

and intimidation—they want transparency and the rule of law. They want a future for themselves and their children.

Today, Northern Ireland is a struggling democracy—at a crossroad. Elections have occurred. Elected representatives have been chosen. The mechanisms of self-government are clearly spelled out in the Good Friday Accords. Everyone knows what needs to be done to move the process forward. I hope and pray that those with the power to make a difference will have the courage to do the right thing. The people of Northern Ireland deserve and expect nothing less.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

Last week, a 15-year-old high school student was charged with assault after attacking a fellow student. According to police, the attacker yelled disparaging remarks about the victim's sexual orientation before the fight broke out. The victim was taken to the doctor with bruised ribs after he was repeatedly kicked.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

OPPOSING THE NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT

Mr. KYL. Mr. President, it has come to my attention that persons outside of the Senate have told Senators that I do not oppose S. 147, the latest incarnation of a bill that would create a tribal government for Native Hawaiians. This is untrue; it is probably being said because I agreed that the issue could be brought to the Senate floor for a vote. I continue to believe that this bill is profoundly unconstitutional and poses serious moral and political problems. I oppose this bill, and urge my colleagues to do so.

I ask unanimous consent that the following three news columns by Bruce Fein, constitutional scholar and former Reagan administration Justice Department official, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Times, Mar. 11, 2005]

THE PINEAPPLE TIME BOMB

(By Bruce Fein)

It is not because Native Hawaiians should be cherished less but that equality under the law should be loved more that the Akaka Bill to create a race-based government should be opposed. The Senate Committee on Indian Affairs blithely approved the legislation Wednesday without seriously examining its constitutionality. The bill previously passed the House in 2000 as a "noncontroversial," like treating South Carolina's firing on Fort Sumter as a July Fourth celebration.

The proposed legislation would ordain a Native Hawaiian Governing Entity cobbled together by Native Hawaiians meeting a threshold of Native Hawaiian blood. The Entity would negotiate with the United States and the State of Hawaii for lands, natural resources, civil and criminal jurisdiction, and other matters within the customary purview of a sovereign. It would be a race-based state within a state: a government of Native Hawaiians, by Native Hawaiians, for Native Hawaiians. It does not deserve birth.

The grandeur of the United States has been a history of escape from ugly racial, ethnic or class distinctions. The nation celebrates equality of opportunity and merit rather than birth as the touchstone of destiny. American citizenship is defined by common ideals and aspirations unstained by hierarchy: no divisions between patricians or clergy, nobles and commoners. Indeed, the Constitution forbids titles of nobility.

Accordingly, Supreme Court Justice Antonin Scalia instructed in *Adarand Constructors v. Peña* (1995): "To pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are but one race here. It is American."

The United States has flourished by overcoming stains on its creed of equality. Black slavery was ended by the 13th Amendment, and Jim Crow died with the Civil Rights Act of 1964 and Voting Rights Act of 1965. Individual Japanese-Americans got an apology and compensation for race-based maltreatment in World War II in the Civil Liberties Act of 1988.

Racism is defeated by its renunciation, not its practice. The latter pits citizen against citizen and invites strife and jealousies that weaken rather than strengthen.

An exclusive Native Hawaiian government is no exception. Justice Anthony Kennedy persuasively discredited the argument that the Akaka Bill will bring reconciliation between Native Hawaiians and their co-citizens in *Rice v. Cayetano* (2000). In voiding a race-based restriction on the franchise for trustees of the Office of Hawaiian Affairs, Justice Kennedy sermonized: "One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities. . . . [T]he use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve. The law itself may not become an instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry is disclosed by

their ethnic characteristics and cultural traditions."

The Akaka Bill would create an unprecedented race-based government in Hawaii. Prior to the 1893 dethronement of Queen Lili'uokalani, the monarchy treated Native Hawaiians and immigrants alike. Each enjoyed equal rights under the law. Ditto under the successor government and territorial authority after Hawaii's annexation by the United States in 1898. In other words, the race-based legislation would not restore the 1893 legal landscape, but enshrine an odious political distinction amongst Hawaii's inhabitants that never before existed.

A Native Hawaiian enjoys the same freedoms as other Americans. Native Hawaiians may celebrate a distinctive culture under the protection of the Constitution, like the Amish. Racial discrimination against a Native Hawaiian is illegal. And the civil and political rights of Native Hawaiians dwarf what was indulged by the sovereign under the former monarchy.

Stripped of rhetorical adornments, the Akaka Bill is racial discrimination for the sake of racial discrimination; a dishonoring of the idea of what it means to be an American and a formula for domestic convulsions.

[From the Washington Times, Oct. 5, 2004]

A RACE-BASED DRIFT?

(By Bruce Fein)

The nation's mindless celebration of multiculturalism and denigration of the American creed has reached a new plateau of destructiveness. A bill recently reported by the Senate Appropriations Committee (S. 344) would establish a race-based government for Native Hawaiians unconstrained by the restrictions of the U.S. Constitution. The bill's enactment would mark the beginning of the end of the United States, akin to the sack of Rome by Alaric the Great in 410 A.D. A country that wavers in its fundamental political and cultural values—like a nation half slave and half free—will not long endure.

S. 344 would erect an independent government for the lineal descendants of Native Hawaiians to honor their asserted "rights as native people to self-determination and self-governance." Best estimates place their number at more than 400,000. Like Adolf Hitler's blood tests for Jews, a minuscule percentage of Native Hawaiian ancestry would establish an entitlement to participate in the new racially exclusive domain.

The right to self-determination means the right of a people to choose their sovereign destiny, whether independence, federation, accession to another nation or otherwise. Thus, the bill would overturn the past and prevailing understanding of the Civil War. As Chief Justice Salmon Portland Chase lectured, Ulysses S. Grant's defeat of Robert E. Lee established an indivisible national unity among indestructible states.

The Native Hawaiian government would be unbothered by the "irritants" of the U.S. Constitution. Thus, it might choose theocracy over secularism; summary justice over due process; indoctrination over freedom of speech; property confiscations over property rights; subjugation over equality; or, group quotas over individual merit. The Native Hawaiian citizens of the Native Hawaiian government would also be exempt from swearing or affirming allegiance to the United States of America or the U.S. Constitution.

The race-based sovereignty created by S. 344 is first cousin to a revolution against the