native people of Hawai'i; the only state whose natives have not so far been part of that process. That issue and the fully documented, dismal plight of the Hawaiian people must be presented in a manner that clearly supports passage of the bill.

Some of the opponents of the Bill contend that Hawaiians never had a "tribal" governance in the past and that our history as a people weakens our position under U.S. Indian law. In answer to that, we state the fact that we Hawaiians continue to have our culture, our heritage, our language, our beliefs about our gods and that it is those things that continue to bind us together as a people. We know, for instance that, under the influence of the Christian convert Queen Ka'ahumanu, King Kamehameha II overthrew the old religion, drove off the priests and decreed that the people would no longer worship any of the old gods. That, and the conversion of thousands of Hawaiians to Christianity, were supposed to wipe out every shred of the old religion and banish the old gods to oblivion. Why then do our chants and hula, to this very day, continue to extol the fame and fortune of gods such as Kū, Kāne, Kanaloa, Pete and Hi'iaka? They are still an integral part of our culture. Doubt the existence of Madame Pete, the goddess of volcanoes? We never do! Especially not when we are in her firery neighborhood.

Yes, our "tribal" governance was transformed to a Western style of monarchy, but what existed for thousands of years and lasted through the first part of the reign of Kamehameha III was a governance which was primitive, dictatorial and feudal. The kings made all the rules and the chiefs and warriors carried them out. It wasn't until the "Hawaiian Magna Carta" of 1839 and the first constitution in 1840, both decreed by Kamehameha III, that the transformation began. It was continued in 1848 to 1854 with the so-called "Great" Mahele under which, for the very first time, the king released his absolute control of all of the lands in the kingdom. Then, in less than forty years, the kingdom was gone.

What we are saying is that together the old form of governance and the living Hawaiian culture form the foundation for the Hawaiian nation which we seek to have recognized; not the later multi-racial and short-lived monarchical government. However, just as other recognized Native American nations have done, we intend to modernize our form of governance as we organize ourselves. We are sufficiently assimilated into Western thinking that we do not want to preserve the feudal system which existed before Western influence wrought its changes; but rather we wish to preserve those positive cultural aspects which still bind us together as a People while changing for the better those aspects which no longer serve us in a positive way in today's World.

However, we do intend to form a native government under the principles enunciated in the so-called "Indian Commerce Clause" of the U.S. Constitution and, before that, the Articles of Confederation of the American colonies. That's what S.310 would enable. It will enact provisions which will allow for the process to begin and lay the framework for the eventual recognition of the Native Hawaiian nation by the federal government under United States law.

Let us go forward with the historic and legal basis for the recognition of the Native Hawaiian Nation.

"The Founding Fathers" of the United States of American had only a very shallow understanding of the natives they had found on the Eastern seaboard which they had colonized. To their credit they understood that they had established certain political relationships with those natives in the form of treaties and other pacts.

What they could hardly have envisioned was the number and variety of the natives that future generations would encounter as settlement advanced Westward. How could they have known that their descendants would come upon natives as diverse as Navaho, Pueblo, Inuit or Hawaiian? Indeed, although they have been acknowledged to be a native people of Alaska, Eskimos are no more "Indian" than Hawaiians are.

In their compact late eighteenth century fledgling union made up of thirteen states, there were a handful of groups of natives that they called "tribes". The Founding Fathers assumed that all natives were organized in that manner. Even then, however, there were other forms of native governance . . . bands, villages, clans . . . and so forth. They lumped them all into the word "tribe". Time and time again that constitutional term "tribe" has been interpreted to include all forms of native governance.

Over the years, a procedure dubbed "federal recognition" (for lack of a better term) has been used to acknowledge the domestic sovereignty of these varied native peoples. There is only one state in the union in which its native people has not been so recognized. Its name is the State of Hawai'i.

Why has that been the case? Actually, it has been mainly due to the attitude of the Native Hawaiians themselves. We can remember when the founders and early members of what eventually became the Native Hawaiian Chamber of Commerce strongly objected to the inclusion of the word "native" in our name. Attitudes on that subject have drastically changed over the thirty-three years of our existence as a chamber of commerce.

Why do we ask you to support S.310?

As we said, the justification for the passage of the bill must concentrate on the fairness and justice represented in finally recognizing the native people of Hawai'i; the only state whose natives have not been so recognized, thus far. That issue and the fully documented, dismal plight of the Native Hawaiian people must be presented in a manner that clearly supports passage of the bill. The federal, state and private sector social programs presently helping Native Hawaiians must be preserved.

We could easily document the statistics concerning native Hawaiians and the sorrowful results they chronicle. These are the real reason for passage of the bill.

What's at stake? Social programs targeting these problems are in jeopardy as a result of suits pending in our federal courts which seek to dismantle them. The legal arguments made in the suits by their plaintiffs are very similar to arguments made in other states, as a national campaign to dismantle or water down affirmative action programs gains momentum. Just as we are finally gaining on solutions to these problems, the federal, state and private-sector programs addressing them are under full-on legal attack.

Please review the attached document entitled **The U.S. Constitution and Indian and Minority Law.** In short, it points out that programs benefiting the recognized native peoples of the United States are treated differently under the law than such programs aimed at benefiting racial minorities.

Mahalo nui loa for this opportunity to speak to you on this critical issue. We earnestly urge your support.

Mahalo a me ke aloha.

THE U.S. CONSTITUTION AND INDIAN AND MINORITY LAW

(Under the U.S. Constitution, federally recognized native entities have a unique status under the law and their members are not treated like members of minorities)

By H.K. Bruss Keppeler, Esq.

Art. I, Sec. 8

"The Congress shall have the Power . . . To regulate Commerce with foreign nations, and among the several States, and with the Indian tribes . . . ." June 21, 1788

Morton v. Mancari (1974): An employment preference for Indians upheld under the 14th Amendment by U.S. Supreme Court which applied the "rational basis"[1] test and said: Indians in tribes have "[a] unique status . . . th[is] preference is **political** rather than racial in nature."

Alaska Native Claims Act: Aleuts, Inuits and Eskimos are "Indians"; their regional corporations are "tribes". H.H.C. Act of 1920, Admission Act, federal acts adding Hawaiians to native programs and "Akaka Bill": Hawaiians same as "Indians". "Akaka Bill": "governing entity" same as "tribe".

[1] Program is o.k. if it's "rationally tied" to Congress' obligation to aid natives - especially in furthering self-government.

Art. II, Sec. 2

"The President . . . shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . . ." June 21, 1788

A number of treaties were entered into between the U.S. and various Indian tribes, nations or other entities.

Note: Federal recognition[2] can also be sought from the Secretary of the Interior without specific congressional action.
Ironies: (1) The 1898 Newlands Resolution - the "treaty" of annexation of the Hawaiian islands violated the U.S. Constitution (i.e., passed by simple majority not by the required two-thirds vote of the Senate) and (2) the present legal challenges of Hawaiian programs are based on arguments used in the 1960's civil rights cases to gain equality for Blacks and other minorities.

[2] There are presently 557 federally recognized native entities in the U.S.

14th Amend.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." July 9, 1868

City of Richmond v. J.A. Crosson Co. (1989) and *Adarand Constructors, Inc., v. Pena* (1995): Race-based minority programs are subject to "strict scrutiny" test and are legal only if they are "narrowly tailored to further a compelling government interest". *Arakaki v. State of Hawai'i* (2000): Law saying only Hawaiians can run in OHA trustee elections struck down. *Arakaki v. Cayetano* (2002), now called *Arakaki v. Lingle*: This suit seeks to invalidate DHHL, OHA and the section 5(f) provision naming "native Hawaiians", as "race-based" and unconstitutional under the 14th Amendment.

15th Amend.

"1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude. 2. The Congress shall have power to enforce this article by appropriate legislation." February 3, 1870

Civil rights cases and voting rights cases (1960s).

Rice v. Cayetano (2000): After saying: "If a non-Indian lacks a right to vote in tribal elections, it is for the reason that such elections are the internal affair of a quasi-sovereign" and "the OHA elections, by contrast, are the affair of the State . . . and they are elections to which the Fifteenth applies", U.S. Supreme Court invalidates Hawaiian-only OHA voter registration.

September 2006

National Congress of American Indians
Testimony
S. 310, Native Hawaiian Government Reorganization Act of 2007
May 3, 2007
Senate Committee on Indian Affairs

The National Congress of American Indians (NCAI), the nation's oldest and largest organization of tribal governments, strongly supports S. 310, the Native Hawaiian Government Reorganization Act of 2007. NCAI offered testimony concerning Native Hawaiian sovereignty before this Committee in 2000 and again in 2005. NCAI's strong support for federal reaffirmation of Native Hawaiian sovereignty and the creation of a process that will lead to self-determination and economic self-sufficiency for Native Hawaiian people has not changed.

Like all of our nation's indigenous peoples, Native Hawaiians lived on their homelands and governed their own affairs before the first European contact and until the overthrow in 1893. For many years, nations from all over the world, including the United States, recognized the government of the Native Hawaiians – the Kingdom of Hawai'i – as a sovereign political entity and a valued partner in commerce and trade through formal documents, including international treaties.

In 1893, in response to a report into the circumstances surrounding the overthrow of the Hawaiian monarchy, then President Grover Cleveland declared that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair." Since that time, however, Native Hawaiians have continued to suffer more than a century of injustice, including neglect and abuse of Native Hawaiian entitlements and civil rights, by the United States and its agent, the State of Hawaii.

In 1993, the federal government acknowledged the wrongdoing on its part in relations with the Native Hawaiian people when Congress passed the Apology Resolution. The Apology Resolution recognizes that "the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as people over their national lands to the United States." For the Apology Resolution to be more than hollow words on paper, Congress must take the next step forward in the reconciliation process it began in 1993. Reaffirmation of the inherent Native Hawaiian right to self-governance by the federal government is long overdue.

The unique legal and political relationship that indigenous Hawaiians have with the United States is based on their status as aboriginal people with pre-existing governments with whom the U.S. entered treaties and other agreements. It is this historical, political reality that provides the foundation for the unique

relationship that has always existed—and continues to exist today—between the United States and its indigenous peoples.

The argument of some opponents to S. 310 that recognition of a Native Hawaiian governing entity would establish a race-based government is antithetical to the very foundation of the United States government's relationship with its indigenous peoples. This argument was expressly repudiated by the Supreme Court in *Morton v. Mancari* and is worth quoting here:

> Literally every piece of legislation dealing with Indian tribes and reservations, and certainly all legislation dealing with the B.I.A, single out for special treatment a constituency of tribal Indians living on or near reservations. If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized. . . . As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed. Here, where the preference is reasonable and rationally designed to further Indian self-government, we cannot say that Congress' classification violates due process. 417 U.S. 535 (1974).

S. 310 would establish a level of parity for Native Hawaiians with the other indigenous peoples of America. To invoke the equal protection or due process clauses of the Constitution in this context, as some critics of S. 310 have attempted to do, is a distortion of what those clauses were intended to do. Those submitting this argument are using the very comerstones of justice and fairness in our democracy to deny equal treatment to one group of indigenous people.

Like all of the indigenous peoples of the United States, Native Hawaiians deserve the right to determine their own future. The purpose of self-determination is not simply for its own sake. The purpose is to enable a unique group of indigenous people to maintain their culture, language and identity. This is a purpose that all of America can support and that Congress has consistently supported through numerous programs intended to benefit Native Hawaiians.

Our country will be much the poorer if our indigenous cultures are forcibly homogenized. In addition to the often intangible benefits rich cultural diversity brings to a community, the State of Hawaii benefits economically from the thriving Native Hawaiian culture. The Hawaiian economy depends on tourism, and many tourists are drawn to Hawaii by the Native Hawaiian culture. Native Hawaiians need the ability to maintain their own institutions, their own schools, their own lands, if they are to maintain the culture that supports the Hawaiian

economy. It is no surprise that the Native Hawaiian bill has broad support in Hawaii from the Governor to all of its Congressional delegation.

NCAI represents tribal nations from across the Unites States, and over the past five years the member tribes of NCAI have approved four resolutions that support the self-governance rights of Native Hawaiians and call on the federal government to establish a true government-to-government relationship with the Native Hawaiian governing entity. NCAI has, and will continue to support, whatever path the Native Hawaiian people choose to assure their self-determination. S. 310 will rectify a long-standing injustice and set Native Hawaiians on the path toward self-determination and self-governance, as is their inherent right. NCAI strongly urges you to allow this process to begin by supporting S. 310.

Dear Senate Committee,

My opinion is in line with J. Kehaulani Kauanui, a Native Hawaiian and an assistant professor of anthropology and American studies at Wesleyan University in Middletown, who presented a short history of Hawaii/U.S. relations and her views of the Akaka Bill in a talk called "The Politics of Native Hawaiian Self-Determination: U.S. Federal Policy v. International law" at Yale University on April 4th.

"Why should Native Hawaiians who have never relinquished their inherent sovereignty settle for the lesser status of federal recognition that is being put forward in the "Akaka Bill"? I agree, we should not!

"The Hawaiian sovereignty movement is split between those who support federal recognition and those who want full independence from the United States based on decolonization and de-occupation under international law".

"At the heart of this division between federal recognition and independence is the debate as to whether or not, and if so, how Native Hawaiians fit into U.S. policy on Native American governing entitles".

"A compelling argument against federal recognition is how federally recognized tribes are treated now".

"You have a backlash against tribal nations in this area who are absolutely entitled to federal recognition and you have the state bearing down on them, and the courts continue to erode tribal sovereignty. So the challenge is intellectually, legally and politically, has been how to formulate a critique of federal recognition for Hawaiians without it ever being misinterpreted as something that can be used against tribes here, because Kauanui supports the federal recognition of tribes here".

"But the central argument against federal recognition rests on "the particularity of the Hawaiian claims given the legal history of the Hawaiian kingdom," Kauanui said.

"Those particularities are embedded as facts in Public Law 103-150- an apology to the Hawaiian people that was signed in 1993 by President Bill Clinton".

"The apology acknowledges the illegality of the U.S. government's military-backed regime change of "the sovereign Hawaii nation" in 1893 and its support for the illegally created "provisional government" in violation of treaties and international law. The insurgents were wealthy American and European financiers and colonists who owned sugar plantations".

"The key statement in the apology reiterates Hawaii's continuing independence: "The indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum".

"This legal genealogy makes the current push for federal recognition as reflected in the Akaka Bill extremely problematic, Kauanui said".

"The word "people" itself puts Hawaiians in line with international law that says all peoples have the right to determine their political structures".

"When you say 'people', you're saying a nation. A people is not an ethnic group," Kauanui said, quoting Lumbee legal scholar David Wilkins, who outlined four elements that set American Indians apart from racial

minorities".

"Indians are nations, not minorities," Wilkins said, because they were the original inhabitants of the land; their pre-existence necessitated the negotiation of political compacts, treaties and alliances with European nations and the United States. As treaty-recognized sovereigns, Indian peoples are subject to U.S. trust doctrine, which is supposed to be a unique legal relationship with the federal government that entails protection; and, stemming from the trust relationship, the United States asserts plenary power of tribal nations, which it deems exclusive and pre-emptive".

"Native Hawaiians who want to pursue self-determination through international law contest this U.S. use of the "doctrine of discovery" to indigenous peoples' lands and U.S. assertion to legal title to those lands while only recognizing tribal nations' use of the land, Kauanui said".

"The "provisional government" ceded 1.8 million acres of Hawaiian lands to the United States in 1898, but those lands have never fallen into private hands".

"These are lands the U.S. government accepted from the people that stole them from the Hawaiian monarchy. Never has a penny exchanged hands and never has a case about legal title of these lands ever been adjudicated so this is a major outstanding land claim - 1.8 million acres of some of the most expensive real estate in the world and one of the most militarized place in the world," Kauanui said". Which is the central command for U.S. military interests in the Pacific Ocean.

"Supporters of federal recognition say there is nothing in the Akaka Bill that would compromise or foreclose Hawaiian national claims under international law, but U.S. actions in asserting its plenary power to keep tribal nations both domestic and dependent belie that claim, Kauanui said".

"Hawaiians may not be able to realize their independence right now, but just because you can't see it come to fruition right now doesn't mean you throw it down the toilet. You protect the claims. I'd rather stick with the status quo for the moment and work on cultural sovereignty, get the people stronger and work on educating people about their political rights," Kauanui said.

"Under the Akaka Bill, Hawaii could never have casinos, never have criminal and civil jurisdiction, never petition the secretary of the Interior Department to take land into trust and never be able to make land claims under the 1790 Non-Intercourse Act, which would mean "there goes those 1.8 million acres," Kauanui said.

"No competing Hawaiian sovereignty group would have legal standing in any domestic court or at the United Nations. The Native Hawaiian government would be formed by commission appointed by and answerable to the Interior secretary, unlike federally recognized Indian tribes who determine their own leadership and membership. And Hawaiians could not have their own civil jurisdiction".

"Why should we do that? It seems a more critical time than ever for Hawaiians and all U.S. citizens to critically question why there should not be a Hawaiian embassy in Washington, D.C. Instead of negotiating with the Department of the Interior, Hawaiians have the un-extinguished right to negotiate with the U.S. Department of State," Kauanui said".

Mahalo,
Patrick W. Goldstein
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Pearl City, Hawaii 96782
May 1, 2007

TESTIMONY IN SUPPORT OF S. 310/H.R. 505
Native Hawaiian Government Reorganization Act of 2007
U.S. Senate Committee on Indian Affairs
May 15, 2007

Dear Chairman Byron Dorgan, Vice-Chairman Craig Thomas, Members of the United States Senate Committee on Indian Affairs, The Honorable Daniel Akaka, The Honorable Daniel Inouye, The Honorable Neil Abercrombie, and The Honorable Mazie Hirono:

My name is David M. Forman, and I am writing to support S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act of 2007. I recently completed my second term as Chairperson of the Hawai'i State Advisory Committee ("HISAC") to the United States Commission on Civil Rights ("USCCR"). I served continuously on the HISAC from my initial appointment in 1995 until the committee's charter expired last year (sometime in November or December 2006). The HISAC's charter has not been renewed. In any event, I have been informed that I am no longer eligible for reappointment due to a newly imposed USCCR internal policy.

During my service as Chair, thirty-seven current and former State Advisory Committee Chairpersons joined me in signing a RESOLUTION OF NO CONFIDENCE concerning the USCCR's relationship with the State Advisory Committees. An independent report on the USCCR by the Government Accountability Office, "The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its Advisory Committees" (May 2006), echoed some the State Advisory Committees' concerns. On a variety of issues, the newly-constituted USCCR majority has demonstrated a blatant disregard for both procedure and substance as it seeks to further an apparently pre-determined agenda regardless of the facts.

The USCCR Ignored its own State Advisory Committee, and Issued its Recommendation Despite Acknowledging the Inadequacy of its Factual Findings

The USCCR's Briefing Report on The Native Hawaiian Government Reorganization Act of 2005 exemplifies the agency's flaws. The USCCR failed to provide the HISAC with advance notice, much less consult the HISAC on the planning and implementation, of its January 20, 2006 informational briefing on an earlier version of S. 310/H.R. 505. The USCCR's briefing report pays only lip service to a comprehensive report on the underlying issues published by the HISAC in June 2001. "RECONCILIATION AT A CROSSROADS: The Implications of the Apology Resolution and *Rice v. Cayetano* for Federal and State Programs Benefiting Native Hawaiians" (hereafter "HISAC Report") is available for public viewing at www.usccr.gov under "Publications" and "State Advisory Committees.

Former USCCR Commissioner Yvonne Lee described the HISAC's June 2001 report as "one of the most comprehensively researched reports issued by a State Advisory Committee during [her] service to the Commission." "By comparison," she added, "the USCCR's [May 2006 briefing] report can only be described as superficial." Indeed, the current USCCR majority voted along with the dissent to remove the erroneous findings upon which the majority's recommendation concerning an earlier version of The Native Hawaiian Government Reorganization Act was based.

Although the USCCR's briefing report purports to rely upon "the great majority of comments wrote to express their opposition" to the legislation, the USCCR received a mere 16 public comments on their briefing. Despite limited funding, the HISAC obtained input from a total of 87 people during sessions held on the island of 'Oahu. The overwhelming majority of those commenting voiced their support for formal federal recognition of Native Hawaiians. The same is true of the 39 comments provided during public forums held by the HISAC in 1988 and 1990, which led to an earlier HISAC report likewise recommending formal federal recognition of Native Hawaiians. "A BROKEN TRUST, The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Governments to Protect the Civil Rights of Native Hawaiians (Dec. 1991). The HISAC also issued a report entitled "Breach of Trust: Native Hawaiian Homelands" (Oct. 1980).

The USCCR's briefing report is patently biased. After summarizing proponent Noe Kalipi's testimony in dry and emotionless terms, the USCCR then introduces opponent William H. Burgess as having "expressed grave concerns." USCCR Chair Gerald Reynolds revealed his own bias by opening the discussion with a question indicating that he had predetermined the issue as one involving the distribution of benefits (and burdens) on the basis of race or ethnicity, as opposed to political status. Similarly, the Chair asked whether the mechanism for selecting group membership "would work exactly like racial preferences in that the governing entity would have the ability to treat non-Hawaiians differently." (USSCR Briefing Report at 10.) According to the report, "Ms. Kalipi did not answer the question directly, instead clarifying that [the legislation] was based on the political and legal relationship" between Native Hawaiians and the United States. (Id.) A review of the briefing transcript, however, reveals a long-winded question by the Chair concluding with a simple hypothetical: "I have a family who lived in Hawaii for 22 years. They would still be ineligible for those benefits?" To which Ms. Kalipi responds, clearly and unmistakably, "Yes." Chair Reynolds then replies, "Okay," apparently satisfied that she answered his question.

The USCCR's Apparent Disdain for Federal Indian Law

The USCCR briefing report seems to suggest uncritical acceptance of testimony by panelist Gail Heriot (subsequently named Chair of the California

State Advisory Committee, and almost immediately elevated to USCCR Commissioner), "explaining the complexity of the body of Indian law and the presence of numerous contradictions." According to a portion of the transcript left out of the briefing report, perhaps due to strategic editing, Heriot (who admittedly is not an expert in this area of law) argued that Federal Indian Law is "ripe for reform." Such views are decisively addressed by Philip Frickey's 2005 Harvard Law Review article, "(Native) American Exceptionalism in Federal Public Indian Law", noting that the "seduction of coherence" masks historical use of the rule of law to justify colonialism in the pursuit of constitutionalism.

Native Hawaiians are acutely aware of this history. As Mahealani Kamau'u explained during a September 2000 panel presentation before the HISAC:

> ... [T]he increasingly dominant discourse of neo-conservatism ... has emphasized the need for strictly color-blind policies, calling for the repeal of special treatment such as affirmative action and other race-remedial policies.
>
> Under this doctrine, implicit assumptions regarding race include beliefs that any race-consciousness is discrimination, that race is biological and thus a concept devoid of historical, cultural, or social content, and that a group is either racial or it is not. And if it is racial, it cannot be characterized as political. This approach allows America to ignore its historical oppression of Native Hawaiians when meting out justice in its courts of law.[1]

For example, in *Rice v. Cayetano*, 528 U.S. 425 (2000), "justice" was purportedly meted out without giving due consideration to the political status of Native Hawaiians. The Supreme Court studiously avoided such "questions of considerable moment and difficulty" by focusing its analysis instead on the Fifteenth Amendment and the status of the Office of Hawaiian Affairs ("OHA") as a state agency. The stark irony of this voting rights decision is highlighted by the fact that naturalized subjects of Asian descent and "denizens"--*i.e.*, mostly American and European resident aliens, who retained their original citizenship--possessed the franchise in these islands eighteen years before passage of the Fifteenth Amendment. *See* Kingdom of Hawaii Const., art. 78; L. Scott Gould, *MIXING BODIES AND BELIEFS: THE PREDICAMENT OF TRIBES*, 101 Colum. L. Rev. 702 (May 2001) (no other group approaches the multiracial tendencies of indigenous peoples).

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[1] HISAC Report, at 40-41 & footnote 351 (quoting Kamau'u Statement, Forum 2000 Transcript, pp. 82-83). *See also St. Francis College v. Al-Khazraji*, 481 U.S. 604, 610 n.4 (1987) (acknowledging criticism of racial classifications as arbitrary, and without biological significance; "racial classifications are for the most part sociopolitical, rather than biological, in nature").

"Race" is not recognized in the Hawaiian language

It is useful to note that there is no word for "race" in the Hawaiian language.[2] In fact, the first time that democratic rights were determined by race in Hawai'i was the Bayonet Constitution of 1887, which "reduced the Hawaiians to a position of ... actual inferiority in the political life of the country." Ralph S. Kuykendall, THE HAWAIIAN KINGDOM: 1874-1893 (1967), at 370.[3] An oligarchy of wealthy white residents later used opposition to their imposition of the Bayonet Constitution as an excuse for the illegal overthrow in 1893, assisted by United States marines.[4] *Rice v. Cayetano*, 528 U.S. 425, 504-05 (2000); Pub. L. No. 103-150 (1993). Four years later, armed with petitions signed by at least half the Native Hawaiian population (between 21,000 and 38,000 of a total 40,000), Native Hawaiian advocates succeeded in convincing United States Senators to defeat a proposed treaty of annexation.[5] However, this was only a temporary victory. The following year, during the hysteria surrounding the Spanish American war, Congress annexed the Hawaiian Islands via Joint Resolution.

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[2] HISAC Report, at page 9, footnote 58 ("There is no precise word for 'race' in the Hawaiian language. The closest term is lāhui, which is also defined to mean nation, tribe, people, or nationality. [Mary Kawena] Pukui and [Samuel H.] Elbert, *Hawaiian Dictionary*, pp. 190, 509 [1986 ed.].").

[3] This fact highlights a further irony of the *Rice* case, which upheld the voting rights of an individual whose great-grandfather (William Hyde Rice) was part of the group that forced King Kalākaua to sign the Bayonet Constitution. HISAC Report at 28 n.235 (citing Jon M. Van Dyke, "The 'Painful Irony' of *Rice v. Cayetano*," Sept. 29, 2000 statement to HISAC, at 4 n.13). After the overthrow, the Republic of Hawaii promulgated a Constitution (1894) that "was designed to keep as many Kanaka Maoli from voting as possible and to prevent Asian immigrants from voting as well. To do so it made use of the 'Mississippi laws' that had kept African American citizens from voting in that state." Noenoe K. Silva, ALOHA BETRAYED, at 136 & n.49 (Duke Univ. Press 2004) (citing Alfred L. Castle, "Advice for Hawaii: The Dole-Burgess Letters," *Hawaiian Journal of History* 15 (1981): 24-30). *See also id.* at 166 & 237-38 (citing scholar Lawrence A. Fuchs for the observation that "[Sanford B.] Dole wanted a constitution that would protect haole [*i.e.*, 'white foreigner'] rights and privileges"). One of the architects of the illegal overthrow gave a speech that same year justifying the disenfranchisement of American blacks. *Id.* at 148 n.87 (citing Lorrin A. Thurston, "The American League: Minister Thurston's Speech Friday Night," *Hawaiian Star*, 15 June 1894). These facts further demonstrate the ridiculously offensive nature of comparisons between Queen Liliu'okalani and Slobodan Milosevic that have been offered by opponents of the Akaka Bill.

[4] Interestingly, nearly two-thirds of Native Hawaiians left their churches after the overthrow. HISAC Report, at 22 (citing Reverend Kaleo Patterson Statement, Forum 1998 Transcript, vol. 1, p. 37).

[5] HISAC Report, at 7; *Aloha Betrayed*, at 124, 149 & 151 (citing October 8, 1897 documents protesting annexation, maintained in the U.S. National Archives).

As a former OHA Chairperson stated during her 1998 testimony to HISAC, "this isn't a racial issue.... They have taken my dignity. They have stripped me of my nationhood, my language, everything."[6]

The harm suffered by Native Hawaiians may not reasonably be disputed

During the HISAC's 1998 Forum, Dr. Richard Kekuni Blaisdell opined that the impact of colonization by foreign settlers on indigenous people explains why social, health, and economic statistics are worse for Native Hawaiians than for all other ethnic peoples in Hawai'i and, therefore, it is "essential" to distinguish them from non-Native Hawaiians.[7]

For example, the mean value of housing units owned by Native Hawaiians is lower than all the major racial/ethnic groups in Hawai'i, and 22 percent less than the average value of housing units owned by the overall state population.[8] And these are some of the more fortunate among Native Hawaiians who actually own a home. Overall, 49 percent of Native Hawaiian households experience housing problems, compared with 29 percent of the U.S. population.[9] Meanwhile, a "majority of the homeless in Hawai'i are Hawaiians, Native Hawaiians. We have thousands of children every day who are Native Hawaiians going to school from situations of homelessness, from tents, from cars, from caves."[10]

Native Hawaiians are also plagued by disproportionately low levels of employment, homeownership, income security and education, along with disproportionately high levels of substance and physical abuse, medical problems, impaired mental health and homelessness.[11] No other group has any many families below the poverty level, families on public assistance, or individuals 200 percent below the poverty level.[12] The employment rate for

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[6] HISAC Report, at 21 (quoting A. Frenchy Statement, Forum 1998 Transcript, vol. 2, p. 202).

[7] HISAC Report, at 21 & footnotes 167-68 (quoting Blaisdell Statement, Forum 1998 Transcript, pp. 64-65).

[8] HISAC Report, at 17& footnote 129 (quoting the *Native Hawaiian Data Book-1998*, "Economics of Housing", p. 142).

[9] HISAC Report, at 17 & footnote 133 (quoting Soon Statement, Forum 2000 Transcript, pp. 160-61).

[10] HISAC Report, at 3 & footnote 11 (quoting Kame'eleihiwa Statement, Forum 2000 Transcript, pp. 29-32).

[11] HISAC Report, at 12.

[12] HISAC Report, at 12 & footnote 84 (quoting the *Native Hawaiian Data Book-1998*, "Family Profile", p. 50).

Native Hawaiians is also lower than any other group in the State.[13] Correspondingly, the unemployment rate for the Native Hawaiian civilian labor force is 10.8 percent, compared with just 6.4 percent for the total civilian labor force.[14]

Among other startling statistics, Native Hawaiians have the worst health indicators in Hawai'i--including the highest mortality rates for the major causes of death (heart disease, cancer, stroke, injuries, infections, and diabetes) and the highest rates for chronic diseases.[15] For example, Native Hawaiians aged 35 years and older make up 44 percent of all cases of diabetes recorded in the State.[16] Native Hawaiians also account for 73 percent of the deaths of individuals under 18 years old.[17] Heart disease occurs 1.3 times more frequently for Native Hawaiians aged 36-65 than any other group.[18] Several behavioral risk factors (obesity, smoking and alcohol consumption, as well as drinking-and-driving) are also highest in the state for Native Hawaiians.[19]

These statistics show "virtually no improvement" since the 1983 Native Hawaiian Study Commission ("NHSC") report,[20] whose "findings regarding the economic, educational, and health needs of Native Hawaiians were unanimous."[21]

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[13] HISAC Report, at 12 & footnote 85 (quoting the *Native Hawaiian Data Book-1998*, "Labor Force Profile", p. 552).

[14] HISAC Report, at 12 & footnote 86 (quoting the *Native Hawaiian Data Book-1998*, "Employment Profile", pp. 562-64).

[15] HISAC Report, at 17.

[16] HISAC Report, at 18 & footnote 139 (quoting the *Native Hawaiian Data Book-1998*, "Diabetes", p. 344).

[17] HISAC Report, at 17-18 & footnote 138 (quoting the *Native Hawaiian Data Book-1998*, "Mortality", p. 414).

[18] HISAC Report, at 17 & footnote 136 (quoting the *Native Hawaiian Data Book-1998*, "Circulatory Diseases", p. 314).

[19] HISAC Report, at 18 & footnote 141 (quoting the *Native Hawaiian Data Book-1998*, "Lifestyle and Health Risks", p. 430).

[20] HISAC Report, at 21 (citing DeSoto statement, Forum 1998 Transcript, vol. 1, p. 174). *See* Native Hawaiians Study Commission Act of 1980, Pub. L. No. 96-565, tit. III, §§ 301-307, 94 Stat. 3321 (1980).

[21] HISAC Report, at 21 (citing Kamali'i Statement, Forum 1998 Transcript, vol. 2, p. 272).

Shifting Political Winds

Although the Commissioners of the NHSC unanimously agreed about the dire circumstances affecting Native Hawaiians, the six-member majority (all from areas outside Hawai'i) based their conclusions regarding the 1893 overthrow on a flawed methodology that failed to consider available primary sources.[22] Consistent with the phenomenon described by Phillip Frickey above, and the February 1894 report by Alabama Senator John Tyler Morgan (based on hearings held in Washington, D.C., without having even visited Hawai'i),[23] the NHSC majority report attempted to justify America's actions by ignoring its historical oppression of Native Hawaiians.

The 1993 Apology Resolution was intended to correct the 1983 NHSC majority report.[24] Borrowing a phrase from opponents of the Akaka Bill, to suggest otherwise would be tantamount to making the ridiculous assertion that "the Senators could not think and evaluate for themselves." Indeed, Senators concerned about the potential implications of this act forced a roll call vote that was decided in favor of passing the Apology Resolution by a vote of 65 to 34.[25]

The NHSC majority report is just one example of the historically "shifting political winds" that have contributed to adverse conditions faced by Native Hawaiians.[26] Awkward transitions between the administrations of Presidents

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[22] HISAC Report, at 20 (citing NHSC *Report on the Culture, Needs and Concerns of Native Hawaiians*, vol. II (June 23, 1983), p. iv; Kamali'i Statement, Kūpuna Forum). Kinau Boyd Kamali'i, minority leader for the House of Representatives in Hawai'i, and chair of Ronald Reagan's presidential campaign in Hawai'i, served as chairperson of the NHSC. She and two other commissioners from Hawai'i submitted a minority report.

Reagan judicial appointee David Alan Ezra, Chief Judge for the U.S. District Court of Hawai'i also recognizes that programs for Native Hawaiians are "not based upon race, but upon a recognition of the unique status of Native Hawaiians." *See Rice v. Cayetano*, 963 F. Supp. 1547, 1554 (D. Haw. 1997). Likewise, Congress has explicitly acknowledged and described the unique political relationship between the United States and Native Hawaiians through more than 150 laws including the Hawaiian Homes Commission Act, the Admission Act, the Native Hawaiian Education Act, and many more. *See, e.g.*, HISAC Report, at 18 (citing U.S. Department of the Interior and U.S. Department of Justice, "From Mauka to Makai: The River of Justice Must Flow Freely," Report on the Reconciliation Process Between the Federal Government and Native Hawaiians, Oct. 23, 2000, p. 55).

[23] Later, Senator Morgan and other pro-annexation senators worked to prevent a plebiscite because they knew the Hawaiian people would reject annexation as well as the colonial government that had been forced upon then. *Aloha Betrayed*, at 159 & n.112 (citing S. Rep. No. 681, 55th Cong., 2d Sess. (1898)).

[24] HISAC Report, at 19.

[25] HISAC Report, at 19; *see also* 103 CONG. REC. 14482 (1993).

[26] *See* HISAC Report, at 20-21.

Grover Cleveland and William McKinley[27] were later replicated by a series of legal opinions issued by the Department of the Interior during the administrations of Presidents Jimmy Carter, George H.W. Bush, and William Jefferson Clinton.[28]

Failure to pass the Akaka Bill would further compound the effects of these "shifting political winds" on Native Hawaiians while continuing to ignore our nation's responsibility for these conditions.

S. 310/H.R. 505 Address Fundamental Issues That Can No Longer Be Ignored

In contrast to the views of those who oppose S. 310/H.R. 505, as well as countless others who have blindly accepted the images of Hawai'i put forth by tourism promoters:

> *The fantasy of happy, healthy natives living a life of ease and security, in a bountiful and lush paradise contrasts sharply with the realities of existence for many Hawaiian-Americans: they have been alienated from their land, their numbers diminished by disease, they have lost political power, they are economically insecure, and are troubled by health, education, and social problems out of proportion to their numbers in the population.*[29]

More than two and a half decades later, a group of prominent Hawai'i residents admitted that:

> In our community there is more pain than we admit and more than we tend to show the outside world. Hawaiians mourn the loss of their culture and their land. New immigrants--Filipinos, Samoans, Southeast Asians, African-Americans--suffer daily indignities. The Japanese remember the bitterness of their plantation days and their internment on the West Coast. Haoles speak of being held accountable and demonized for events not of their making such as the 1893 overthrow.[30]

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[27] *See* HISAC Report at 6-7 & 20.

[28] HISAC Report at 20-21 & nn.163-66. Opinions disclaiming any federal trust responsibility to Native Hawaiians are based, in part, on the now-discredited NHSC majority report.

[29] HISAC Report, at 8 & footnote 53 (quoting Ronald Gallimore, Joan Whitehorn Boggs, and Cathie Jordan, *Culture, Behavior and Education: A Study of Hawaiian-Americans* (Beverly Hills, CA: Sage Publications, 1974), p. 14).

[30] HISAC Report at 1 & footnote 4 (quoting Peter Adler, Michael Broderick, Morni Cazimero, Linda Colburn, Mitch D'Olier, Delores Foley, Miki Lee, and Marina Piscolish, "A Place at the Table," *The HonoluluAdvertiser*, Nov. 19, 2000, p. B1).

There are certainly many wonderful things about living in Hawai'i, but we are also faced with serious issues that deserve greater attention and understanding. An overwhelming majority of my former colleagues on the HISAC share the conviction, however that there can be no justice in Hawai'i without justice for Native Hawaiians.

Despite decades of discriminatory, race-based efforts to suppress their culture, Native Hawaiians are a distinct people with distinct needs.[31] S. 310/H.R. 505 provide an important step forward in addressing those needs and providing long overdue justice to the indigenous people of these islands. I earnestly hope that your colleagues in the Senate can be made to see past the hurtful, inaccurate and misleading rhetoric that opponents of S. 310/H.R. 505 have been spreading.

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[31] HISAC Report, at 23 & n.194 (citing Brief of *Amici Curiae* State Council of Hawaiian Homestead Associations, Hui Kāko'o 'Āina Ho'opulapula, Kalama'ula Homestead Association and Hawaiian Homes Commission in Support of Respondent, *Rice v. Cayetano*, No. 98-818 (filed July 28, 1999), at 21-29); *see also* Reconciliation Report, pp. 46-51.

The Honorable Byron Dorgan, Chairman
The Honorable Craig Thomas, Vice-Chairman
Members of the Senate Committee on Indian Affairs

On behalf of the Native Hawaiian Legal Defense and Education Fund, NHLDEF, I am writing to express our support for S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act of 2007, introduced by the Members of the Hawai'i Congressional Delegation, and to urge that you vote yes to support passage of S.310/H.R. 505.

What S.310/H.R. 505, the Akaka Bill, is designed to do is give an indigenous people, Hawaiians, the opportunity to overcome the suppression of colonialism, become self sufficient, and preserve their ethnic identity, language, culture, and ancestral lands. History demonstrates that colonized indigenous people are neither free nor equal to others. Indigenous people suffer from economic deprivation, poor health, housing, schooling, and job opportunities. They have high rates of depression, suicide, and substance abuse. Hawaiians in Hawaii own all these bad statistics.

Critics of the Akaka Bill, using the rubrics of unity and equality, argue that special rights and privileges given to Hawaiians by an Akaka Bill is race based and unconstitutional. These critics demand the assimilation and suppression of an indigenous people, Hawaiians.

Yet special rights have been granted to indigenous people world wide to make it possible for these minorities to preserve their identity, unique characteristics, and traditions. Special rights are just as important in achieving equality of treatment as non-discrimination. The granting of special privileges, like Federal Recognition and the opportunity to re-organize a former government eradicated by colonialism, shows to the world that the United States Government has respect for indigenous values, traditions, and human rights. It shows to the world that the Apology Resolution of 1993 has meaning and is not just a set of empty words used to assuage a guilty national conscience.

Critics of the Akaka Bill argue against its passage, conjuring up a Frankenstein like monster called the "independent unruly Hawaiian." These critics do not understand Hawaiians and the spirit that makes Hawaii unique-the aloha spirit. These critics reveal their ignorance of Hawaiian culture when they try fear to defeat the bill.

"Ecomo mai" is a phrase that Hawaiians use. It expresses the communal aspect of Hawaiian life. It means, "come into my home, it is yours." This giving and sharing without expectation of reciprocation has

cost the Hawaiians dearly. It is this "aloha spirit" which is at the root of the problems that Hawaiians face today.

Hawaiians have lost much. Today, after two centuries of racial discrimination, a newly found national policy against race discrimination places all of the remaining possessions of Hawaiians in legal jeopardy. In order to survive this jeopardy Hawaiians must follow current United States law and secure Federal Recognition as indigenous people and achieve limited sovereignty. Let not the epigram of this Congress be veni, vici, vidi, fini the Hawaiian people.

05/09/07

William J. Fernandez
Chief Executive Officer NHLDEF
1335 Trinity Drive
Menlo Park, CA 94025

Aloha Kakou, (Greetings Everyone)

My name is Reynold Freitas and I am the son of Betty Chang and Reynold Freitas Jr. I was born on the island of Oahu and raised mostly on the island of Hawaii. I am native Hawaiian.

I support S. 310 and H.R. 505. I resecptfully ask for your support in doing what is long overdue and right.

Thank you for your time.

Aloha, Reynold Freitas

Dear Senators,

I am writing to express my support for **S. 310/ H.R. 505, The Native Hawaiian Government Reorganization Act of 2007,** *introduced by the members of Hawai'i's Congressional Delegation, and to ask that you* ***VOTE YES*** *to support passage of S. 310/H.R. 505.*

I am a Native Hawaiian, and this bill has particular significance for me in providing federal recognition of my Hawaiian ancestry and in helping to preserve my cultural heritage for my children, my grandchildren, and for future generations of Native Hawaiians. Enactment of NHGRA assists in preserving the very distinct nature of the Native Hawaiian culture and its existing programs for its people.

U.S. recognition is already available to American Indians and Alaska Natives, and enactment of NHGRA extends a similar process to Native Hawaiians. Native Hawaiians are the indigenous people of Hawai'i, whose ancestors practiced sovereignty in their ancestral lands that later became part of the United States. The establishment of a process of federal recognition for Native Hawaiians moves us toward **fairness in federal policy** toward **American Indians, Alaska Natives** and **Native Hawaiians.**

The role of the United States in the illegal overthrow of the Native Hawaiian government in 1893 is documented in U.S. Public Law 103-150, the Apology Resolution of 1993. A majority of Native Hawaiians opposed the 1898 annexation of Hawai'i. Now, 114 years later, enactment of NHGRA will provide for a U.S. recognition process of the illegal overthrow, and enable the U.S., the State of Hawai'i and the recognized, representative Native Hawaiian governing entity to negotiate, to resolve the consequences of that action, and to seek a positive outcome that will seek to preserve and perpetuate our culture, our values, and our inherent sovereign right.

As stated in the **Apology Resolution, United States Public Law 103-150,**

Whereas, prior to the arrival of the first Europeans in 1778, **the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;**

Whereas, **a unified monarchical government of the Hawaiian Islands was** established in 1810 under **Kamehameha I, the first King of Hawaii;**

Whereas, from **1826 until 1893**, the **United States recognized the independence of the Kingdom of Hawaii**, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826,

1842, 1849, 1875, and 1887

Whereas, on February 1, 1893, the United States Minister raised the American flag and **proclaimed Hawaii to be a protectorate of the United States**;

The Congress -
(3) **apologizes to Native Hawaiians** on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the **deprivation of the rights of Native Hawaiians to self-determination;**

As used in this Joint Resolution, the term **"Native Hawaiians"** means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Whereas, **I AM A NATIVE HAWAIIAN**, I strongly support passage of the **Native Hawaiian Government Reorganization Act of 2007**, and seek your support in passage of this legislation.

Sincerely,
Maile Mahikoa Duggan
President, Kamehameha Schools Alumni Association-East Coast

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Testimony of the Council for Native Hawaiian Advancement
Robin Puanani Danner, President and CEO

presented to the

Committee on Indian Affairs, United States Senate
Senator Byron Dorgan, Chairman
Senator Craig Thomas, Vice Chairman

for the Legislative Hearing on S. 310
The Native Hawaiian Government Reorganization Act of 2007

May 3, 2007

Support for S. 310, the Native Hawaiian Government Reorganization Act of 2007

Aloha Honorable Chairman Dorgan, Vice Chairman Thomas and distinguished members of the Senate Committee on Indian Affairs:

The Council for Native Hawaiian Advancement (CNHA) expresses its strong support for S. 310, the Native Hawaiian Government Reorganization Act of 2007, also known as the Akaka Bill in recognition of its dedicated sponsor and our beloved senator, Senator Daniel Akaka. CNHA has previously submitted testimony to this Committee, both orally and in writing, in support of past versions of this bill, and we continue to support Congress' efforts to extend the federal policy of self-governance for the indigenous peoples of the United States to Native Hawaiians.

The Council for Native Hawaiian Advancement is one of the largest statewide and national associations of Native Hawaiian organizations. Our mission is to unify and promote sound policy, economic and community development for Native Hawaiians. With more than 160 members, our core membership consists of Native Hawaiian organizations and non-profits engaged in a variety of community development initiatives, including, but not limited to, affordable housing, education, healthcare, economic development, workforce development, environmental protection and culture. In the absence of a recognized Native Hawaiian government, our community has formed various civic and community associations and non-profit organizations to develop solutions to address our community's needs and benefit all of Hawaii. Native Hawaiians need the Akaka Bill so that we have a proper vehicle for the community to express its will and make critical decisions about how best to guarantee our culture, knowledge and way of life continue well into the future.

Like many indigenous peoples, Native Hawaiians continue to embrace our culture, values and belief systems. Our communities are organized along traditional lines, with a large emphasis placed on the inter-dependency of extended families, on our sacred relationship to the land, ocean and each other, and on adhering to cultural laws that define our individual and collective *kuleana* (responsibilities). There is great interest in Native Hawaiian culture throughout the state and nation, and Native Hawaiians have continued to pursue every avenue available to ensure the survival of our language, our way of life, and our knowledge base about these special islands we

call Hawaii. This is amply evidenced by our being at the forefront of language immersion programming, developing programs that range from preschool to college; our advocacy for, and success at operating, a Center for Hawaiian Studies at the University of Hawaii at Manoa; and the persistence of traditional healing practices like *lomilomi* (massage), *la'au lapa'au* (medicine) and *ho'oponopono* (dispute resolution). We are deeply concerned that some people seek to characterize us as a group simply related by race, with no shared culture, history or values to bind us together. Nothing could be further from the truth. We welcome any member of the Senate to visit our communities and share in our cultural practices, or to visit our immersion schools and understand the strength of our culture and our desire to perpetuate it through self-governance and self-determination.

CNHA and many of our members have strong working relationships with, and the strong support of, American Indian Tribes and Alaska Native Villages and Corporations working in similar areas of community development. Through these working relationships and some of our staff's individual experiences living and working with our Native brothers and sisters in the continental United States and Alaska, we agree that the United States' policy of self-governance for its Native peoples is the best policy to empower our communities to govern and shepherd our resources to implement the best solutions from our communities and for our communities, our state and our country.

CNHA and our member organizations are proving that self-determination works as we continue to develop programs to promote innovative educational programming, financial literacy, homeownership, workforce development and economic development, among other initiatives.

Though many challenges and opportunities remain on the horizon, we are proud to report that Native Hawaiians are engaged in the self-determination opportunities available under current law, and some of the programs and products developed and delivered by CNHA and its member organizations have gained the attention of state and federal government officials who are interested in working with us to expand our products and services to all of Hawaii and other states. Native Hawaiians are proving to be an integral part of the solution to challenges that we face as a community, state and country.

Federal recognition of a Native Hawaiian governing entity will also address the challenges that the federal, state and local governments encounter when they need to know which Native Hawaiian individual or entity to contact in order to make better informed decisions for the benefit of the broader communities which these respective governments serve. A Native Hawaiian governing entity would improve the coordination and collaboration of various organizations and create efficiencies for the federal, state, local and Native governments and entities.

For the above and previously stated reasons, the Council for Native Hawaiian Advancement supports S. 310, the Native Hawaiian Government Reorganization Act of 2007.

Mahalo (thank you).

To All This Concerns,

I emphatically support the above referenced legislation that would provide for a process by the United States to extend reorganization and recognition of the Native Hawaiian governing entities, as is already provided for the Alaska Native and American Indians indigenous to this great country. This new legislation would establish a single policy that will re-affirm that the Hawaiian People have a recognized political and legal relationship with the U.S. government, as the other indigenous Americans have already. This law would provide fairness in the policies towards America's three indigenous groups: Alaska Native, American Indian and Native Hawaiians.

Hawaiian ancestors exercised sovereignty over the lands and areas that are now part of the United States. They had pre-existing self-governance, a prerequisite which is recognized by the U.S. Constitution. Native Hawaiians have a unique culture, cultural values, history, and assets. Hawaiian institutions that can focus on problems specific to Native Hawaiians will provide the needed recognition of rights, trusts, assets and programs designed to assure continued cultural existence into the future generations.

This is the least that the United States can do for the sovereign Peoples whose government was illegally overthrown by the U.S. in 1893. Time to bring fairness and balance to a Nation that claims "Justice for All."

Thank you for your consideration of my testimony here.

Sincerely,

Wanda J. Culp

Cc: Office of Hawaiian Affairs

Dear Chairman Dorgan, Vice-Chairman Thomas, Members of the United States Senate Committee on Indian Affairs, The Honorable Daniel Akaka, The Honorable Daniel Inouye, The Honorable Neil Abercrombie, and The Honorable Mazie Hirono:

My name is Charlene Cuaresma. As president of the Filipino Coalition for Solidarity, I would like to thank you for the opportunity to strongly support S. 310/H.R. 505. Established in 1990, the Coalition represents more than 50 Filipino community leaders whose aim is to work for social justice issues to empower our community to make socially responsible contributions to Hawai'i and our global neighbors. I am also a public health educator by training and serve as the community director of the Asian American Network for Cancer Awareness, Research and Training, a National Cancer Institute(NCI) Community Network Program.

Native Hawaiians deserve federal recognition as the indigenous people of Hawai'i. The success of how Native Hawaiians have addressed health disparities through programs established by the NCI's Community Network Program, Imi Hale, and the Native Hawaiian Health Care Act, have demonstrated that Native Hawaiians, when given the opportunity and resources, are better able to build the capacity to effectively address the social justice issue of health disparities in their own communities. It is undeniable that incidence, morbidity, and mortality rates of public health benchmarks are literally grave indicators that Native Hawaiians are disproportionately harmed under the current government structures that have failed to safeguard their health status, while other groups have benefited.

Native Hawaiian health professionals and researchers, in partnerships with others, are adding to the body of scientific knowledge to turn around this troubling trend of uneven burdens of cancer, diabetes, other chronic diseases, smoking, alcohol, and drug abuse suffered by their people. Despite this long overdue progress, Native Hawaiians continue to be underrepresented in institutions of higher learning, overrepresented in prison, and underrepresented in professional and executive positions of influence. Thus, the existing governmental structures continue to marginalize Native Hawaiians at best, and inhibit access to life saving services at worst.

The Filipino Coalition for Solidarity does not agree with opponents of the S. 310 who call this a racist policy. Unlike the Native Hawaiians, opponents have failed to demonstrate that they themselves have been harmed or injured by such a policy. On the other hand, safeguards to protect the right of indigenous people for self determination to work out how best to heal their community's ills, educate their youth, and bring about economic empowerment, will result in a healthy and sustainable Native Hawaiian community, which will ultimately benefit all of Hawai'i's people, as well as Americans and immigrants in the U.S.

Therefore, your leadership is needed to pass S. 310. Thank you for weighing the merits and moral duty we have as Americans to provide due justice to Native Hawaiians.

Dios ti agngina & Maraming salamat po,

Charlene Cuaresma
President, Filipino Coalition for Solidarity

From: Clarence Ching, PO Box 6916, Kamuela, HI 96743

Dear Sirs:

1. I object that these hearings are being held in Washington, DC - a great distance from the bulk of native Hawaiian people - the principle peoples who are supposedly whose issues are the subject matter of the proposed legislation.

2. I object that S.310 has been designed, drafted, being heard, and is being totally acted upon in Washington DC. The proposed legislation is sooo far removed from the people that it supposedly will affect - that it is immoral and dishonest to carry out these hearings.

3. I object that no Workshops have been held in Hawaii or anywhere else - so that the people - the native Hawaiians - would be assisted in understanding what this proposed legislation is all about.

4. I object that the Senatorial sponsors of this bill have not had the honesty and openness to educate those who are to be affected by this bill.

5. I object that there have been no press releases, editorials of any kind in any media - that would explain what the bill is all about and how it would affect the subject peoples.

6. The United States of America, by any of its divisions, is in violation of its "supreme" law (Constitution and Treaties) by attempting to provide a process by which the non-suspecting peoples involved in that legislation are encouraged to modify their existing government (a separate nation/state than the United States - being the Kingdom of Hawaii) - that the United States actually "recognizes" by supporting such modification.

In other words - by this proposed legislation - the United States is interfering in the internal affairs of a different and separate nation/state.

7. Hawaii is NOT part of the United States of America.

While the United States has historically shammed the Annexation of Hawaii - nothing meeting the minimal requirements of international law pertaining to annexation has ever taken place.

For background - Hawaii declared itself to be constitutional monarchy in 1840 - First Constitution. In 1843, Hawaii was recognized as a full-fledged member of the Family of Nations (by England, France and the United States). Hawaii declared itself to be a "neutral" nation in 1850 - and therefore could not be conquered by war.

Therefore - the only legal process for annexation of Hawaii by anyone would have to be by Treaty of Annexation and a majority plebiscite vote of the people.

There has been NO Treaty of Annexation regarding Hawaii NOR a plebiscite approving of such "ficticious" Treaty.

While the United States attempted to "annex" Hawaii by a Resolution - a domestic instrument that is in noncompliance with the "supreme" law of the land - such "fiction" does not pass the test of annexation as set forth by accepted international law.

Therefore - this attempted legislation is WITHOUT necessary jurisdiction in international law.

8. Hawaii is "Occupied" by the United States - just as Iraq is today.

9. An occupying nation must comply with the laws of the "occupied" nation-state. And any attempt to creat legislation in opposition to the laws of the "occupied" nation is illegal.

10. This proposed legislation is non-compliant with the "supreme" laws (the Constitution) and treaties (for instance - treaties with the Kingdom of Hawaii that the United States has violated) - of the United States.

11. This proposed legislation violates the "supreme" (Constitution and Treaties) law of the (United States) land.

12. This proposed legislation should be placed delicately in the round file (trash can).

Thank you for this opportunity to express my sincere and correct by the standards of international law regarding this "sham" legislation.

It is decidedly unfortunate that such a "fictitious" attempt as this - to attempt to "correct" the mistakes of the United States of the past - to even see the light of day in the United States Senate.

Ed Case
U.S. Congressman (HI-2; 2002-07)
45-665 Halekou Place
Kaneohe, HI 96744

May 7, 2007

The Honorable Byron Dorgan, Chair
The Honorable Craig Thomas, Vice-Chair
Members
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: Support for S. 310, the Native Hawaiian Government Reorganization Act of 2007

Dear Chair Dorgan, Vice-Chair Thomas and Members:

I write in strong and unqualified support of S. 310, the Native Hawaiian Government Reorganization Act, and its counterpart, H.R. 505.

I write in a number of capacities. First, I served Hawaii in Congress throughout the 108th and 109th Congresses. During that period I was responsible for representing more Native Hawaiians (those of our fellow citizens whose ancestors had lived in Hawaii for centuries if not a millennium pre-Western contact) than any other Congressional district. During my tenure I also introduced, with the rest of the Hawaii delegation and others, prior versions of S. 310/H.R. 505.

Second, I served in the Hawaii State Legislature from 1994 through 2002, focusing in large part on Native Hawaiian matters, including as chair of the House Committee on Hawaiian Affairs. Our challenge throughout that period was to provide that overall structure, or big picture, under which federal, state and private efforts by and on behalf of Native Hawaiians could be carried forward in a coordinated and sustainable way. Our answer in large part was federal recognition for Native Hawaiians, as reflected in part in numerous resolutions virtually unanimously supported by Hawaii's federal, state and county elected officials.

Third, I worked in Congress during the 1970s for former U.S. Congressman and Senator Spark Matsunaga, like all other members of Hawaii's delegation since statehood an advocate of federal efforts to preserve and perpetuate the Native Hawaiian people and culture. It was during this period that Congress exercised its plenary power to lay the

broader foundation under which Native Hawaiians are today recognized under over 150 federal laws affirming their special political and legal relationship with the United States.

Fourth, I write as one who is not Native Hawaiian. I believe this is important because the opponents of federal recognition too often present the issue simplistically as one of racial or ethnic division, of Native Hawaiians against non-Native Hawaiians, of net detriment to non-Native Hawaiians. As a non-Native Hawaiian individual, I do not agree. I believe that federal recognition is an issue of fairness and consistency which will unite and benefit all. Similarly, I believe that, although the benefits of federal recognition may not flow directly to me, I and all of my fellow citizens will benefit by the preservation and perpetuation of the Native Hawaiian people and culture facilitated through federal recognition, and that, conversely, the absence of federal recognition will work to the detriment of not only Native Hawaiians but of all.

You have received testimony and comments on the various intricacies of S. 310/H.R. 505 and the policy alternatives you face. I would like to associate myself with the positions taken by my congressional delegation, other elected officials, leaders of our Native Hawaiian community, and others in support of those initiatives.

But I do believe your decision can be reduced to this direct question: are Native Hawaiians indigenous peoples of our country? Because if they are, then they should not be differentiated under our constitutions and laws from any other indigenous peoples, nor excluded from the same status as has been available to and developed for and with other indigenous peoples by this Congress, exercising its plenary power, for over 150 years.

There can be no real doubt on this central issue. Native Hawaiians had a developed, unique and indigenous culture pre-contact just as did American Indians and Alaska Natives, and they have faced and do face the same consequences and challenges of post-contact preservation and perpetuation as any other indigenous peoples. And our federal government has recognized their status not only through law but by numerous other actions for a full century.

Addressing one argument advanced against S. 310/H.R. 505, some opponents of federal recognition often mischaracterize the proposal as resulting inevitably in "independence" or "secession" or other relationships under which Native Hawaiians would not continue as full citizens of our country and fully subject to our laws. First, neither I nor, in my view and experience, the great majority of citizens, Native Hawaiian and non-Native Hawaiian alike, advocate or support that outcome, nor would we support this proposal if that was its predetermined result.

But the point is that this proposal does not mandate that or any other result. This proposal simply sets forth a process which may lead to a form of federal recognition; may lead there if, and only if (1) Native Hawaiians can agree on an entity with which to discuss potential federal recognition internally and to negotiate with the United States, (2) those negotiations are undertaken and result in a tentative agreement after full public input, and (3) both this Congress and Hawaii state government approve that agreement. That is a lot of safety valves against an end result which does not enjoy widespread acceptance.

S. 310/H.R. 505 provides that we collectively proceed with this process in a deliberative and inclusive manner toward a result that is fair to Native Hawaiians, consistent with our relationship with other indigenous peoples, and of benefit to all citizens. It has been fully considered and developed and is fully ripe for your decision. I support it fully, and respectfully request that you pass S. 310 out of committee and seek to bring it before the full Senate at your earliest opportunity.

Thank you very much for considering my submission. Please contact me should you have any questions or needs for assistance.

With aloha,

Ed Case

Ed Case

Aloha. Please vote yes to support passage of S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act of 2007 as introduced by the Members of the Hawai`i Congressional Delegation.

I have worked for almost 20 years at the Office of Hawaiian Affairs (OHA) in Hawai`i. The mission of this organization is to work for the betterment of the conditions of the Hawaiian people. NHGRA is consistent with this mission, and passage of this bill would provide fairness in U.S. policy and protection of the Native Hawaiian culture and existing programs.

A process of U.S. recognition already exists for American Indians and Alaska Natives. Native Hawaiians, as the indigenous people of Hawai`i, deserve similar recognition. It is simply a matter of justice.

Again, please vote yes for justice and for The Native Hawaiian Government Reorganization Act of 2007.

Thank you for your consideration.

Jennifer Chiwa
1216 Young Street, #306
Honolulu, Hawai`i 96814

Subject: Senate Bill 310/HR 505 Hawaiian Recognition Bill

Gentlemen/Madam: As a graduate of the Kamehameha Schools in 1948, I strongly urge the passage of the above bill. Mayday Card

JAPANESE AMERICAN CITIZENS LEAGUE
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Testimony of Honolulu Chapter

Japanese American Citizens League

Shawn L.M. Benton, 1st Vice President

Before the U.S. Senate Select Committee on Indian Affairs

On **S.310**
The Native Hawaiian Government Reorganization Act of 2007

On behalf of the Honolulu chapter of the Japanese American Citizens League, I am pleased to provide testimony in SUPPORT of S.310, which was heard by this committee on May 3, 2007. I understand the committee has left the record open for additional testimony until March 20, 2003. We believe that immediate action is necessary to protect the rights of Native Hawaiians through a full, fair, and unqualified process that facilitates their right to self-determination. S.310 is a good step in that direction.

Past support for Hawaiian Self Determination. The Honolulu chapter is a staunch supporter of the human and civil rights of Native Hawaiians, including their right to self-determination. We have been, and are, alarmed by the erosion of Native Hawaiian rights. Accordingly, with the support of over 100 JACL chapters across the country, we have successfully advocated for the adoption of resolutions by the JACL National Council in each of the last three decades formally expressing the organization's support for the rights of Native Hawaiians during the last twenty-five years. For example, in 1984, the delegates adopted a resolution urging Congress to acknowledge the illegal and immoral actions of the United States and to provide restitution for losses and damages suffered by Native Hawaiians as a result of these wrongful actions. In 1992, the National Council adopted another resolution in anticipation of the 100th anniversary of the illegal overthrown, recommitting the organization to the cause of indigenous Hawaiians. In the wake of the U.S. Supreme Court's decision in Rice v. Cayetano (2000), the National Council called for express recognition of a political relationship between the United States and Native Hawaiians.

Hawai'i's political and Demographic History. The Honolulu chapter is conscious of the history of Japanese immigration to Hawai'i, and of its impact on our contemporary culture and political conditions. Native Hawaiians are the indigenous people of Hawai'i. Until 1893, Hawai'i was a sovereign and self-governing nation recognized in the international community. In 1868, the

Gannenmono, the first Japanese contract laborers, arrived in Honolulu. Beginning in 1885, the first 955 *Kanyaku Imini* arrived in Hawai'i. Over the next thirty-five years, 86,000 Japanese contract workers were brought to Hawai'i to work on sugar plantations. They were later joined, between 1900 and 1924, by 132,000 Japanese immigrants. This history of immigration had a huge impact on these islands.

Although Japanese workers faced harsh conditions on the plantations, they were treated with aloha by the Native Hawaiians. They were allowed to become naturalized subjects of the Kingdom of Hawaii, with suffrage rights, under the Hawaii Constitution of 1852 (whereas Japanese immigrants were denied suffrage rights in the United States for nearly a century). In 1887, however, Western businessmen used extraordinary political and military pressure to force King Kalakaua to sign the "Bayonet Constitution", which denied Japanese suffrage, among other things. We note with dismay that, after the alleged annexation of Hawaii in 1898, the United States government denied the privilege of naturalization to persons of Japanese ancestry until after World War II.

Accordingly, descendants of those Japanese workers today remain immeasurably grateful for the treatment afforded to their ancestors by an unassuming Kingdom, which merely treated people fairly, without demanding gratitude (or asking these new citizens to prove their loyalty by sacrificing their lives in battle). Memories of the harsh treatment they received as workers on plantation run by American and European businessmen contrast sharply with recollections of the political treatment afforded to them, as equals, by the Kingdom of Hawaii.

The Struggle for Equality in Hawai'i. Japanese American soldiers who fought for their country in World War II and witnessed the sacrifices made by those who battled by their sides, returned to Hawai'i after the war and engaged themselves in local politics. Among others, U.S. Senator Daniel Inouye and former U.S. Senator Spark M. Matsunaga reinvigorated local politics in Hawai'i and helped achieve statehood for its people. That ethnic struggle for equality was monumental, if not revolutionary in Hawaii's history. It occurred at a time when other minorities around the United States joined in the larger struggle for civil rights in our nation.

Hawaii's admission into the Union in 1959 set the stage for political changes that contrasted sharply with the oligarchy that ruled Hawai'i for more than half a century. The returning AJA veterans would replace that system with a more democratic system of governance that opened up a substantial variety of political, social and economic opportunities.

However, as others began to achieve a greater sense of equality in those early decades following statehood, Native Hawaiians focused on a slightly different approach in their own efforts to achieve a sense of equality. They focused, instead, upon the principles expressed by President Richard M. Nixon on July 8, 1970, when he formally initiated the "Self-Determination" period of federal policy concerning Indian affairs on the continent. In Hawai'i, scant attention had been paid to provisions of the Statehood law designed to benefit Native Hawaiians (Akaka Bill opponent William H. Burgess likewise omits reference to section 5(f), which expressly provides for "the betterment of the conditions of native Hawaiians"). Simultaneously, the rapid period of development in the 1960's and 1970's (as a result of statehood) began to reach even rural areas populated by Native Hawaiians communities. The resulting protests by Native Hawaiians exposed many in Hawai'i to political injustices that had yet to be redressed.

During the 1978 Constitutional Convention for the State of Hawai'i, the delegates (not including delegate William H. Burgess) approved a constitutional provision establishing the Office of Hawaiian Affairs (OHA) as the entity responsible for administering a portion of the ceded lands trust revenues for the betterment of Native Hawaiians. This constitutional provision, and others concerning Native Hawaiian traditions, customs, water and land issues, were then ratified by a popular vote of the people of Hawai'i. One of the young leaders of this convention, John Waihee, would later serve as Lieutenant

Governor under the Administration of the State's (and nation's) first Asian American Governor, George Ariyoshi, before himself being elected as the State's (and nation's) first Native Hawaiian Governor.

This constitutional initiative spurred other related efforts. In the wake of that pioneering convention, both the state and federal governments initiated a variety of important publicly funded programs and enacted statutory provisions that address the unique needs of Native Hawaiians for better health, housing, employment, education, business development, social programs, and protection of traditional and customary practices. The resulting societal benefits have been immeasurable. More Hawaiians receive health care, housing, assistance, education support, college tuition, vocational and job training, and homesteads than ever before. More important, these programs give young Hawaiians a sense of purpose and identity that they carry forward in their career development. Although these investments and laws have targeted Native Hawaiian communities, they have had tremendously valuable incidental benefits to the public at large.

The people of Hawai'i – and, from a practical perspective, the State's economy – have greatly benefited from the Native Hawaiian cultural renaissance. For example, the resurgence of Native Hawaiian hula, both kahiko (ancient) and 'auana (modern), has been embraced by Japanese American and other ethnic groups in Hawai'i, who have been welcomed into the various halau hula (hula academies). Hula and chants are now regularly incorporated into public ceremonies. The people of Hawai'i also regularly participate in hui wa'a, or canoe racing associations, which celebrate the ancient Hawaiian tradition of voyaging. In addition, all are welcome in the private, non-profit Hawaiian language schools that have been established on all major islands with the assistance of federal funds.

The Japanese American community has borrowed from Native Hawaiians the term hapa (mixed blood) to identify and focus discussion around the issues faced by the children of our interracial marriages. We have drawn liberally from the experiences of Native Hawaiian 'ohana (extended families) in order to embrace the diversity in our own community. Thus, family includes not only blood relatives, but also beloved friends and informally adopted children. The Native Hawaiian traditions of aloha 'aina (love for the land) and ahupua'a (land division extending from uplands to the sea) management techniques have also been incorporated in the State's land use planning processes. In addition, our State's family courts have successfully implemented ho'oponopono (conflict resolution) to address significant societal problems outside the courtroom.

The practices of la'au lapa'au (Hawaiian healing) have been incorporated in Hawaiian health centers established with federal financial support. Once mechanisms are in place to protect cultural interests in the intellectual property reflected in Native Hawaiian oral traditions, the potential benefits to be explored among the biological diversity found in these islands could be very significant. We are still learning lessons from the Native Hawaiian people and fear the potentially adverse impacts that may result from a failure to recognize their political status as indigenous peoples of this land. Their centuries worth of experience living in connection with this land represents a resource that needs to be nurtured and celebrated.

On a more practical and admittedly self-interested level, we fear the economic impact on our State should Congress fail to clarify the political status of Native Hawaiians, thereby endangering vital social programs that may be subjected to further constitutional attacks in the wake of Rice v. Cayetano. The likely effect upon the State as a whole, as it struggles to fill the gaps left in the wake of such challenges, could be devastating. Even more compelling, of course, are the immediately adverse impacts upon the diverse communities served by federal legislation that benefits Native Hawaiians. Therefore, Congress must act to confirm what it has implicitly recognized since 1920. Our nation's trust responsibility to the Native Hawaiian people demands no less.

The cost of inaction on S.310 could be insurmountable. Failure to recognize the political status of Native Hawaiians would certainly cripple the reconciliation efforts mandated by P.L. 103-150. It would also undercut the legitimacy of the more than 150 pieces of legislation enacted by Congress as well as efforts by the State of Hawai'i Legislature to address a variety of chronic ills that plague the Native Hawaiian community. The loss of these essential programs would cripple families and agencies structured to address some of the most profound problems facing our island communities.

This movement to institutionalize programs and rights in Hawaii's constitutional framework reflected a widespread belief that the problems and affairs of Native Hawaiians deserved State governmental attention. That attention was justified on the basis of the unique history of Hawai'i and the role that its original inhabitants had played in establishing its initial mode of governance. There is widespread acceptance of the compelling need to politically address, in the political arena, the various issues facing Hawaiians.

Furthermore, our chapter recognizes the hard work that many Native Hawaiian organizations have engaged in to promote the concept of self-determination. This movement has grown both in size and sophistication over the past 25 years. Our support for S.310 is not meant as an endorsement of any particular form of self-governance. Rather, we believe that the Native Hawaiian people should make that decision pursuant to a democratic process that reflects the true exercise of self-determination.

The Honolulu chapter of the JACL recognizes Native Hawaiians as an aboriginal, indigenous and native people (kanaka maoli). They are not simply an ethnic minority. Rather, they occupy a unique position in the society that now calls Hawai'i home. That position is based on a political history that was once guided by an independent Kingdom recognized in the international community of nations. That governance structure was forcibly displaced with the support of U.S troops in 1893. The United States has never provided any redress for those actions, although it has formally apologized for them by enacting P.L. 103-150.

Accordingly, we urge the United States Congress and President to recognize the political status of Hawaiians as a native people, and provide for the implementation of reconciliation efforts between the federal government and Native Hawaiians in accordance with Public Law 103-150. We join with and support the recommendation of the Hawai'i Advisory Committee to the U.S. Commission on Civil Rights in calling for this sustained process redressing the claims of Native Hawaiians. See, Hawai'i Advisory Committee, "Reconciliation at a Crossroads: The Implications of the Apology Resolution and *Rice v. Cayetano* on Federal and State Programs Benefiting Native Hawaiians" (June 2001) (available at www.usccr.gov).

Consistent with the desires expressed by Native Hawaiians in the exercise of their right to self-determination, our chapter urges Congress and the President to include the establishment of a government-to-government relationship as part of the reconciliation process. This relationship must be formal, fair, and democratic, so true self-determination can occur. We urge Congress to create the conditions that will allow this model to emerge.

Finally, our chapter further urges that the United States remain open to creative resolutions in this process, to match the particular circumstances of Native Hawaiians, as S.310 appears to contemplate. Hawaii's unique history, and the differing conditions on the continent, demands different solutions to these complex problems. Accordingly, our chapter urges Congress to provide for such flexibility rather than constraining the legislation to fit circumstances that are relevant to other native groups.

Under these conditions, the Honolulu chapter supports the efforts of Congress to enact S.310. Thank you for this opportunity to provide you with our views.

Federal Recognition of Native Hawaiians

What Federal Recognition of Native Hawaiians Means to Me; What it Says About Our Country

1. It means that the United States honors the First Peoples of our great nation. The first peoples of our great nation have been great stewards of the lands and natural resources that sustain us; they welcomed immigrants with great hospitality; and they continue to share their knowledge, experiences and practices to help their Native and non-Native communities to adapt, survive and flourish as we face challenges and seize opportunities to live a better life and leave behind a better world for future generations.
2. It means that we value the diversity of the indigenous peoples and all of the immigrant populations that have come to the United States for better opportunities and freedoms and the pursuit of the American dream.
3. It means that we recognize the value and importance of ensuring that the world's cultures, including Hawaiian culture, survive as they embody the knowledge, experience and history of their respective peoples in relation to each other, the land and natural resources, environment and the universe.
4. It means that caring about the future of other people as much as we care about our own future is fundamental to our humanity.
5. It means that we truly believe in individual and collective self-determination – that we can be empowered to manage, control and determine our own futures.
6. It means that fairness and justice are not merely lofty ideals, but are real principles that guide our policies and decisions in these United States.
7. It says that our country holds itself to the same high moral standards by which our country measures others.
8. It means that my children, grandchildren and other generations to follow will have hope for the future.
9. It means that the challenges, hard work and accomplishments of my ancestors to bring me/us here to this day were not in vain.
10. It says that the United States recognizes and honors the sovereign authority of its member states and their respective citizens from whom the United States derives its sovereignty.
11. It says that the United States upholds the ideals and principles embodied in its Constitution and body of laws.

I support federal recognition of a Native Hawaiian government.

I support S. 310, the Native Hawaiian Government Reorganization Act of 2007.

Regards,
Liberta (Li) E. Garcia-Ballard
2253 Kapahu St.
Honolulu, HI. 96813

Senator Byron Dorgan, Chair
Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

Aloha mai Kakou,

I am writing to express my strong opposition to Senate Bill S 310, the "Native Hawaiian Government Reorganization Act of 2007." I am also writing to have my letter included in the testimony and comment on S.310 to be placed in the Congressional Record. On several points I find the bill inadequate, ill-conceived and inappropriate to the present and future needs of Native Hawaiian people. As a recently hired professor of Hawaiian and American history at the University of Hawai'i at Manoa and a current PhD Candidate in the American History program at Brandeis University, I find it necessary to come forward to add my opposing voice to the historical record for a number of reasons.

As a student and soon to be professor of American and Hawaiian history, I find it outrageous that our Senators and their supportors would proceed to promote a bill that has scarcely been shared with the very people who they claim are to be its benefactors. If through this "reorganization" act they seek to organize Hawaiians into a single "indigenous" citizenry, then the first necessary step to take would be to consult us to see what we think of this process. It would also help if the successive incarnations which the bill has taken over the last few years were shared with the wider community of *both* Native Hawaiians and Non-Native Hawaiians. In other words, everyone whom this bill is liable to affect should have the opportunity to really comment on this legislation. To my knowledge, this has yet to happen. No public hearings or town meetings **in Hawai'i** have been held since the bill was first introduced in 2000. If the impetus for "reorganization" is not a grass roots movement, from where indeed is the energy for this bill emerging?

As a historian, I am concerned that the reorganization of Native Hawaiians into a "government" with new ties to the Federal Government of 2007 will further erase and erode the current practices, agreements and modes of relation which Hawaiians have fought to build between ourselves and non-Native Hawaiians and the State of Hawai'i over generations. For all of its amorphous status, "being Hawaiian" in Hawai'i has for the most part been something that is appreciable to most members of local government and community. Local communal ties to each other may provide a stronger support for our future as a people than binding ourselves to a the federal government, whose approach seems to be a redefinition of Hawaiians in relation to American Indians. In this way, the unique historical experience and relationship which Hawaiians and their nation had to the federal government may be suppressed. For Hawaiians are not, *nor were we ever historically*, considered to be American Indians or even Native Americans, nor have we *ever* organized ourselves on our islands as *tribes*. Hawaiians had a kingdom that was not only recognized (as the bill so readily points out) by the United States, but our kingdom had standing as a nation among nations world-wide, maintaining diplomatic ties with European nations as well as nations of Asia and the Pacific over the course of the long 19th century.

As a student of the Hawaiian 19th century, and potentially one of its emerging leading experts, I am not convinced that those leading this process and calling for the "reaffirmation of the special legal and political relationship with Native Hawaiian people" have any idea what historically constitutes this relationship, since for the longest time most historians have simply ignored the extensive historical record written in Hawaiian.

I have many other points to elaborate upon, which I will reserve for a later date. For now let me reiterate my strong opposition to this legislation S. 310 and urge you and your colleagues to oppose passage of S.310.

'o au no me ke aloha
He Hawai'i'imiloa

Noelani Arista

Noelani Arista
20 Grove Street #14
Somerville, MA
02144

89-115 Mano Avenue
Wai'anae, HI 96792

Aloha Honorable Byron Dorgan, Chairman and Honorable Craig Thomas, Vice-Chairman and Members of the Senate Committe on Indian Affairs;

Attached you will find our letter of support for S. 310/H.R. 505, the Native Hawaiian Government Reorganization Act. This letter is being sent on behalf of my organization : 'Ahahui Siwila Hawaii O Kapolei (the Hawaiian Civic Club of Kapolei). The civic club movement was begun by Prince Jonah Kuhio Kalanianaole in 1910. We continue to live the dream of this man and the alii and ancestors that preceded him...and followed him.

We urge your vote in support of this legislation as a first step to reconcile with the native peoples of Hawaii. Thank you for your support,

Annelle Amaral, President, 'Ahahui Siwila Hawaii O Kapolei.

Re: Letter in Support of S. 310 /H.R. 505

Aloha Kakou:

On behalf of the members of 'Ahahui Siwila Hawai'i O Kapolei, a Native Hawaiian membership organization created by Prince Jonah Kuhio Kalanianaole in 1910, I am writing to transmit our support for S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act (NHGRA) of 2007, introduced by the Members of the Hawai'i Congressional Delegation. I ask that you vote yes to support the passage of S. 310/H.R. 505.

NHGRA reaffirms the special political and legal relationship between the United States and the indigenous, aboriginal Native Hawaiian people. NHGRA is about fairness in U.S. policy, protection of Native Hawaiian culture and existing programs, and justice.

A process of U.S. recognition is already available to American Indians and Alaskan Natives. The NHGRA extends a similar process to Native Hawaiians. We are the indigenous people of Hawai'i, whose ancestors practiced sovereignty in their ancestral lands and later became part of the United States. The establishment of a process of federal recognition for Native Hawaiians moves us toward fairness in federal policy and protects our existing entitlements and programs already in existence.

The historical facts of the role of the United States in the illegal overthrow of the native Hawaiian government in 1893 is easily available in historical documents…or can be found in U.S. Public Law 103-150, the Apology Resolution. The US Library of Congress maintains copies of the Ku'e petitions, filed with the United States providing you with sufficient evidence that the majority of Hawaiians opposed the annexation of Hawai'i. The enactment of NHGRA will provide a significant step toward repairing 114 years of injustice against the Native Hawaiian people and assist in the resolution of a historical wrong.

We take special interest in this legislation and we urge your support of it. We hope that the words promising "justice for all" is more than just words…but rather, that they encompass the fair effort of a people committed to reconciliation with those that have been harmed. Our ancestors wait for justice, we trust in fairness. We urge your support.

O wau me ka ha'a ha'a, (*I am humbly yours*)

Annelle C. Amaral, President

Robert Alm
165 Waokanaka Place
Honolulu, Hawaii 96817

May 16, 2007

As a citizen of Hawaii, as a non-Hawaiian citizen of Hawaii, as a citizen of the United States, I am writing to ask you to support S. 310/H.R. 505, the Native Hawaiian Government Reorganization Act of 2007.

This measure has been introduced by the Hawaii Delegation in the interests of fairness to the native people of Hawaii. The United States has recognized our many native peoples throughout our nation's history. Over 500 distinct native peoples have already been recognized and exist side-by-side with the larger U.S. society.

Recognizing native peoples has not harmed the United States; quite the contrary, this recognition has enriched the United States and strengthened it. Honoring the cultures that were here first is an act of fundamental justice for a nation founded on principles of justice.

The protection of Native Hawaiian culture, as well as the protection of existing Native Hawaiian programs, is critical for future generations. Enactment of this bill is a critical step in reaffirming that the Native Hawaiian people have a special political and legal relationship with the United States, consistent with the relationship the United States has with Native American peoples and Native Alaskan people.

I am not of Hawaiian ancestry. I was born, raised and live in Hawaii. This is the only home I know or expect ever to know. I deeply resent those who fear monger or seek to make this a racial issue. Honoring our native people will not bring us harm, it will instead bring us peace and reconciliation. It will heal us and make us stronger. It is, in the end, a matter of character, our character as nation. Do we have the strength and the integrity to do the right thing? With your help, with your support of S. 310/H.R. 505, we can and will do the right thing.

Thank you!

Aloha,

Robert Alm

TESTIMONY IN SUPPORT OF S. 310/H.R. 505
NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2007
U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
MAY 10, 2007, 9:30 A.M.

Dear Chairman Dorgan, Vice-Chairman Thomas, Members of the United States Senate Committee on Indian Affairs, The Honorable Daniel Akaka, The Honorable Daniel Inouye, The Honorable Neil Abercrombie, and The Honorable Mazie Hirono:

The National Federation of Filipino American Associations Region XII expresses its strong support of S. 310/H.R.505 Native Hawaiian Government Reorganization Act. NaFFAA Region XII is comprised of Hawai'i, Guam and the Commonwealth of Northern Marianas Islands. We are a non-partisan, non-profit national organization consisting of twelve regional chapters that represent more than five hundred Filipino American institutions and umbrella organizations, spanning the continental United States and Pacific Basin. NaFFAA is committed to promote the participation of Filipino Americans in civic and national affairs, and to increase awareness of Filipino American contributions to social, economic, cultural and political life in the United States. Through advocacy, it engages in securing social justice, equal opportunity and fair treatment of Filipino Americans.

The 2000 US Census for the state of Hawai'i shows 20% of the population is Native Hawaiian and Part/Hawaiian and 23% are Filipino and Part/Filipino. For 100 years, Filipinos have intermarried with Hawaiians and our community has become part of a multiethnic state. A majority of the Filipinos in Hawaii are immigrants from the Philippines. Our organization understands the history of colonization in the Philippines and the Philippine's desire for independence as a sovereign state. As Filipinos, we understand the need to recognize the special status of Native Hawaiians. As residents of Hawai'i we fully support the special status of indigenous Native Hawaiians and appreciate the host culture and their aspiration for self-governance and justice.

We believe that S. 310/H.R. 505 will benefit all people in Hawai'i, including immigrant Filipinos and US citizen Filipinos. There is nothing in the bill that would decrease or harm and ethnic group in our multicultural state. This bill will improve the low socio-economic and health status of Native Hawaiians who are our host culture and community. We support the Native Hawaiian Government Reorganization Act because it provides an orderly process to obtain recognition of the special relationship between the United States and Native Hawaiians. This process is already available to American Indians and Alaskan Natives and should be made available to Native Hawaiians.

We respectfully urge passage of S.310/H.R. 505 Native Hawaiian Government Reorganization Act.

Sincerely,

Amy Agbayani, Ph.D.
Vice Chairperson Region XII

NaFFAA Region XII · c/o 728 Nunu Street · Kailua, Hawai'i 96734

United States Senate Committee on Indian Affairs
Hearing May 3, 2007 on the "Akaka Bill"
(S.310, the Native Hawaiian Government Reorganization Act of 2007)
Follow-up testimony by Wendell Marumoto, JD. a third-generation Hawaii resident.

Aloha, Senator Bryan Dorgan, Chairman, Senator Craig Thomas, Vice Chairman, and members of the Committee:

In response to a question by Senator Akaka regarding assimilation, Micah Kane, Chairman of the Hawaiian Homes Commission, testified as follows:

> " I think the irony of that question is that in Hawaii, Americans have assimilated to Hawaiians. Hawaiians have not assimilated to Americans. And it is seen in cultural practices of our hula, where non-Hawaiians, thousands of them, participate in hula festivals, practicing our cultural hula. We've seen thousands of non-Hawaiians who practice in our language, in our charter schools and in our immersion schools. It is seen in the practices, of our cultural practices on a family basis in celebrating a child's one-year luau, where non-Hawaiians practice that. So it is quite ironic where the question is posed in a way where Hawaiians - are Hawaiians assimileting to Americans when in Hawaii, it's non-Hawaiians who have assimilated to our culture, and the value-set of us who received them to our land.

Mr. Kane's testimony is the epitome of revisionist history in which much confusion is created by his failure to distinguish between "*Hawaiian* culture" and "*Hawaii* culture". The former references the culture of ethnic Hawaiian people, while the latter references the overriding culture of the greater Hawaii community, which are, in fact, quite different.

Hawaiian culture, i.e. that of the people of Hawaiian ancestry, is one of many that have coexisted in Hawaii under the overriding aegis of American culture for over a century, and together make up the Hawaii culture, a congenial society that we all take great pride in calling the Paradise of the Pacific. The Hawaii culture is one inclusive of other influential cultures, which are predominantly of Asian origins, reflecting peoples who have together constituted a strong majority of the blood quantum of Hawaii's population since before it became a Territory of the U.S.

With regard to the emphasis that Mr. Kane places on the presumably numerous non-Hawaiians who participate in practicing "our cultural hula", it is fascinating to note that its accompanying music today would not exist without instruments contributed by others who make up our polyglot community, esp. the Portuguese. A closing note on this aspect of Mr. Kane's testimony is that if the *alii* had their way the hula might not exist at all today, and neither might the Hawaiian language.

This latter point gets into Mr. Kane's reference to having "seen thousands of non-Hawaiians who practice in our language, in our charter schools and in our immersion schools" as if schooling were a Hawaiian tradition. Schools and formal education for Hawaiians were unknown until introduced to Hawaii by the missionaries after 1820. For this and many other cultural benefits bestowed on native Hawaiians, Mr. Kane and the ethnic Hawaiian people should be grateful to America.

It was the existence of the American Way in a somewhat unadulterated form in pre-1950 Hawaii that fostered its incorporation of the vast array of Asian cultural practices brought to Hawaii and practiced by the then imposing majority of its populace. This immeasurably helped in developing a polyglot community to become greater than the sum of its parts, rather than to ethnically divide, compartmentalize, and fester, as the unrealistic premises and objectives of the proposed legislation seem to be leading.

Respectfully submitted,

Wendell Marumoto

United States Senate Committee on Indian Affairs
Hearing May 3, 2007 on the "Akaka bill"
(S.319, the Native Hawaiian Government Reorganization Act of 2007)

Prepared statement by Kaleihanamau Johnson

"No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and mammon." (Matthew 6:24)

The proposed legislation would ask individuals, with a strand of a particular racial inheritance, not to reject the government under which they have lived their lives but to choose to add a second layer of government to it. Jesus would say that this is not just unwise, it is impossible.

To begin with, the United States of America is not just a government; it is an idea. The idea is individual liberty. I know because I lived in Venezuela for ten years. I fled that country four years ago, bringing my children but leaving behind my husband, in order to breathe the air of freedom again. I wanted to give to my children, not a superior set of welfare programs but, the opportunity to grow up in a land where economic success was not just possible but was to be encouraged. I left behind a growing political climate which would feed on the economically successful.

Moreover, the proposed "Native Hawaiian Governing Entity" is not a government; it is a social welfare program. It is an attempt to unify the administration of a set of programs which have worked their way into our society over the past century. Although the insidious nature of welfare systems to establish a class of perpetual recipients has been well recognized and the recent efforts of Congress have been to get people off the welfare roles, the Akaka Bill would do just the opposite. It would provide a race-based criterion for enshrining such a class.

The notion of a racially distinct Native Hawaiian Community is a fiction. It was a fiction in 1893 at the overthrow of the Kingdom of Hawaii . Even then there had been many generations of dilution of Hawaiian bloodlines. It should go without saying that, after another century of interbreeding, bloodlines are even more dilute. But there does persist a Hawaiian spirit. This spirit transcends bloodlines and does not require a government for its perpetuation. Many of those who possess the Hawaiian spirit are completely devoid of Hawaiian ancestry. It insults them to deny this American process of integration.

The Akaka Bill Speaks of sovereignty of the Native Hawaiians. Here is another myth. Before 1894 there was no such sovereignty. The various Constitutions of the Kingdom of Hawaii make clear that the sovereignty resided in the reigning monarch. The constitutions also make clear that there were no citizens of Hawaii , only subjects. This is not an arbitrary choice of words; the history of the word 'subject' is steeped in servitude. Despite the attempts to appear enlightened by incorporating guarantees of liberty, patterned after the American Bill of Rights, Hawaiian commoners were servants of the Ali'i, or chiefly, class. It was the Queen who lost sovereignty at the overthrow of the Monarchy, not the

Hawaiian people.

David Malo lived during the time when human sacrifices were performed; before the kapu system was abolished in 1819. He was one of the first native Hawaiian scholars schooled at the Lahainaluna Seminary of the first class beginning in 1831. Malo wrote:

> The condition of the common people was that of subjection to the chiefs, compelled to do their heavy tasks, burdened and oppressed, some even to death. The life of the people was one of patient endurance, of yielding to the chiefs to purchase their favor.... It was from the common people, however, that the chiefs received their food and their apparel for men and women, also their houses and many other things. When the chiefs went forth to war some of the commoners also went out to fight on the same side with them.... It was the makaainanas also who did all the work on the land; yet all they produced from the soil belonged to the chiefs; and the power to expel a man from the land and rob him of his possessions lay with the chief.

Just as the Hawaiian commoners of old did not deserve to live subjected to authoritarian chiefs, Hawaiians of today do not deserve to live subjected to authoritarian legislators and executors. We are Americans and our rights are recognized by the U.S. Constitution and Bill of Rights.

It has been argued that the Akaka bill, if passed by Congress, will be used as the means to secession from the United States . In observance of current politics in Hawaii , sovereignty is a probability that looms ahead of us. Proponents of Hawaiian sovereignty recognize only those who descend from the inhabitants of these islands prior to the arrival of Captain Cook in 1778 regardless of the fact that the Hawaiian Kingdom recognized all persons of other races as subjects.

Some of the greatest minds in history came together to found a republic based on good principle. As Americans we can disagree on everything save the one document that stands as superior above all others that states "...[t]hat all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness..." It is absurd that anyone would settle for less than what they already have: freedom.

Dear Members,

Folks who can trace their lineage back to the overthrow of the Monarchy and can show that at least one of their ancestors was a citizen of the Monarchy and of Polynesian ancestry are wanting to claim special privileges now. Apparently the political gains are enough to warrant never once allowing the citizens of Hawaii to vote on this matter and convey their actual opinions to Washington.

Since this measure has been defeated before, we think it time to let the sunshine in and allow the people of Hawaii to speak through their right to vote. Will you support a vote by the people of Hawaii, or will you try to pass legislation without this basic preliminary step?

Our politicians have often gained lousy reputations over this kind of thing. I hope you will rise above the deal-making to insist that you hear from Hawaii's citizens before doing anything so divisive as forcing our citizens into separate camps by force of their genealogy.

Imua,

Bill Jardine
PO Box 1599
Kamuela, HI 96743

I Kui L Yee Hoy a proud citizen of the United States of America and a Kanaka Maole, hereby express my support for the Native Hawaiian Governance Reorganization Act (Akaka Bill).

This bill is not about politics or political parties. This has never been an issue to the Native Hawaiians. What has always been the issue was JUSTICE. Justice from the wrong done over a century ago by those speaking on behalf of the United States of America, yet doing so without its blessing or approval. Whether by error or with malicious intent, we the Hawaiian people have foregiven those agents representing(or misrepresenting) the United States of America whom have taken away our dignity and our self determination. We have learned the great virtue of forgiveness from which America, a Christian Nation was founded upon. Apologies and forgiveness aside, we look upon the keepers of Justice within the great halls of Congress to act upon what it stands for.... TRUTH AND JUSTICE.

I Kui L Yee Hoy support S. 310 and HR 505.

May 09, 2007

To: The Honorable Byron Dorgan, Chairman,
The Honorable Craig Thomas, Vice-Chairman
The Honorable Daniel K. Akaka
The Honorable Daniel K. Inouye
The Honorable Neil Abercrombie
The Honorable Mazie K. Hirono

The Native Hawaiian Education Association (NHEA) comprised of more than 1,000 members support the Hawaiian Federal Recognition Bill. The Senate Bill is S.310. The House Bill is H.R. 505. These Bills respectively state, "To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity."

It is NHEA's belief that successful legislation coincides with the efforts of NHEA, namely, to network and provide a venue for Hawaiian educators to design educational practices that supports a Hawaiian context for teaching and learning.

Therefore, these bills reaffirm the relationship between Native Hawaiians and the United States and represent an important step in the process of reconciliation between the United States and the Hawaiian peoples acknowledged by Congress as necessary through the enactment of the Apology Resolution, P.L. 103-150.

Congress has passed more than 100 bills relating to Native Hawaiians. Most of these acts of Congress treat Hawaiians similarly to Native Americans and Alaska Natives, but unlike the other indigenous peoples of the United States, Hawaiians have been excluded from the U.S. policy concerning Native American self-determination. It is time to end this discrimination and to begin the process of reconciliation.

Please support S. 310 and H.R. 505 by voting in favor of these measures.

Me ke aloha pumehana,

Lui Hokoana
President, Native Hawaiian Education Association

Central Maui Hawaiian Civic Club

May 9, 2007

To: The Honorable Byron Dorgan, Chairman,
The Honorable Craig Thomas, Vice-Chairman
The Honorable Daniel K. Akaka
The Honorable Daniel K. Inouye
The Honorable Neil Abercrombie
The Honorable Mazie K. Hirono

Aloha,

I hope this letter finds you and your family in good health and spirit. I am writing this letter on behalf of the members of the Central Maui Hawaiian Civic Club, to urge you to support Senate Bill 310 / H.R. 505 also known as the Akaka Bill.

The members of the club believe that the Akaka bill is important to protect the current programs for Native Hawaiians, and to begin the process of reconciliation and negotiation for other rights that were stolen when the United States assisted in the overthrow of the Hawaiian monarchy. We are confident that we, Native Hawaiians, can negotiate a reasonable settlement that is acceptable to all the people of Hawai'i.

We agree that the bill is not perfect, but also contend that the bill is a work in progress. If we think the bill needs to be changed, we will amend it until we get it perfect. The bill to grant Alaskan Natives recognition has been amended more than 30 times. The underlying point is that we, Native Hawaiians, have the skill and know how to make those changes to protect our future.

Some Native Hawaiians believe that the bill gives away too much, we disagree. While we are respectful of their beliefs, we do not share their sentiment. We believe most Hawaiians and non-Hawaiians are not yet ready for return to a government with a King. We believe it would be naive to believe that the United Nations will order the United States to return Hawai'i to a constitutional monarchy, and that the U.S. would abide.

Within this tabloid, you will find valuable information about the Akaka bill. We hope it will help to dispel the propaganda that is being put out by other organizations and demonstrate that many people support the passage of the Akaka bill.

All our members appeal to you to support Native Hawaiians, by supporting the Akaka bill. All those who call Hawai'i home has taken a part of our culture and made it yours; this is why Hawai'i is special. We ask that you support Native Hawaiians and in doing so support your way of life. Please aid in the passage of Senate Bill 310 / H.R. 505, the Akaka Bill.

With warm regards,

Lui K. Hokoana, President
Central Maui Hawaiian Civic Club

On behalf of the Central Maui Hawaiian Civic Club Membership:

Claire Aganos, Gordon Apo, Betty Bega, Stanley Bega, Geraldine Casil, Corey Char, Sharon Char, Kenneth Chong Kee,Rhoda Chong Kee, Clara DeStefano, Catalina Ewaliko, Lori Feiteira, Patricia Feiteira, Morris Haole, Juanita Hokoana, Pauahi Hokoana, Patricia Kaauamo, Rochelle Kaauamo, Lita Kahihikolo, Gordon Kalehuawehe, Momi Kalehuawehe, David Keala, Robin Laudermilk,Boyd Mossman, Maile Mossman,Geri Oliveros, Lisa Oliveros, Pedro Oliveros, Frank Purrugganan, Leone Purrugganan, Kennethy Souza, Michael Souza, Roni Tavares, Kathy Taylor, Lee Taylor, Kamaka Wallace, Elizabeth Williams, Ron Williams, Gary Wood, and Rose Yamane.

The Central Maui Hawaiian Civic Club is a 501 C (4) non-profit community organization that was established more than forty years ago. The mission of the Civic Club is to take an active interest in the civic, commercial, social, moral welfare, and education of our community. The Central Maui Hawaiian Civic Club is part of the Association of Hawaiian Civic Clubs. The Association of Hawaiian Civic Clubs is a confederation of forty-seven (47) Hawaiian Civic Clubs located throughout the State of Hawai'i and in the States of Alaska, California, Colorado, Nevada and Utah. The Hawaiian Civic Clubs are the oldest community based grass roots Hawaiian organization in Hawai'i, having been formed in 1918 by the then non-voting Delegate to the United States Congress Prince Jonah Kuhio Kalaniana'ole. We are the only Hawaiian organization to have branch clubs outside the State of Hawai'i.

Dear Sirs,

I was born in Honolulu, Hawaii in 1941. I was raised, educated, worked, contributed, raised a family, and hopefully will die in Hawaii. I love Hawaii as much as anybody, even if I do not have a speck of Hawaiian blood.
I firmly oppose the Akaka Bill, which will fragment Hawaii along racial lines and destroy what we have built for over 100 years. What we have built is something unique to the world and our legacy to mankind. It is this:
that no matter what your race, religious belief or no belief, economic status, profession or position, you are judged by your character only, and if flawed as we all are, yet can find hands everywhere extended in friendship. We have learned to live in tolerance, peace, and understanding.

The Akaka Bill threatens this legacy and has already created an insidious polarization among people that never existed before. It threatens Hawaii and America. It is dangerous, unconstitutional, and creates bigger wrongs than that which it proposes to correct. It looks backward, not forward. It seeks to legislate a state within a state, a priviledged race among races, an unequal distribution of wealth, land and power.

Kill it now, but if it advances further, all the people of Hawaii should be given a chance to vote on and defeat this proposal once and for all, as is our right.

Sincerely,

Wallace Hiraoka, resident of Hawaii
American and Hawaiian

Dear Senator Dorgan,

As a product of your educational system in the state of North Dakota (NDSU '70) and as a citizen and long-time friend of many native Hawaiians, I write in favor of the Akaka Bill for the following reasons:

1. For 33 years I have resided in their home land, with their blessing, raised two beautiful children with them who are of native Hawaiian blood, and truly understand the mindset and complexities of indigenous peoples.

2. It is important to remember that the Hawaiian Islands are their home by birthright, as are the American Indians and native Alaskans in their homelands, and are entitled to rights and entitlements as indigenous people, and therefore the United States is obligated to protect their rights from the onslaught of legal positioning that occurs in the United States. I view the Akaka Bill as the mechanism with which to do this. Hawaii is a very expensive place to live, they need help.

3. Native Hawaiians current ground level leadership are extremely intelligent people, much like the native Indian people in Canada, who I admire greatly. Be assured that only goodness will come from the Akaka Bill, that the future of the next generation is in good hands because the merit of the Akaka Bill is right, just, and will be placed in the hands of the right people. Without the Akaka Bill, that cannot be assured, and that assurance is what we non-Hawaiians most desire.

Best of luck to the North Dakota State University quest for a national championship in football next year, and please convey to President Bush that we will continue to produce major league pitchers here in Hawaii if he backs us up. It's not about race, it's about heart. He has a tough job, I do too making winners out of young people. Let's work together on it.

Aloha,

Frank Hecomovich, baseball scout
Midwest Liaison, Inc.
Mauna Loa Shores #604
1875 Kalanianaole Ave
Hilo, Hawaii 96720

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Bo Thao

Nhan Paul Ton That

JoAnn Yoo
Asian Americans for Equality, NY

Executive Director
Lisa Hasegawa

1001 Connecticut Avenue, NW
Suite 730
Washington, DC 20036

May 10, 2007

The Honorable Byron Dorgan, Chairman,
Senate Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

Dear Senator Dorgan,

I am writing to you today to express the National Coalition for Asian Pacific American Community Development's (CAPACD's) support for S. 310 and H.R. 505, the Native Hawaiian Reorganizatian Act of 2007. We thank you for taking these impartant steps in ensuring that the Native Hawaiian peoples have a governing entity that can negotiate with the state and federal government. We feel it is vital that the Native Hawaiian peoples are recognized by the federal government in ways that currently empawer other indigenous peoples, American Indians, and Alaska Natives.

National CAPACD is the first national advocacy organization dedicated to addressing the housing and community development needs of the diverse and rapidly growing Asian American and Pacific Islander (AAPI) communities in the United States. Our member organizations have worked closely with Native Hawaiians to ensure they have access to home ownership opportunities and affordable housing. In particular, National CAPACD supports the efforts of Hawaiian Community Assets and Hawaiian Community Lending to educate the native Hawaiian community on financial literacy and banking. We also support the emerging efforts of these important institutions to address the increasing rate of foreclosure among Native Hawaiians and asset building efforts through Individual Development Accounts.

Enactment of the Native Hawaiian Reorganization Act protects greater self-determination of Native Hawaiian people, and thus the distinct culture. It protects existing programs because it establishes a single U.S. policy reaffirming that as the indigenous people of Hawaii, Native Hawaiian people have a special political and legal relationship with the U.S., consistent with the Hawaii Constitution, over 150 existing Federal laws addressing Native Hawaiians and the U.S. Constitution regarding Native people of the lands of the 50 states.

We thank you for your continued support and offer our help in any way to help passage of the Native Hawaiian Rearganization Act of 2007. If you have any questions, please contact TC Duong at 202-223-2442.

Regards,

Lisa Hasegawa

I speak in opposition to S. 310.

The proponents of the Bill seek to have the congress recognize and restore an exclusive, Hawaiian race-based sovereign political entity that never existed. History makes this clear. In prehistoric times, only Polynesians inhabited Hawaii. This was by happenstance, not design. The idea of recreating prehistoric Hawaii entity comprised with those only of Hawaiian blood is nonsensical. We must examine then, after discovery and the resulting traffic to Hawaii, how did the political entity which was to be the Hawaiian government evolve and what was its racial character.

When explorers first landed on Hawaiian shores they found a stone age population with a ruling hierarchy. They made contact with ruling chiefs, marked their charts and left. The discovery, however, brought missionaries, mariners and travelers to Hawaii. The missionaries came to preach and the others came to rest and re-supply. However, many, attracted by Hawaii and its people, decided to settled in Hawaii.

Those who settled in Hawaii accepted the rule of the chiefs and became an integrated part of the western style monarchy started by Kamehameha, the great. Newcomers were welcomed as full citizens and a great many served in important government posts. Intermarriage was commonplace. It was the beginning of a successful and peaceful multiracial community of which we are so proud. Native Hawaiians have been full participants in the leadership of the community. Just as Senator Akaka, they have served in critical posts, as governor, judges (including Supreme Court chief judge), congressmen, mayors, state legislators, university professors and labor leaders.

The concept of a new raced based sovereign entity suggested by the bill's proponents was specifically rejected by the Hawaiian monarchy. Kamehameha III in the Declaration of Rights of 1839 said that, "God hath made of one blood all nations of men...." and refers to rights, "given alike to every man...." Equal rights to all, without reference to ethnicity, is the proud tradition of the Hawaiian monarchs. This tradition persisted through the reigns of all the Hawaiian monarchs. It should be supported by the United States congress, not challenged.

The Hawaii experience is the opposite of that of the Native American Indian tribes. The pilgrims came to North America with their own political and social structure. The settlers and the American Indians then maintained strictly separate politically and socially communities. Congress has recognized that peculiar history and has accommodated it. The experience of the American native Indian tribes has no relevance to Hawaii and certainly does not support the Bill.

Within Hawaii's multiracial population, a sense of racial harmony has long been considered Hawaii's unique blessing, but it can be fragile. That blessing helps us overcome our anthropological beginnings which carries with it a natural tension between races, ethnicity, religion, etc. The best communities are identified as how well they get past that tension. However, in these progressive communities there will always be those on the fringes demonstrating racial bigotry. Some measure of anti-white bigotry has been Hawaii's dirty secret from the world.

The bill takes us backwards and heightens inter-racial tensions which can send those on the fringes, over the line. We need to nurture our blessing, not undercut it. One wonders if there were more talk of racial togetherness rather than racial division, the recent spat of anti-white hate crimes would not have occurred. See http://starbulletin.com/2007/02/28/editorial/editorial01.html, and http://starbulletin.com/2007/05/04/news/story03.html

Thank you for considering my remarks

Joseph Gedan

Joe Gedan
345 Queen Street, Suite 702
Honolulu, Hawaii 96813

Dear Senators,

Hayden Burgess, also known as Poka Laenui (no relation to H. William Burgess), has been working for several decades to achieve independence for a Nation of Hawai'i. He served for a while in the U.S. military until he was drummed out for refusing to salute the flag and pledge allegiance to the U.S. He served as an elected Trustee of the Office of Hawaiian Affairs.
He is an attorney.

"Poka Laenui" believes Hawai'i has been under belligerent military occupation by the U.S. since 1893, and that under "international law" the U.S.
should withdraw from Hawai'i and pay reparations. He broadcasts anti-American propaganda 3 hours per week on a radio program, and a couple hours per week on cable TV -- infomercials sponsored by the "Hawaiian National Broadcasting Corporation."

And he is in favor of S.310, the Akaka bill.

He sees it as a form of reparations -- a way of getting money and power during a transitional period making Native Hawaiians stronger and more capable of pursuing total secession.

Below is an article he published in Ka Wai Ola O OHA of April 2005 [monthly newspaper of the State of Hawai'i Office of Hawaiian Affairs] page 16, "Federal Recognition Forum"
http://www.oha.org/pdf/kwo05/0504/16.pdf

This article should be regarded as his "testimony"
regarding S.310.

I support Hawaiian independence, but that doesn't mean I must oppose the Akaka Bill. Yet I find too often those two positions being placed in opposition to one another. It's part of that "or" syndrome: either Akaka or independence.

The Akaka Bill is not a substitute to the independent nation. It is a small, inadequate step to fully address the illegality of the overthrow and the wresting of self-determination from our Hawaiian nation. But it can be an important step to move us along that way. It can be an important step in addressing the current social, educational, cultural and economic needs of our native Hawaiian population, whether or not they select to enlist in the cause of Hawaiian independence.

The passage of the Akaka Bill will in no way retard or thwart the struggle for our sovereign nation. Like the Office of Hawaiian Affairs that was never meant to be the substitute for our independence, it could, and has, served to bring us one step closer to independence. Instead of the Akaka Bill standing as an "or " proposition to Hawaiian sovereignty, I see it as an "and" solution. Instead of dividing the causes among Hawaiian proponents between federal Native Hawaiian recognition vs. Hawaiian independence, such causes can be joined together. One is not exclusive of the other. We need not be divided on this issue.

The times now call for a new framework in which we plan our future. I can accept the Akaka Bill and continue to strive toward our Hawaiian independence.
Hawaiians, whether defined by race or by national allegiance, can continue to march hand in hand toward our historical justice and our brighter future.

Poka Laenui,

Tuesday, May 1, 2007

Honorable Chairman Byron Dorgan
United States Senate
Committee on Indian Affairs
838 Hart Office Building
Washington, DC 20510

Transmitted via facsimile to: 202-228-2589
Original hand delivered directly to office

Dear Chairman Dorgan:

I am writing to you today as an Inupiaq Eskimo from Alaska's North Slope, a veteran of the Viet Nam War and a supporter of S. 310.

During my life I have seen the promise of the American Dream come true. My people, the Inupiat Eskimos, have occupied the North Slope of Alaska for thousands of years. For us life has always been hard, but we have survived. We have adapted to the land, the resources around us, and developed a unique language, culture and art forms.

The most difficult period in my peoples' history began in the late 1800's after New England whalers made repeated visits in search of the bowhead whale for its baleen (an early form of organic "plastic") and whale blubber which was rendered for its oil. Oil extracted from whales caught in our waters provided an alternative to candle-light in the pre-hydrocarbon world. The Yankee whalers also brought many terrible diseases (against which my people had no immunity), alcohol, and values which threatened our successful Inupiat culture.

After the Yankee whalers almost extinguished the bowhead whale, species which my people relied upon, they departed our region. We were left behind and trapped between two cultures with many ashamed of their Inupiat heritage.

This changed in the 1960's. Some of the future leaders of Alaska's Native people returned home from the BIA high schools located around the country, Viet Nam, and other experiences in urban Alaska and the lower 48 States. They had witnessed the rising revolution in the early 1960's with African Americans insisting on their rightful place in a society of equality, regardless of skin color or heritage.

Our young Native leaders were emboldened to demand on behalf of their people that their aboriginal and fundamental human rights be protected. This movement and other issues in the late 1960's led to the enactment of the Alaska Native Claims Settlement Act in 1971 (ANCSA).

ANCSA vested in my people some of our ancestral lands, funding and the ability to organize into Regional and Village Corporations based upon status as Alaska Natives. We chose to

gamble upon independence and selected the corporate form of governance over the tribal-reservation system which had a long and checkered history in the lower 48 States.

I believe we made the right choice for the Alaska Native people. Our Regional and Village Corporations are successful. We have brought pride to our people. We have worked hard to preserve our heritage and our culture while at the same time learning to be competitive and successful in many aspects of modern business.

My Native Regional Corporation, Arctic Slope Regional Corporation (ASRC), is owned by nearly 10,000 Inupiat shareholders. We have chosen to be modern and competitive in business while at the same time preserving for our people their local traditional subsistence lifestyle. Our children move easily between the worlds of high-tech and the world of subsistence. We find that this works for us.

We are grateful that over the years Senators Inouye and Akaka have supported us in addressing the needs of the Alaska Native people. As a result, we have taken a special interest in the history and plight of Hawaii's Native people. We have sought to share our experience and have acknowledged that bringing the values of independence and self-determination in Hawaii will require new arrangements and institutions to adapt to differences in history, culture and legal relationships.

S. 310, the Native Hawaiian Government Reorganization Act of 2007, will, I believe, present the Hawaiian Native people the same opportunities for commercial success, independence, and cultural preservation that ANCSA provided for my people more than 35 years ago.

Based upon our experience, I urge Members of the Indian Affairs Committee and the United States Senate to support S. 310 and give the Hawaiian Native people the same opportunity Congress gave my people in 1971.

In my view, technical legal arguments about whether the Native Hawaiian people fit the pattern and precedent of "Indian Policy" miss the point. The Hawaiian Native people have suffered an injustice. Congress can and should address this injustice by recognizing it and allowing them a measure of self-determination and local control.

S. 310 represents many compromises and plows new ground. In this respect it is much like ANCSA. ANCSA was not perfect, but it worked very well. It brought self-determination to Alaska's Native people and allowed them the institutional means to preserve their pride in heritage and their unique cultures.

I endorse S. 310 and urge you to support Senator Akaka, Senator Inouye, and the Hawaiian Native people. I respectfully submit my comments for the written record.

Sincerely,

Oliver Leavitt
Vice President

Cc: Office of U.S. Senator Daniel Akaka
Office of U.S. Senator Daniel Inouye
Office of U.S. Senator Ted S[illegible]
Office of U.S. Senator Lisa Mur[illegible]

On Jan. 17, 2007 - 114 years to the day after the illegal overthrow of the Hawaiian kingdom - Hawaii Sen. Daniel Akaka introduced **The Native Hawaiian Government Reorganization Act of 2007** (S. 310) on the floor of the U.S. Senate. The bill would begin a process to form a Native Hawaiian governing entity that could negotiate with the state and federal government on behalf of Hawaii's indigenous people, and would provide parity in federal policies that empower other indigenous peoples, American Indians and Alaska Natives, to participate in a government-to-government relationship with the United States.

To Our Honorable Representatives in the United States Government:

I would like to raise my voice in support of the Native Hawaiian Government Reorganization Act of 2007 (S. 310) as introduced by Senator Daniel Akaka on the floor of the U.S. Senate.

This bill would grant the United States government the opportunity to provide for the restoration and forgiveness (Ho'o Pono Pono) necessary to heal the deep wounds inflicted upon both the innocent people and the Aina of Hawai'i, and provide relief from the illegal actions *based upon greed* which have desecrated and stained our beloved Constitution for so many years.

American Indians and Alaska Natives have finally been afforded the opportunity to enjoy the fruits of this healing process through the conditional sovereignty granted them by the recognition of their status as a separate governing body; able to negotiate and represent the needs of their people, including the right to health care, reparation, protection of sacred sites and the return of ancestral remains.

The National Congress of American Indians (NCAI) has become a powerful force on behalf of all federally recognized tribes, assuring them the right to be heard and considered in matters pertaining to the health and welfare of their families and communities.

We, the people of Hawai'i deserve this same opportunity to raise our voices and be heard. We deserve to be recognized on every level in this great Nation as Peacemakers, Keepers of the Sacred Trust, and Survivors of an undeclared and unjust war that confiscated our lands, imprisoned our beloved Queen, and brought our Culture to the brink of annihilation.

The gentle people of Hawai'i Ne have survived through the sheer strength of self-determination and Aloha, and with the love of Ke Akua will continue to prosper as we stand tall beside our Native Brothers and Sisters on the Mainland.

Please do everything you can to assure that we can do so *in total equality* with other Indigenous people of the United States of America, free from the unlawful oppression of the past, whether on Island soil, the Cities and Indian reservations of the mainland United States, or anywhere else we choose to reside.

Kanaka Maoli, wherever they are found, carry the Aina and Spirit of Hawai'i in their Souls.

Mahalo Nui Loa,
Susan Ka'iulani Lyons
Gila, New Mexico

Agnes Malate, Program Chair
FILIPINOS FOR AFFIRMATIVE ACTION
3432 B-1 Kalihi St.
Honolulu, Hawaii 96819

Dear Chairman Dorgan, Vice-Chairman Thomas, Members of the United States Senate Committee on Indian Affairs, The Honorable Daniel Akaka, The Honorable Daniel Inouye, The Honorable Neil Abercrombie, and The Honorable Mazie Hirono:

My name is Agnes Malate, program chair of Filipinos for Affirmative Action. Our organization strongly supports S. 310/HR 505 Native Hawaiian Government Reorganization Act.

We support this bill to protect Native Hawaiian culture, existing Native Hawaiian programs, and a process to obtain federal recognition. As one of the newest and largest ethnic/racial groups in the state of Hawaii, Filipinos have experienced discrimination based on ethnicity and language. We are very aware of the history of civil rights in the United States and appreciate the need to protect our civil rights, to expand affirmative action and to work for fair immigration reform. We believe that this bill is consistent with civil rights laws that protect discrimination based on race, ethnicity, nationality, and language because S. 310/H.R. 505 addresses political status e.g. immigration status, citizenship status, indigenous native status. Filipinos for Affirmative Action supports this bill for it does not decrease benefits and rights of any ethnic or racial group. This bill will benefit Native Hawaiians and no resident of Hawaii will be harmed by passage of this bill. This bill will provide for added protection for Native Hawaiians who have been historically denied benefits and rights based on their political status.

Hawaii is a multicultural community and every ethnic and racial group in Hawaii has benefited from our Native Hawaiian host culture over the centuries. Filipinos support this bill and other efforts to improve the status of Native Hawaiians and to recognize the special political status and relationship of Native Hawaiians and the U.S. This bill will provide a process that is inclusive of the entire community.

We would like to take this opportunity to express our thanks to our host culture, the Native Hawaiians, who have generously welcomed us as part of the community. We support this bill which provides an inclusive process to provide federal recognition of the special status of Native Hawaiians and their relationship to the U.S. Filipinos and other ethnic/racial groups support their aspirations and urgently request your support to pass this bill.

Respectfully,

Agnes Malate, Program Chair
Filipinos for Affirmative Action

Presented by Jake Manegdeg · President, Filipino American Citizens League

Dear Chairman Dorgan, Vice-Chairman Thomas, Members of the United States Senate Committee on Indian Affairs, The Honorable Daniel Akaka, The Honorable Daniel Inouye, The Honorable Neil Abercrombie, and The Honorable Mazie Hirono:

My name is Jake Manegdeg. As president of the Filipino American Citizens League, I am proud to submit our full support of S. 310. The Filipino American Citizens League was formed over ten years ago to contribute to the advancement of civil rights and social justice for minority groups, underserved populations, and vulnerable communities through education, advocacy, and social action.

Native Hawaiians deserve federal recognition as the indigenous people of Hawai'i. Do not be confounded by opponents of this bill, who fan unjustified fears and distrust that contort and dismantle the intent of the constitution and its responsibilities to make right the historical wrongs that continue to disempower Hawai'i's Native people until today.

Like Native American Indians and Alaskan Natives, Native Hawaiians have among the worst health, education, and labor status in the nation, which is well documented in the Native Hawaiian Health Care Act. These disproportionate disparities, when compared to other populations in the U.S., are evidence of systematic disenfranchisement of Native Hawaiians that must be ameliorated through self determination measures proposed under S. 310.

Therefore, it is the civic and moral responsibility of the Filipino American Citizens League to support S. 310, as Filipinos have had the privilege to work, live, raise generations of our families, prosper, and contribute to building Hawai'i's vital economy and vibrant cultures over the last one hundred years in Hawai'i. I hope that Congressional lawmakers will see that by supporting America's Native Hawaiians with your vote to enact S. 310, it helps all Americans and vulnerable groups.

Very Sincerely,

Jake Manegdeg,
President, Filipino American Citizens League

Aloha! My name is R. Moana Medeiros and I am a Native Hawaiian educator working at a Hawaiian focused public charter school in Nanakuli, Hawai`i. I have taught kindergarten for five years at a school in a Native Hawaiian community and have witnessed the hopelessness many of my native people face in day to day life.

Nearly a dozen students at my school are homeless. By the age of four too many have suffered from experiences that include physical and sexual abuse. Numerous are raised by grandparents as their parents struggle with crystal methamphetamine addiction and incarceration. Large numbers of students come from single parent households.

With these stories as their own, reading more often struggles to be their strength. Sadly, 92% of our student body are Native Hawaiian children from four to thirteen years of age who already face socio-economic and health disadvantages through no fault of their own. Rebuilding self esteem, self identity and cultural pride through education is how I work everyday to serve my people in this Native Hawaiian school community.

I am writing to express my support for S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act of 2007, introduced by the Members of the Hawai'i Congressional Delegation, and to ask that you vote yes to support passage of S. 310/H.R. 505.

With this recognition, not only will Native Hawaiian programs be protected, but the people whom it serves will begin to believe there is hope for a life to be proud of. We are on the cusp of forging forward or not. I take special interest in this legislation, and urge your support to help the many destitute Native Hawaiians who are searching for recognition in these United States. Thank you for your consideration of this important issue.

Sincerely,

R. Moana Medeiros

Aloha,
I am writing to express my support for S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act of 2007, introduced by the Members of the Hawai'i Congressional Delegation, and to ask that you vote yes to support passage of S. 310/H.R. 505.

I was born on Maui, raised on Oahu, attended and graduated from Iolani School, have a BA in History from the University of Hawaii at Manoa, am a tax payer, and a proud contributor to this unique and beautiful state of Hawaii. However, I am not Native Hawaiian. But I am married to one, love their culture and values, and am completely and whole heartedly in support of this Act.

I'm sure you've heard some of the arguments opposed to this Act siting secession, land grabbing, and racial fears. These arguments are simply not true. They are made by ignorant, self-serving individuals who would rather push forward with their own personal agendas than move forward with an Act that would benefit all Native Hawaiian people.

Having traveled on business to the state of Alaska, I have seen first hand the benefits that Native Alaskans have enjoyed from Federal Recognition.
Lets do what's right and extend the same recognition to Native Hawaiians.

As proud Americans who have a troubled history, it is our duty to be responsible towards our Native brothers and sisters who have long suffered a lost of land, identity, and culture while living in a state of poverty.
The Native Hawaiians have done much to bring themselves up. It's time for the United States Government to do their share by supporting S. 310/H.R.
505 and there bye giving them the same recognition that the Native Americans and Native Alaskans currently enjoy.

I support the Native Hawaiian Government Reorganization Act of 2007!

thank you for your time,
Preston R. Medeiros
--

Dear Senators Dorgan and Thomas:

I am writing this letter for inclusion in the hearing record for the hearing on Senate Bill No. 310 ("S.310" or the "Akaka Bill") of May 3, 2007, which record was held open until May 15 and to urge you and other senators to oppose passage of S.310. This letter has been transmitted via facsimile today, and a copy has been placed in the postal service for physical delivery to the Committee's address referenced above.

With all due respect to the junior senator from Hawaii, this legislation is more about his personal legacy and less about recognizing sovereignty or ensuring economic self-sufficiency for the native people of Hawaii (for purposes of this letter, "Native Hawaiians").

First, S.310 sprang forth not from Native Hawaiians as a group but from a small group of political elites in Hawaii, without sufficient input from either Native Hawaiians at large or the greater population of the state of Hawaii. Despite claims from Senators Akaka and Inouye to the contrary, the last truly public hearings on "the Akaka Bill" were held in Hawaii over five days in 2000—a full seven years ago. Since then, S.310 has been altered so significantly that it truly bears little relationship to the legislation publicly commented upon in 2000. This lack of public hearings in the State of Hawaii on *this* version of the legislation is significant. Legislation purporting to recognize a people's sovereignty should spring "from the bottom up," from the voices of the people themselves, not from special interests or a political elite that have a vested interest in preserving their control over economic resources. Yet, this legislation arrived fully drafted before there ever was an opportunity for the people to have meaningful input. True, there have been hearings—in Washington, D.C. under the auspices of the Committee on Indian Affairs. But how many average Hawaiian people can make the very costly and time consuming journey to Washington to come to these Committee hearings of subsequent versions of the bill? Why do lists of people who have given testimony on subsequent versions of the bill look like a "Who's Who" of political elites with vested interests in garnering federal funding that they will control? With the sovereignty of an entire people purportedly at stake, why not allow the people themselves to determine whether or not this legislated framework of government reorganization and land settlement is what the people really want?

The Akaka Bill is less about justice or economic self-sufficiency and more about protecting entitlements, the administration of which provides jobs for the same political elites in Hawaii. One of the primary reasons in the past for Congress to recognize various Indian nations has been to foster their economic self-sufficiency. Yet, nowhere in the public discourse has a plan been laid out to encourage greater economic self-sufficiency. The only plan has been to preserve the status quo, in which Native Hawaiians become more dependent on federal entitlements, to the benefit of the political elites.

S.310 does not reflect the will of Native Hawaiians, and I urge you in the strongest terms to oppose passage of this poorly conceived legislation.

Respectfully yours,

Jessie Konala Minier, Esq.
Originally of Nanakuli, O'ahu

Morgan, Lewis & Bockius LLP
2 Palo Alto Square, Suite 700
3000 El Camino Real
Palo Alto, California 94306

cc: Senator Dianne Feinstein
Senator Barbara Boxer

Na Kanaka Maoli o Hawaii, P.O. Box 23386, San Diego, CA 92193

May 9, 2007

Vernon H. M. Miranda
President - CEO
Sharon Ku'uipo Paulo
Executive VP
Margaret K. Sanborn
Chief Financial Officer
Donald P. Sato
VP Marketing
Lono A. Kollars
VP Technology

The Honorable Byron Dorgan, Chairman
The Honorable Craig Thomas, Vice Chairman and
Members of the Senate Committee on Indian Affairs

On behalf of the Board of Directors of Na Kanaka Maoli o Hawaii, *"Mahele Imi Na'auao – A Journey to Seek Knowledge,"* I am writing to express our support for S. 310/H.R. 505, The Native Hawaiian Government Reorganization Act of 2007, introduced by the Members of the Hawai'i Congressional Delegation, and to ask that you vote yes to support passage of S. 310/H.R. 505.

NHGRA reaffirms the special political and legal relationship between the United States and the indigenous, aboriginal Native Hawaiian people. NHGRA is about fairness in U.S. policy, protection of Native Hawaiian culture and existing programs, and justice.

A process of U.S. recognition is already available to American Indians and Alaska Natives, and enactment of NHGRA extends a similar process to Native Hawaiians. There are over 560 federally recognized Native governing entities functioning in the U.S, along side local, state and federal governing entities. Native Hawaiians are the indigenous people of Hawai'i, whose ancestors practiced sovereignty in their ancestral lands that later became part of the United States. The establishment of a process of federal recognition for Native Hawaiians moves us toward fairness in federal policy toward American Indians, Alaska Natives and Native Hawaiians.

Protection of Native Hawaiian culture, as well as existing Native Hawaiian programs is critical for future generations. Perpetuation of distinct, living cultures requires self-determination, and that is necessary for the Native Hawaiian culture as well. Enactment of NHGRA protects this greater self-determination, and thus the distinct culture. It protects existing programs because it establishes a single U.S. policy reaffirming that as the indigenous people of Hawai'i, Native Hawaiian people have a special political and legal relationship with the U.S., consistent with the Hawai'i Constitution, over 150 existing Federal laws addressing Native Hawaiians and the U.S. Constitution regarding Native people of the lands of the 50 states.

The historical facts of the role of the U.S. in the illegal overthrow of the Native Hawaiian government in 1893 are accurately documented in U.S. Public Law 103-150, the Apology Resolution. As evidenced by the anti-annexation Ku'e petitions filed with the U.S, the vast majority of Native Hawaiians opposed the 1898 annexation of Hawai'i. Upon enactment of NHGRA, just reconciliation and movement forward, after 114 years of justice delayed, will now be possible. After the required U.S. recognition process is satisfied, representatives of the U.S., the State of Hawai'i and the recognized, representative Native Hawaiian governing entity will be able to talk together, with equal standing, negotiating to resolve consequences of the illegal overthrow with well-being and justice for all as the goal.

Reaffirmation of the special legal and political relationship between the U.S. and the Native Hawaiian people as a whole, acknowledges Native Hawaiians with their unique culture, values, history, assets and institutions can best determine and implement solutions to solve problems specific to Native Hawaiians.

We take special interest in this legislation, and urge your support. Thank you for your consideration of this important issue.

E malama pono,

Vernon H.M. Miranda, Sr.

Aloha,

It is with Aloha that we send this testimony, at the same time condolences for your loses in Virginia and Iraq for all who have died and to their families who are grieving today. Malama Pono Ike Kahi ike kahi. (We seek your response to this e-mail)

Although Hawai'i still has a treaty with the U.S. (1849) we believe this bill cannot pass based on international law, however, we would like to state for the record the following regarding S.B. 310.

My name is Rita Kawehiokalaninui-I-iamamao Kanui, President of The Aha Hui O Kealoha Aina (Hawaiian Women's Patriotic League) an association of native Hawaiians; na kupuna, teachers, farmers, fisher people, kumu hula, practitioners in healing, museum curators, builders, students and descendants of Kamehameha, I, Moana, Keawe, and Kauaua 'ohana (family) well aware of our history as a people speaking on behalf of those who cannot speak for themselves; our ancestors, inmates in prison at home and abroad, na kupuna (elderly) and na keiki (innocent children) and native Hawaiians who like you are proud to be who we are living in a country with problems we are sure you can identify with and for this purpose we send this testimony to share with this committee why we cannot support Senate Bill 310, regarding creating a Native Hawaiian Government at this premature time for many legal, cultural, spiritual, health, education, economic development and moral reason that is contained within the website: "hawaiiankingdom.org" too long to mention here, but I would like to focus on the attempts by less than scrupulous people, many our own who call themselves "N"ative Hawaiians as well as those "Hawaiians" who have formed their own government from a corporation stand point who do not speak for us, who are descendants of native Hawaiians who never gave up legally or with consent our sovereignty, who are clear about who we are, what laws we follow and why it is important for your committee to consider our testimony in writing and in person, should we be invited for consideration.

As native Hawaiians with the highest respect for Americans who believe in 'Io (God) especially in these times of political turmoil, weather catastrophies and the need for healing in all of our lives, families and countries we pray 'Io will help all of us as we deliberate the Hawaiian question at hand.

Appointed by my ancestors (kupuna who have passed) to approach the Hawaiian question with the highest regard and with respect to all concerned, because we believe in true democracy that is built on righteousness (pono) for all cocnerned it is our intention to help in the process to get to the bottom of this question in a way that the world could learn from the Hawaiians about Aloha through first talking and coming to some agreement on the way forward making war the last resort at all times. As my ancestors were and continue to be the best when it came to warfare and diplomacy, two tactics we constantly use in resolving issues personally, nationally and

internationally we seek to resolve the Hawaiian question once and for all without the interferences of foreign and domestic corporations Hawaiian and non-Hawaiians who claim to speak on our behalf who see Hawai'i as an independent country, can only bring out the good and best for America and the Hawaiians who are not Americans by nationality who do not seek to secede since, Hawai'i was never made legally a part of the United States of America...our problem and your problem? is that we are illegally occupied by the United States military and influx of foreigners on a land that is only a dot on a map of the world
where land space, water and resources are very limited and vanishing quickly if we don't do something about it. We certainly, are not saying that we do not welcome Americans to our shores.
We certainly am not saying we do not want to be friends with the Americans and we certainly would not want to see our people more marginalized off of their own lands because foreigners choose to live here.

We are saying that it is time the Hawaiian question be resolved by the Hawaiians who are not and do not belong to any American or foreign corporations who have the money, military and might to control our future. One only needs to look to Iraq and see what is happening there. We are an occupied country and would like to see it end without war, political corruption, fear and greed to those who claim to have military might backing their position. We all know, that they are not 'Io, (God) and we seek his direction, blessings and wisdom to work with those of like mind to find the righteous solution that can be the lesson for the world to learn from.

As a descendant of Princess Bernice Pauahi we believe as she has that only through Jesus will our questions be answered and that it is time the United States Congress give the true Hawaiians who have gone without an opportunity to lay out why Hawai'i as an independent country continues and why it is time America begin to take care of their own, pull back their forces all over the world and mind their own business for once. The American Indians also need to understand that Hawaiians are not indians or eskimos as the Danner sisters, who work for a corporation tries to brain wash our people into thinking. We are not, never were and only want to continue to be what our ancestors were...Hawaiians. Just simple people, living humbly whose only interest is to make 'Io smile and to take care of our children, country and be happy. We can all be happy when we let go. It's time the Akaka Bill be let go and OHA, Kau Inoa and the attempts to implement the Ho'oulu Lahui government stop trying to make us Americans, indians and eskimos...which we are not, and do not wish to be.

We pray you will consider to invite us and have OHA pay for it that we be able to attend this aupicious hearing where upon we can come with our plans to work together with our people in Ameica on building for a true Hawaiian government that is not dependent on federal funding and where everyone can be satisfied and content, as 'Io (God) has planned and to bring Him in as a witness to the truth, that we may all live as one family caring for our own with our own funds, resources and human know how. This way, American people will never be burdened by our needs that was never our intent but the intent of the political and corporate few who have profited on the backs of the Hawaiians and holding us hostage. We, like you want to be free and that is what every man, woman and independent country wants.

Mahalo Nui Loa and May God Bless You All,

Rita Kawehiokalaninui-I-iamamao Kanui,
President Aha Hui O Ke Aloha Aina
41-169 Poliala Street
Waimanalo, Hi. 96795

Federal Recognition of Native Hawaiians

What Federal Recognition of Native Hawaiians Means to Me; What it Says About Our Country

1. It means that the United States honors the First Peoples of our great nation. The first peoples of our great nation have been great stewards of the lands and natural resources that sustain us; they welcomed immigrants with great hospitality; and they continue to share their knowledge, experiences and practices to help their Native and non-Native communities to adapt, survive and flourish as we face challenges and seize opportunities to live a better life and leave behind a better world for future generations.
2. It means that we value the diversity of the indigenous peoples and all of the immigrant populations that have come to the United States for better opportunities and freedoms and the pursuit of the American dream.
3. It means that we recognize the value and importance of ensuring that the world's cultures, including Hawaiian culture, survive as they embody the knowledge, experience and history of their respective peoples in relation to each other, the land and natural resources, environment and the universe.
4. It means that caring about the future of other people as much as we care about our own future is fundamental to our humanity.
5. It means that we truly believe in individual and collective self-determination – that they can be empowered to manage, control and determine their own futures.
6. It means that fairness and justice are not merely lofty ideals, but are real principles that guide our policies and decisions in these United States.
7. It says that our country holds itself to the same high moral standards by which our country measures others.
8. It means that their children, grandchildren and other generations to follow will have hope for the future.
9. It means that the challenges, hard work and accomplishments of their ancestors to bring their children here to this day were not in vain.
10. It says that the United States recognizes and honors the sovereign authority of its member states and their respective citizens from whom the United States derives its sovereignty.
11. It says that the United States upholds the ideals and principles embodied in its Constitution and body of laws.

I support federal recognition of a Native Hawaiian government, and I understand and support the extension of the federal policy of self-governance to only the indigenous peoples, indeed the first peoples, of the United States, as this is the only place in the world where their sacred lands and cultural resources are located and where their histories and cultures live and thrive.

I support federal recognition of a Native Hawaiian government.

I support S. 310, the Native Hawaiian Government Reorganization Act of 2007.

Regards,
Steven E. Ballard
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