

NATIVE HAWAIIAN FEDERAL RECOGNITION

JOINT HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

AND THE

COMMITTEE ON RESOURCES

UNITED STATES HOUSE OF

REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2899

TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE
UNITED STATES' RELATIONSHIP WITH NATIVE HAWAIIANS

AND

H.R. 4904

TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE
UNITED STATES' RELATIONSHIP WITH NATIVE HAWAIIANS, TO PRO-
VIDE A PROCESS FOR THE REORGANIZATION OF A NATIVE HAWAIIAN
GOVERNMENT AND THE RECOGNITION BY THE UNITED STATES OF
THE NATIVE HAWAIIAN GOVERNMENT

AUGUST 30, 2000
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NATIVE HAWAIIAN FEDERAL RECOGNITION

WEDNESDAY, AUGUST 30, 2000

U.S. SENATE, COMMITTEE ON INDIAN AFFAIRS, MEETING
JOINTLY WITH THE COMMITTEE ON RESOURCES, U.S.
HOUSE OF REPRESENTATIVES,

Honolulu, HI.

The committees met, pursuant to recess, at 8 a.m. at the Pikake Room, Neal Blaisdell Center, 777 Ward Avenue, Honolulu, Oahu, HI, Hon. Daniel K. Inouye (vice chairman of the Senate Committee on Indian Affairs) presiding.

Present: Senators Inouye and Akaka, Representatives Mink and Abercrombie, and Delegate Faleomavaega.

Senator INOUE. The hearing will come to order.

Before proceeding with the hearings, it is my high privilege to call upon Chief Faleomavaega to lead us in the pule. Please rise.

Mr. FALEOMAVEGA. The Chairman and Senator Akaka have asked me to take on this most formidable task, as it is customary in our Polynesian custom.

[Prayer in native tongue.] Our Father in Heaven, again as we are gathered here this morning for the purpose of trying to understand and a better way to provide the best possible assistance for the needs of the native Hawaiian people here in our State of Hawaii, we are most grateful and thankful for being here and the blessings that we receive from Thee, for the air we breathe, our families and loved ones, and again now for this most important and crucial moment in the lives of the people State of Hawaii, especially the lives of the people that are indigenous to this land.

We're grateful for this opportunity, that we come in our capacities as members of Congress, and bearing our responsibility not only to our Nation, but to this great State, and more especially to the native Hawaiian people. We're grateful for the many institutions and the opportunities that we enjoy in obtaining the proper education and training, things that will enable ourselves and our families to grow and to provide opportunities to serve our communities.

We earnestly beseech Thy Spirit to permeate these halls. Help us that we might find solutions to the problems that are before our State, our native Hawaiian community and our Nation. We pray that whatever opinions or suggestions, questions that will be raised throughout the course of this hearing that it will be done in accordance with the traditions not only of our fathers, but in accordance to Thy Spirit.

We pray for patience and understanding for those who have differences of opinion as to what the best possible solution that has been proposed here in this legislation. Thou knowest of our failings and many weaknesses and imperfections in life. But we do sincerely pray for Thy Spirit to be with us this day.

We pray for our chairman, and for the tremendous patience that he has exercised in the past days, that these proceedings might go forward in a manner that will provide the best offerings and opinions that will be brought forth from the leaders and the members of our Hawaiian community.

We pray for Senator Akaka's health, that he will regain his strength from this operation that he has gone through. We pray for the leaders of the State of Hawaii, that they too will have a greater sense of compassion and understanding for the problems affecting the native Hawaiian community. We pray for our brothers and sisters, and we understand their sense of frustration and the serious social and economic problems affecting the native Hawaiian community throughout the State and elsewhere. We sincerely hope that by these proceedings we will have a greater understanding and knowledge of what we need to do as members of the Congress and of our responsibility not only to our Nation, but truly to our native Hawaiian community, that these solutions might be such that will be of help to everybody, especially for them.

Again, we ask for Thy forgiveness of our many imperfections. Help us this day, our Father, that these proceedings might go well, with the spirit of everyone having the right to express their opinions, whatever that opinion might be. Whether they be against or for this proposed legislation, let it help us that we will have the real spirit of *hoa male male* and really have the spirit of *pono* this day.

We pray in the name of Jesus Christ. Amen.

Senator INOUE. Amen.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUE. By authority of the appropriate leadership of the U.S. Senate and the U.S. House of Representatives, the Senate Committee on Indian Affairs and the House Committee on Resources convene today, subject to appropriate rules and regulations, to receive testimony on two bills that have been introduced in the Senate and the House, to provide a process for the recognition of a native Hawaiian governing body.

If enacted into law, these bills would provide for a government to government relationship with the United States. There are 556 native governments that are formally recognized by the United States, and with whom the United States is engaged in government to government relations. There are another 160 groups that are currently petitioning the United States for recognition as governments. This recognition by the United States is a recognition of the sovereignty of those native governments and their rights as governments to exercise governmental authorities including the fundamental rights to self-determination and self-governance.

It is within this context that the measures we are considering today have been proposed. The legislation would provide a process

for the recognition of the sovereignty of the native Hawaiian people and their right to self-determination and self-governance. It would provide a basis for government to government relations with the United States, and would preserve and protect those Federal programs that are currently extended to native Hawaiians because of their status as native people of the United States. Programs such as health care, education, job training and employment opportunities, housing assistance, scholarships, language preservation, grave protection and the repatriation of human remains and sacred objects of cultural patrimony.

As with other native governments, the recognition by the United States of the sovereignty of the native people of Hawaii does not alter the relationship that the Federal Government has with any of the State governments nor the citizens of those States. While these bills set forth a proposed process for the reorganization of the native Hawaiian governing body, these bills do not address how that governing body might be composed. It could, for instance, be a governing body that is composed of governing entities from each of the islands, or confederation of governments. Or it could take some other form.

We believe that these are matters that are best addressed by those who wish to voluntarily associate themselves with a native Hawaiian governing entity. In a similar manner, we hope that those who want to participate in the process of forming a government body will provide us with guidance on the formulation of the commission that will certify the roll of native Hawaiians who have expressed their desire to be part of the process to form an interim governing council, develop and adopt organic governing documents, and thereafter elect representatives to a native Hawaiian governing body.

Because these bills, if enacted, would become part of the body of Federal laws, the laws of the United States, these bills do not address nor do they preclude the relations and activities of native Hawaiians in international forums. Today the committee is calling upon the citizens of Hawaii to provide us with their thoughts, their mana'o, on whether they support passage of these measures, either as they are currently formulated or with amendments.

These bills have been developed by native Hawaiians for native Hawaiians following extensive consultation, not only with the native Hawaiian community but with representatives of other interested governments, Federal, State and native governments. Ultimately, however, it is the people of Hawaii who will decide whether these measures should be enacted into law.

As the elected representatives of all the citizens of Hawaii, we await your guidance.

[Text of S. 2899 and H.R. 4904 follow:]

106TH CONGRESS
2D SESSION

S. 2899

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2000

Mr. AKAKA (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress finds that—

5 (1) the Constitution vests Congress with the au-
6 thority to address the conditions of the indigenous,
7 native people of the United States;

8 (2) Native Hawaiians, the native people of the
9 State of Hawaii are indigenous, native people of the
10 United States;

1 (3) the United States has a special trust rela-
2 tionship to promote the welfare of the native people
3 of the United States, including Native Hawaiians;

4 (4) under the treaty-making power of the
5 United States, Congress exercised its constitutional
6 authority to confirm a treaty between the United
7 States and the government that represented the Ha-
8 waiian people, and from 1826 until 1893, the United
9 States recognized the independence of the Kingdom
10 of Hawaii, extended full diplomatic recognition to
11 the Hawaiian Government, and entered into treaties
12 and conventions with the Hawaiian monarchs to gov-
13 ern commerce and navigation in 1826, 1842, 1849,
14 1875, and 1887;

15 (5) pursuant to the provisions of the Hawaiian
16 Homes Commission Act, 1920 (42 Stat. 108, chap-
17 ter 42), the United States set aside 200,000 acres
18 of land in the Federal territory that later became
19 the State of Hawaii in order to establish a homeland
20 for the native people of Hawaii, Native Hawaiians;

21 (6) by setting aside 200,000 acres of land for
22 Native Hawaiian homesteads and farms, the Act as-
23 sists the Native Hawaiian community in maintaining
24 distinct native settlements throughout the State of
25 Hawaii;

1 (7) approximately 6,800 Native Hawaiian les-
2 sees and their family members reside on Hawaiian
3 Home Lands and approximately 18,000 Native Ha-
4 waiians who are eligible to reside on the Home
5 Lands are on a waiting list to receive assignments
6 of land;

7 (8) the Hawaiian Home Lands continue to pro-
8 vide an important foundation for the ability of the
9 Native Hawaiian community to maintain the prac-
10 tice of Native Hawaiian culture, language, and tradi-
11 tions, and Native Hawaiians have maintained other
12 distinctly native areas in Hawaii;

13 (9) on November 23, 1993, Public Law 103-
14 150 (107 Stat. 1510) (commonly known as the Apol-
15 ogy Resolution) was enacted into law, extending an
16 apology on behalf of the United States to the Native
17 people of Hawaii for the United States' role in the
18 overthrow of the Kingdom of Hawaii;

19 (10) the Apology Resolution acknowledges that
20 the overthrow of the Kingdom of Hawaii occurred
21 with the active participation of agents and citizens
22 of the United States and further acknowledges that
23 the Native Hawaiian people never directly relin-
24 quished their claims to their inherent sovereignty as
25 a people over their national lands to the United

1 States, either through their monarchy or through a
2 plebiscite or referendum;

3 (11) the Apology Resolution expresses the com-
4 mitment of Congress and the President to acknowl-
5 edge the ramifications of the overthrow of the King-
6 dom of Hawaii and to support reconciliation efforts
7 between the United States and Native Hawaiians;
8 and to have Congress and the President, through the
9 President's designated officials, consult with Native
10 Hawaiians on the reconciliation process as called for
11 under the Apology Resolution;

12 (12) despite the overthrow of the Hawaiian gov-
13 ernment, Native Hawaiians have continued to main-
14 tain their separate identity as a distinct native com-
15 munity through the formation of cultural, social, and
16 political institutions, and to give expression to their
17 rights as native people to self-determination and
18 self-governance as evidenced through their participa-
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct
21 Native Hawaiian community through the provision
22 of governmental services to Native Hawaiians, in-
23 cluding the provision of health care services, edu-
24 cational programs, employment and training pro-
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,
2 native language immersion programs and native lan-
3 guage immersion schools from kindergarten through
4 high school, as well as college and master's degree
5 programs in native language immersion instruction,
6 and traditional justice programs, and by continuing
7 their efforts to enhance Native Hawaiian self-deter-
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in
10 Native Hawaiian cultural practices, traditional agri-
11 cultural methods, fishing and subsistence practices,
12 maintenance of cultural use areas and sacred sites,
13 protection of burial sites, and the exercise of their
14 traditional rights to gather medicinal plants and
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-
17 serve, develop, and transmit to future Native Hawai-
18 ian generations their ancestral lands and Native Ha-
19 waiian political and cultural identity in accordance
20 with their traditions, beliefs, customs and practices,
21 language, and social and political institutions, and to
22 achieve greater self-determination over their own af-
23 fairs;

24 (16) this Act responds to the desire of the Na-
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of
2 Federal law for the Native Hawaiian people to exer-
3 cise their inherent rights as a distinct aboriginal, in-
4 digenous, native community to reorganize a Native
5 Hawaiian governing body for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;

8 (17) the United States has declared that—

9 (A) the United States has a special respon-
10 sibility for the welfare of the native peoples of
11 the United States, including Native Hawaiians;

12 (B) Congress has identified Native Hawai-
13 ians as a distinct indigenous group within the
14 scope of its Indian affairs power, and has en-
15 acted dozens of statutes on their behalf pursu-
16 ant to its recognized trust responsibility; and

17 (C) Congress has also delegated broad au-
18 thority to administer a portion of the federal
19 trust responsibility to the State of Hawaii;

20 (18) the United States has recognized and re-
21 affirmed the special trust relationship with the Na-
22 tive Hawaiian people through—

23 (A) the enactment of the Act entitled “An
24 Act to provide for the admission of the State of

1 Hawaii into the Union”, approved March 18,
2 1959 (Public Law 86–3; 73 Stat. 4) by—

3 (i) ceding to the State of Hawaii title
4 to the public lands formerly held by the
5 United States, and mandating that those
6 lands be held in public trust for the better-
7 ment of the conditions of Native Hawai-
8 ians; and

9 (ii) transferring the United States’ re-
10 sponsibility for the administration of the
11 Hawaiian Home Lands to the State of Ha-
12 waii, but retaining the authority to enforce
13 the trust, including the exclusive right of
14 the United States to consent to any actions
15 affecting the lands which comprise the cor-
16 pus of the trust and any amendments to
17 the Hawaiian Homes Commission Act,
18 1920 (42 Stat. 108, chapter 42) that are
19 enacted by the legislature of the State of
20 Hawaii affecting the beneficiaries under
21 the Act;

22 (19) the United States continually has recog-
23 nized and reaffirmed that—

24 (A) Native Hawaiians have a cultural, his-
25 toric, and land-based link to the aboriginal, na-

1 tive people who exercised sovereignty over the
2 Hawaiian Islands;

3 (B) Native Hawaiians have never relin-
4 quished their claims to sovereignty or their sov-
5 ereign lands;

6 (C) the United States extends services to
7 Native Hawaiians because of their unique sta-
8 tus as the aboriginal, native people of a once
9 sovereign nation with whom the United States
10 has a political and legal relationship; and

11 (D) the special trust relationship of Amer-
12 ican Indians, Alaska Natives, and Native Ha-
13 waiians to the United States arises out of their
14 status as aboriginal, indigenous, native people
15 of the United States.

16 **SEC. 2. DEFINITIONS.**

17 In this Act:

18 (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**
19 **PLE.**—The term “aboriginal, indigenous, native peo-
20 ple” means those people whom Congress has recog-
21 nized as the original inhabitants of the lands and
22 who exercised sovereignty prior to European contact
23 in the areas that later became part of the United
24 States;

1 (2) ADULT MEMBERS.—The term “adult mem-
2 bers” means those Native Hawaiians who have at-
3 tained the age of 18 at the time the Secretary pub-
4 lishes the initial roll in the Federal Register, as pro-
5 vided in section 7(a)(4) of this Act.

6 (3) APOLOGY RESOLUTION.—The term “Apol-
7 ogy Resolution” means Public Law 103–150 (107
8 Stat. 1510), a joint resolution offering an apology to
9 Native Hawaiians on behalf of the United States for
10 the participation of agents of the United States in
11 the January 17, 1893 overthrow of the Kingdom of
12 Hawaii.

13 (4) COMMISSION.—The term “Commission”
14 means the commission established in section 7 of
15 this Act to certify that the adult members of the Na-
16 tive Hawaiian community contained on the roll de-
17 veloped under that section meet the definition of Na-
18 tive Hawaiian, as defined in paragraph (6)(A).

19 (5) INDIGENOUS, NATIVE PEOPLE.—The term
20 “indigenous, native people” means the lineal de-
21 scendants of the aboriginal, indigenous, native peo-
22 ple of the United States.

23 (6) NATIVE HAWAIIAN.—

24 (A) Prior to the recognition by the United
25 States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,
2 the term “Native Hawaiian” means the indige-
3 nous, native people of Hawaii who are the lineal
4 descendants of the aboriginal, indigenous, na-
5 tive people who resided in the islands that now
6 comprise the State of Hawaii on January 1,
7 1893, and who occupied and exercised sov-
8 ereignty in the Hawaiian archipelago, including
9 the area that now constitutes the State of Ha-
10 waii, as evidenced by (but not limited to)—

11 (i) genealogical records;

12 (ii) Native Hawaiian kupuna (elders)
13 verification or affidavits;

14 (iii) church or census records; or

15 (iv) government birth or death certifi-
16 cates or other vital statistics records;

17 (B) Following the recognition by the
18 United States of the Native Hawaiian govern-
19 ing body under section 7(d) of this Act, the
20 term “Native Hawaiian” shall have the mean-
21 ing given to such term in the organic governing
22 documents of the Native Hawaiian governing
23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The
25 term “Native Hawaiian governing body” means the

1 adult members of the governing body of the Native
2 Hawaiian people that is recognized by the United
3 States under the authority of section 7(d) of this
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING
6 COUNCIL.—The term “Native Hawaiian Interim
7 Governing Council” means the interim governing
8 council that is authorized to exercise the powers and
9 authorities recognized in section 7(b) of this Act.

10 (9) ROLL.—The term “roll” means the roll that
11 is developed under the authority of section 7(a) of
12 this Act.

13 (10) SECRETARY.—The term “Secretary”
14 means the Secretary of the Department of the Inte-
15 rior.

16 (11) TASK FORCE.—The term “Task Force”
17 means the Native Hawaiian Interagency Task Force
18 established under the authority of section 6 of this
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct
23 aboriginal, indigenous, native people, with whom the
24 United States has a political and legal relationship;

1 (2) the United States has a special trust rela-
2 tionship to promote the welfare of Native Hawaiians;

3 (3) Congress possesses the authority under the
4 Constitution to enact legislation to address the con-
5 ditions of Native Hawaiians and has exercised this
6 authority through the enactment of—

7 (A) the Hawaiian Homes Commission Act,
8 1920 (42 Stat. 108, chapter 42);

9 (B) the Act entitled “An Act to provide for
10 the admission of the State of Hawaii into the
11 Union”, approved March 18, 1959 (Public Law
12 86–3; 73 Stat. 4); and

13 (C) more than 150 other Federal laws ad-
14 dressing the conditions of Native Hawaiians;

15 (4) Native Hawaiians have—

16 (A) an inherent right to autonomy in their
17 internal affairs;

18 (B) an inherent right of self-determination
19 and self-governance; and

20 (C) the right to reorganize a Native Ha-
21 waiian governing body; and

22 (5) the United States shall continue to engage
23 in a process of reconciliation and political relations
24 with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) IN GENERAL.—There is established within the
4 Office of the Secretary of the Department of the Interior
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) DUTIES OF THE OFFICE.—The Office of Special
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust
9 relationship between the Native Hawaiian people
10 and the United States through the Secretary, and
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-
13 ian governing body by the United States as provided
14 for in section 7(d) of this Act, effectuate and coordi-
15 nate the special trust relationship between the Na-
16 tive Hawaiian governing body and the United States
17 through the Secretary, and with all other Federal
18 agencies;

19 (3) fully integrate the principle and practice of
20 meaningful, regular, and appropriate consultation
21 with the Native Hawaiian people by providing timely
22 notice to, and consulting with the Native Hawaiian
23 people prior to taking any actions that may have the
24 potential to significantly or uniquely affect Native
25 Hawaiian resources, rights, or lands, and upon the
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-
2 grate the principle and practice of meaningful, regu-
3 lar, and appropriate consultation with the Native
4 Hawaiian governing body by providing timely notice
5 to, and consulting with the Native Hawaiian people
6 prior to taking any actions that may have the poten-
7 tial to significantly affect Native Hawaiian re-
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-
10 agency Task Force, other Federal agencies, and with
11 relevant agencies of the State of Hawaii on policies,
12 practices, and proposed actions affecting Native Ha-
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-
15 mittal to the Committee on Indian Affairs of the
16 Senate, the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee on Re-
18 sources of the House of Representatives of an an-
19 nual report detailing the activities of the Interagency
20 Task Force established under section 6 of this Act
21 that are undertaken with respect to the continuing
22 process of reconciliation and to effect meaningful
23 consultation with the Native Hawaiian people and
24 the Native Hawaiian governing body and providing
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated
2 under the authority of Federal law;

3 (6) be responsible for continuing the process of
4 reconciliation with the Native Hawaiian people, and
5 upon the recognition of the Native Hawaiian govern-
6 ing body by the United States as provided for in sec-
7 tion 7(d) of this Act, be responsible for continuing
8 the process of reconciliation with the Native Hawai-
9 ian governing body; and

10 (7) assist the Native Hawaiian people in facili-
11 tating a process for self-determination, including but
12 not limited to the provision of technical assistance in
13 the development of the roll under section 7(a) of this
14 Act, the organization of the Native Hawaiian In-
15 terim Governing Council as provided for in section
16 7(b) of this Act, and the reorganization of the Na-
17 tive Hawaiian governing body as provided for in sec-
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate
22 official within the Department of Justice to assist the Of-
23 fice of the Special Trustee for Native Hawaiian Affairs
24 in the implementation and protection of the rights of Na-
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the
2 Native Hawaiian governing body as provided for in section
3 7(d) of this Act, in the implementation and protection of
4 the rights of the Native Hawaiian governing body and its
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) **ESTABLISHMENT.**—There is established an inter-
8 agency task force to be known as the “Native Hawaiian
9 Interagency Task Force”.

10 (b) **COMPOSITION.**—The Task Force shall be com-
11 posed of officials, to be appointed by the President,
12 from—

13 (1) each Federal agency that establishes or im-
14 plements policies that affect Native Hawaiians or
15 whose actions may significantly or uniquely impact
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native
18 Hawaiian Affairs established under section 4 of this
19 Act; and

20 (3) the Executive Office of the President.

21 (c) **LEAD AGENCIES.**—The Department of the Inte-
22 rior and the Department of Justice shall serve as the lead
23 agencies of the Task Force, and meetings of the Task
24 Force shall be convened at the request of the lead agen-
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of
2 the Office of Special Trustee for Native Hawaiian Affairs
3 established under the authority of section 4 of this Act
4 and the Attorney General’s designee under the authority
5 of section 5 of this Act shall serve as co-chairs of the Task
6 Force.

7 (e) DUTIES.—The primary responsibilities of the
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-
10 fect Native Hawaiians or actions by any agency or
11 agencies of the Federal Government which may sig-
12 nificantly or uniquely impact on Native Hawaiian re-
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops
15 a policy on consultation with the Native Hawaiian
16 people, and upon recognition of the Native Hawaiian
17 governing body by the United States as provided in
18 section 7(d) of this Act, consultation with the Native
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**
5 **TERIM GOVERNING COUNCIL AND A NATIVE**
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**
7 **RECOGNITION OF THE NATIVE HAWAIIAN**
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-
11 bers of the Native Hawaiian community who wish to
12 participate in the reorganization of a Native Hawai-
13 ian governing body shall prepare a roll for the pur-
14 pose of the organization of a Native Hawaiian In-
15 terim Governing Council. The roll shall include the
16 names of—

17 (A) the adult members of the Native Ha-
18 waiian community who wish to become mem-
19 bers of a Native Hawaiian governing body and
20 who are the lineal descendants of the aborigi-
21 nal, indigenous, native people who resided in
22 the islands that now comprise the State of Ha-
23 waii on January 1, 1893, and who occupied and
24 exercised sovereignty in the Hawaiian archipel-
25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not lim-
2 ited to)—

3 (i) genealogical records;

4 (ii) Native Hawaiian kupuna (elders)
5 verification or affidavits;

6 (iii) church or census records; or

7 (iv) government birth or death certifi-
8 cates or other vital statistics records; and

9 (B) the children of the adult members list-
10 ed on the roll prepared under this subsection.

11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to
13 be established a Commission to be composed of
14 9 members for the purpose of certifying that
15 the adult members of the Native Hawaiian com-
16 munity on the roll meet the definition of Native
17 Hawaiian, as defined in section 2(6)(A) of this
18 Act. The members of the Commission shall have
19 expertise in the certification of Native Hawaiian
20 ancestry.

21 (B) CERTIFICATION.—The Commission
22 shall certify to the Secretary that the individ-
23 uals listed on the roll developed under the au-
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall
4 promptly provide notice to the Secretary if any of
5 the individuals listed on the roll should be removed
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-
8 ceipt by the Secretary of the roll developed under
9 the authority of this subsection and certified by the
10 Commission under the authority of paragraph (2),
11 the Secretary shall certify that the roll is consistent
12 with applicable Federal law by publishing the roll in
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication
15 of the roll developed under the authority of this sub-
16 section shall be for the purpose of providing any
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the
19 roll the name of an individual who meets the
20 definition of Native Hawaiian, as defined in
21 section 2(6)(A) of this Act, and who is not list-
22 ed on the roll; or

23 (B) petition the Secretary to remove from
24 the roll the name of an individual who does not
25 meet such definition.

1 (6) DEADLINE FOR PETITIONS.—Any petition
2 described in paragraph (5) shall be filed with the
3 Secretary within 90 days of the date of the publica-
4 tion of the roll in the Federal Register, as author-
5 ized under paragraph (4).

6 (7) CERTIFICATION OF ADDITIONAL NATIVE
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—

8 (A) SUBMISSION.—Within 30 days of re-
9 ceiving a petition to add the name of an individ-
10 ual to the roll, the Secretary shall submit the
11 name of each individual who is the subject of a
12 petition to add his or her name to the roll to
13 the Commission for certification that the indi-
14 vidual meets the definition of Native Hawaiian,
15 as defined in section 2(6)(A) of this Act.

16 (B) CERTIFICATION.—Within 30 days of
17 receiving a petition from the Secretary to have
18 a name added to or removed from the roll, the
19 Commission shall certify to the Secretary
20 that—

21 (i) the individual meets the definition
22 of Native Hawaiian, as defined in section
23 2(6)(A) of this Act; or

1 (ii) the individual does not meet the
2 definition of Native Hawaiian, as so de-
3 fined.

4 Upon such certification, the Secretary shall add
5 or remove the name of the individual on the
6 roll, as appropriate.

7 (8) HEARING.—

8 (A) IN GENERAL.—The Secretary shall
9 conduct a hearing on the record within 45 days
10 of the receipt by the Secretary of—

11 (i) a certification by the Commission
12 that an individual does not meet the defini-
13 tion of Native Hawaiian, as defined in sec-
14 tion 2(6)(A) of this Act; or

15 (ii) a petition to remove the name of
16 any individual listed on the roll submitted
17 to the Secretary by the Commission.

18 (B) TESTIMONY.—At the hearing con-
19 ducted in accordance with this paragraph, the
20 Secretary may receive testimony from the peti-
21 tioner, a representative of the Commission, the
22 individual whose name is the subject of the pe-
23 tition, and any other individuals who may have
24 the necessary expertise to provide the Secretary
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-
2 tion meets the definition of Native Hawaiian, as
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30
5 days of the date of the conclusion of the hear-
6 ing conducted in accordance with this para-
7 graph, the Secretary shall make a determina-
8 tion regarding whether the individual whose
9 name is the subject of a petition meets the defi-
10 nition of Native Hawaiian, as defined in section
11 2(6)(A) of this Act. Such a determination shall
12 be a final determination for purposes of judicial
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United
16 States District Court for the District of Hawaii
17 shall have jurisdiction to review the record of
18 the decision developed by the Secretary and the
19 Secretary's final determination under para-
20 graph (8) and shall make a final judgment re-
21 garding such determination.

22 (B) NOTICE.—If the district court deter-
23 mines that an individual's name should be
24 added to the roll because that individual meets
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-
2 ual's name should be removed from the roll be-
3 cause that individual does not meet such defini-
4 tion, the district court shall so advise the Sec-
5 retary and the Secretary shall add or remove
6 the individual's name from the roll, consistent
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except
9 for those petitions which remain the subject of judi-
10 cial review under the authority of paragraph (9), the
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-
13 ister within 290 days of the receipt by the Sec-
14 retary of the roll prepared under the authority
15 of paragraph (1); and

16 (B) subsequently publish in the Federal
17 Register the names of any individuals that the
18 district court directs be added or removed from
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-
21 tion of the final roll shall serve as the basis for the
22 eligibility of adult members listed on the roll to par-
23 ticipate in all referenda and elections associated with
24 the organization of a Native Hawaiian Interim Gov-
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within
5 90 days of the date of the publication of the
6 final roll in the Federal Register, the Secretary
7 shall announce the date of a general meeting of
8 the adult members of those listed on the roll to
9 nominate candidates from among the adult
10 members listed on the roll for election to the
11 Native Hawaiian Interim Governing Council.
12 The criteria for candidates to serve on the Na-
13 tive Hawaiian Interim Governing Council shall
14 be developed by the adult members listed on the
15 roll at the general meeting. The general meet-
16 ing may consist of meetings on each island or
17 at such sites as to secure the maximum partici-
18 pation of the adult members listed on the roll.
19 Such general meeting (or meetings) shall be
20 held within 30 days of the Secretary's an-
21 nouncement.

22 (B) ELECTION.—Within 45 days of the
23 general meeting (or meetings), the Secretary
24 shall assist the Native Hawaiian community in
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-
2 bership of the Native Hawaiian Interim Govern-
3 ing Council from among the nominees submit-
4 ted to the Secretary from the general meeting.
5 The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-
7 prove the Native Hawaiian Interim Governing
8 Council elected pursuant to this subsection if
9 the requirements of this section relating to the
10 nominating and election process have been met.

11 (2) POWERS.—

12 (A) IN GENERAL.—The Native Hawaiian
13 Interim Governing Council shall represent those
14 on the roll in the implementation of this Act
15 and shall have no powers other than those given
16 to it in accordance with this Act.

17 (B) TERMINATION.—The Native Hawaiian
18 Interim Governing Council shall have no power
19 or authority under this Act after the time which
20 the duly elected officers of the Native Hawaiian
21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian
24 Interim Governing Council shall conduct a ref-
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited
2 to) the following:

3 (i) The proposed elements of the or-
4 ganic governing documents of a Native
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-
7 ties to be exercised by a Native Hawaiian
8 governing body, as well as the proposed
9 privileges and immunities of a Native Ha-
10 waiian governing body.

11 (iii) The proposed civil rights and pro-
12 tection of such rights of the members of a
13 Native Hawaiian governing body and all
14 persons subject to the authority of a Na-
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOVERN-
17 ING DOCUMENTS.—Based upon the referendum
18 authorized in subparagraph (A), the Native Ha-
19 waiian Interim Governing Council shall develop
20 proposed organic governing documents for a
21 Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall
23 distribute to all adult members of those listed
24 on the roll, a copy of the proposed organic gov-
25 erning documents, as drafted by the Native Ha-

1 waiian Interim Governing Council, along with a
2 brief impartial description of the proposed or-
3 ganic governing documents.

4 (D) CONSULTATION.—The Native Hawai-
5 ian Interim Governing Council shall freely con-
6 sult with those listed on the roll concerning the
7 text and description of the proposed organic
8 governing documents.

9 (4) ELECTIONS.—

10 (A) IN GENERAL.—Upon the request of
11 the Native Hawaiian Interim Governing Coun-
12 cil, the Secretary shall hold an election for the
13 purpose of ratifying the proposed organic gov-
14 erning documents. If the Secretary fails to act
15 within 45 days of the request by the Council,
16 the Council is authorized to conduct the elec-
17 tion.

18 (B) FAILURE TO ADOPT GOVERNING DOCU-
19 MENTS.—If the proposed organic governing
20 documents are not adopted by a majority vote
21 of the adult members listed on the roll, the Na-
22 tive Hawaiian Interim Governing Council shall
23 consult with the adult members listed on the
24 roll to determine which elements of the pro-
25 posed organic governing documents were found

1 to be unacceptable, and based upon such con-
 2 sultation, the Council shall propose changes to
 3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the
 5 Native Hawaiian Interim Governing Council,
 6 the Secretary shall hold a second election for
 7 the purpose of ratifying the proposed organic
 8 governing documents. If the Secretary fails to
 9 act within 45 days of the request by the Coun-
 10 cil, the Council is authorized to conduct the sec-
 11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-
 13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of
 15 the Native Hawaiian governing body of the indige-
 16 nous, native people of Hawaii to organize for its
 17 common welfare, and to adopt appropriate organic
 18 governing documents is hereby recognized by the
 19 United States.

20 (2) RATIFICATION.—The organic governing
 21 documents of the Native Hawaiian governing body
 22 shall become effective when ratified by a majority
 23 vote of the adult members listed on the roll, and ap-
 24 proved by the Secretary upon the Secretary's deter-
 25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-
2 cial trust relationship between the United States and
3 its native people. If the Secretary fails to make such
4 a determination within 45 days of the ratification of
5 the organic governing documents by the adult mem-
6 bers listed on the roll, the organic governing docu-
7 ments shall be deemed to have been approved by the
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—
10 Within 45 days after the Secretary has approved the
11 organic governing documents or the organic govern-
12 ing documents are deemed approved, the Secretary
13 shall assist the Native Hawaiian Interim Governing
14 Council in holding an election by secret ballot for the
15 purpose of determining the individuals who will serve
16 as governing body officers as provided in the organic
17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of
19 this initial election and notwithstanding any provi-
20 sion in the organic governing documents to the con-
21 trary, absentee balloting shall be permitted and all
22 adult members of the Native Hawaiian governing
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and
2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-
4 MENTS.—When ratified by a majority vote of the
5 adult members of those listed on the roll, the organic
6 governing documents shall be revocable by an elec-
7 tion open to the adult members of the Native Ha-
8 waiian governing body, and amendments to the or-
9 ganic governing documents may be ratified by the
10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-
12 dition to all powers vested in the Native Hawaiian
13 governing body by the duly ratified organic govern-
14 ing documents, the organic governing documents
15 shall also vest in the Native Hawaiian governing
16 body the rights and powers to—

17 (A) exercise those governmental authorities
18 that are recognized by the United States as the
19 powers and authorities that are exercised by
20 other governments representing the indigenous,
21 native people of the United States;

22 (B) provide for the protection of the civil
23 rights of the members of the Native Hawaiian
24 governing body and all persons subject to the
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian
2 governing body exercises its authority consistent
3 with the requirements of section 202 of the Act
4 of April 11, 1968 (25 U.S.C. 1302);

5 (C) prevent the sale, disposition, lease, or
6 encumbrance of lands, interests in lands, or
7 other assets of the Native Hawaiian governing
8 body without the consent of the Native Hawai-
9 ian governing body;

10 (D) determine the membership in the Na-
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other
16 provision of law, upon the approval by the Secretary
17 of the organic governing documents of the Native
18 Hawaiian governing body and the election of officers
19 of the Native Hawaiian governing body, Federal rec-
20 ognition is hereby extended to the Native Hawaiian
21 governing body as the representative governing body
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-
24 LEGES.—Nothing contained in this Act shall dimin-
25 ish, alter, or amend any existing rights or privileges

1 enjoyed by the Native Hawaiian people which are
2 not inconsistent with the provisions of this Act.

3 (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-
4 ERNING BODY.—

5 (1) CHARTER OF INCORPORATION.—Upon peti-
6 tion of the Native Hawaiian governing body, the
7 Secretary may issue a charter of incorporation to
8 the Native Hawaiian governing body. Upon the
9 issuance of such charter of incorporation, the Native
10 Hawaiian governing body shall have the same status
11 under Federal law when acting in its corporate ca-
12 pacity as the status of Indian tribes that have been
13 issued a charter of incorporation under the authority
14 of section 17 of the Indian Reorganization Act (25
15 U.S.C. 477).

16 (2) ENUMERATED POWERS.—Such charter may
17 authorize the incorporated Native Hawaiian govern-
18 ing body to exercise the power to purchase, take by
19 gift, bequest, or otherwise, own, hold, manage, oper-
20 ate, and dispose of property of every description,
21 real and personal, including the power to purchase
22 lands and to issue an exchange of interests in cor-
23 porate property, and such further powers as may be
24 incidental to the conduct of corporate business, and
25 that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

7 (a) REAFFIRMATION.—The delegation by the United
8 States of authority to the State of Hawaii to address the
9 conditions of Native Hawaiians contained in the Act enti-
10 tled “An Act to provide for the admission of the State
11 of Hawaii into the Union” approved March 18, 1959
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13 (b) NEGOTIATIONS.—Upon the Federal recognition
14 of the Native Hawaiian governing body pursuant to sec-
15 tion 7(d) of this Act, the United States is authorized to
16 negotiate and enter into an agreement with the State of
17 Hawaii and the Native Hawaiian governing body regard-
18 ing the transfer of lands, resources, and assets dedicated
19 to Native Hawaiian use under existing law as in effect
20 on the date of enactment of this Act to the Native Hawai-
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23 Nothing in this Act is intended to serve as a settle-
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations and such delegations of authority as the Sec-
4 retary deems necessary to carry out the provisions of this
5 Act.

6 **SEC. 12. SEVERABILITY.**

7 In the event that any section or provision of this Act,
8 or any amendment made by this Act is held invalid, it
9 is the intent of Congress that the remaining sections or
10 provisions of this Act, and the amendments made by this
11 Act, shall continue in full force and effect.

○

106TH CONGRESS
2D SESSION

H. R. 4904

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2000

Mr. ABERCROMBIE introduced the following bill; which was referred to the Committee on Resources

A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress finds that—

5 (1) the Constitution vests Congress with the au-
6 thority to address the conditions of the indigenous,
7 native people of the United States;

8 (2) Native Hawaiians, the native people of the
9 State of Hawaii are indigenous, native people of the
10 United States;

1 (3) the United States has a special trust rela-
2 tionship to promote the welfare of the native people
3 of the United States, including Native Hawaiians;

4 (4) under the treaty-making power of the
5 United States, Congress exercised its constitutional
6 authority to confirm a treaty between the United
7 States and the government that represented the Ha-
8 waiian people, and from 1826 until 1893, the United
9 States recognized the independence of the Kingdom
10 of Hawaii, extended full diplomatic recognition to
11 the Hawaiian Government, and entered into treaties
12 and conventions with the Hawaiian monarchs to gov-
13 ern commerce and navigation in 1826, 1842, 1849,
14 1875, and 1887;

15 (5) pursuant to the provisions of the Hawaiian
16 Homes Commission Act, 1920 (42 Stat. 108, chap-
17 ter 42), the United States set aside 200,000 acres
18 of land in the Federal territory that later became
19 the State of Hawaii in order to establish a homeland
20 for the native people of Hawaii, Native Hawaiians;

21 (6) by setting aside 200,000 acres of land for
22 Native Hawaiian homesteads and farms, the Act as-
23 sists the Native Hawaiian community in maintaining
24 distinct native settlements throughout the State of
25 Hawaii;

1 (7) approximately 6,800 Native Hawaiian les-
2 sees and their family members reside on Hawaiian
3 Home Lands and approximately 18,000 Native Ha-
4 waiians who are eligible to reside on the Home
5 Lands are on a waiting list to receive assignments
6 of land;

7 (8) the Hawaiian Home Lands continue to pro-
8 vide an important foundation for the ability of the
9 Native Hawaiian community to maintain the prac-
10 tice of Native Hawaiian culture, language, and tradi-
11 tions, and Native Hawaiians have maintained other
12 distinctly native areas in Hawaii;

13 (9) on November 23, 1993, Public Law 103-
14 150 (107 Stat. 1510) (commonly known as the Apol-
15 ogy Resolution) was enacted into law, extending an
16 apology on behalf of the United States to the Native
17 people of Hawaii for the United States role in the
18 overthrow of the Kingdom of Hawaii;

19 (10) the Apology Resolution acknowledges that
20 the overthrow of the Kingdom of Hawaii occurred
21 with the active participation of agents and citizens
22 of the United States and further acknowledges that
23 the Native Hawaiian people never directly relin-
24 quished their claims to their inherent sovereignty as
25 a people over their national lands to the United

1 States, either through their monarchy or through a
2 plebiscite or referendum;

3 (11) the Apology Resolution expresses the com-
4 mitment of Congress and the President to acknowl-
5 edge the ramifications of the overthrow of the King-
6 dom of Hawaii and to support reconciliation efforts
7 between the United States and Native Hawaiians;
8 and to have Congress and the President, through the
9 President's designated officials, consult with Native
10 Hawaiians on the reconciliation process as called for
11 under the Apology Resolution;

12 (12) despite the overthrow of the Hawaiian gov-
13 ernment, Native Hawaiians have continued to main-
14 tain their separate identity as a distinct native com-
15 munity through the formation of cultural, social, and
16 political institutions, and to give expression to their
17 rights as native people to self-determination and
18 self-governance as evidenced through their participa-
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct
21 Native Hawaiian community through the provision
22 of governmental services to Native Hawaiians, in-
23 cluding the provision of health care services, edu-
24 cational programs, employment and training pro-
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,
2 native language immersion programs and native lan-
3 guage immersion schools from kindergarten through
4 high school, as well as college and master's degree
5 programs in native language immersion instruction,
6 and traditional justice programs, and by continuing
7 their efforts to enhance Native Hawaiian self-deter-
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in
10 Native Hawaiian cultural practices, traditional agri-
11 cultural methods, fishing and subsistence practices,
12 maintenance of cultural use areas and sacred sites,
13 protection of burial sites, and the exercise of their
14 traditional rights to gather medicinal plants and
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-
17 serve, develop, and transmit to future Native Hawai-
18 ian generations their ancestral lands and Native Ha-
19 waiian political and cultural identity in accordance
20 with their traditions, beliefs, customs and practices,
21 language, and social and political institutions, and to
22 achieve greater self-determination over their own af-
23 fairs;

24 (16) this Act responds to the desire of the Na-
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of
2 Federal law for the Native Hawaiian people to exer-
3 cise their inherent rights as a distinct aboriginal, in-
4 digenous, native community to reorganize a Native
5 Hawaiian governing body for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;

8 (17) the United States has declared that—

9 (A) the United States has a special respon-
10 sibility for the welfare of the native peoples of
11 the United States, including Native Hawaiians;

12 (B) Congress has identified Native Hawai-
13 ians as a distinct indigenous group within the
14 scope of its Indian affairs power, and has en-
15 acted dozens of statutes on their behalf pursu-
16 ant to its recognized trust responsibility; and

17 (C) Congress has also delegated broad au-
18 thority to administer a portion of the federal
19 trust responsibility to the State of Hawaii;

20 (18) the United States has recognized and re-
21 affirmed the special trust relationship with the Na-
22 tive Hawaiian people through—

23 (A) the enactment of the Act entitled “An
24 Act to provide for the admission of the State of

1 Hawaii into the Union”, approved March 18,
2 1959 (Public Law 86-3; 73 Stat. 4) by—

3 (i) ceding to the State of Hawaii title
4 to the public lands formerly held by the
5 United States, and mandating that those
6 lands be held in public trust for the better-
7 ment of the conditions of Native Hawai-
8 ians; and

9 (ii) transferring the United States re-
10 sponsibility for the administration of the
11 Hawaiian Home Lands to the State of Ha-
12 waii, but retaining the authority to enforce
13 the trust, including the exclusive right of
14 the United States to consent to any actions
15 affecting the lands which comprise the cor-
16 pus of the trust and any amendments to
17 the Hawaiian Homes Commission Act,
18 1920 (42 Stat. 108, chapter 42) that are
19 enacted by the legislature of the State of
20 Hawaii affecting the beneficiaries under
21 the Act;

22 (19) the United States continually has recog-
23 nized and reaffirmed that—

24 (A) Native Hawaiians have a cultural, his-
25 toric, and land-based link to the aboriginal, na-

1 tive people who exercised sovereignty over the
2 Hawaiian Islands;

3 (B) Native Hawaiians have never relin-
4 quished their claims to sovereignty or their sov-
5 ereign lands;

6 (C) the United States extends services to
7 Native Hawaiians because of their unique sta-
8 tus as the aboriginal, native people of a once
9 sovereign nation with whom the United States
10 has a political and legal relationship; and

11 (D) the special trust relationship of Amer-
12 ican Indians, Alaska Natives, and Native Ha-
13 waiians to the United States arises out of their
14 status as aboriginal, indigenous, native people
15 of the United States.

16 **SEC. 2. DEFINITIONS.**

17 In this Act:

18 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-
19 PLE.—The term “aboriginal, indigenous, native peo-
20 ple” means those people whom Congress has recog-
21 nized as the original inhabitants of the lands and
22 who exercised sovereignty prior to European contact
23 in the areas that later became part of the United
24 States;

1 (2) ADULT MEMBERS.—The term “adult mem-
2 bers” means those Native Hawaiians who have at-
3 tained the age of 18 at the time the Secretary pub-
4 lishes the initial roll in the Federal Register, as pro-
5 vided in section 7(a)(4) of this Act.

6 (3) APOLOGY RESOLUTION.—The term “Apol-
7 ogy Resolution” means Public Law 103–150 (107
8 Stat. 1510), a joint resolution offering an apology to
9 Native Hawaiians on behalf of the United States for
10 the participation of agents of the United States in
11 the January 17, 1893 overthrow of the Kingdom of
12 Hawaii.

13 (4) COMMISSION.—The term “Commission”
14 means the commission established in section 7 of
15 this Act to certify that the adult members of the Na-
16 tive Hawaiian community contained on the roll de-
17 veloped under that section meet the definition of Na-
18 tive Hawaiian, as defined in paragraph (6)(A).

19 (5) INDIGENOUS, NATIVE PEOPLE.—The term
20 “indigenous, native people” means the lineal de-
21 scendants of the aboriginal, indigenous, native peo-
22 ple of the United States.

23 (6) NATIVE HAWAIIAN.—

24 (A) Prior to the recognition by the United
25 States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,
2 the term “Native Hawaiian” means the indige-
3 nous, native people of Hawaii who are the lineal
4 descendants of the aboriginal, indigenous, na-
5 tive people who resided in the islands that now
6 comprise the State of Hawaii on January 1,
7 1893, and who occupied and exercised sov-
8 ereignty in the Hawaiian archipelago, including
9 the area that now constitutes the State of Ha-
10 waii, as evidenced by (but not limited to)—

11 (i) genealogical records;

12 (ii) Native Hawaiian kupuna (elders)
13 verification or affidavits;

14 (iii) church or census records; or

15 (iv) government birth or death certifi-
16 cates or other vital statistics records;

17 (B) Following the recognition by the
18 United States of the Native Hawaiian govern-
19 ing body under section 7(d) of this Act, the
20 term “Native Hawaiian” shall have the mean-
21 ing given to such term in the organic governing
22 documents of the Native Hawaiian governing
23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The
25 term “Native Hawaiian governing body” means the

1 adult members of the governing body of the Native
2 Hawaiian people that is recognized by the United
3 States under the authority of section 7(d) of this
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING
6 COUNCIL.—The term “Native Hawaiian Interim
7 Governing Council” means the interim governing
8 council that is authorized to exercise the powers and
9 authorities recognized in section 7(b) of this Act.

10 (9) ROLL.—The term “roll” means the roll that
11 is developed under the authority of section 7(a) of
12 this Act.

13 (10) SECRETARY.—The term “Secretary”
14 means the Secretary of the Department of the Inte-
15 rior.

16 (11) TASK FORCE.—The term “Task Force”
17 means the Native Hawaiian Interagency Task Force
18 established under the authority of section 6 of this
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct
23 aboriginal, indigenous, native people, with whom the
24 United States has a political and legal relationship;

1 (2) the United States has a special trust rela-
2 tionship to promote the welfare of Native Hawaiians;

3 (3) Congress possesses the authority under the
4 Constitution to enact legislation to address the con-
5 ditions of Native Hawaiians and has exercised this
6 authority through the enactment of—

7 (A) the Hawaiian Homes Commission Act,
8 1920 (42 Stat. 108, chapter 42);

9 (B) the Act entitled “An Act to provide for
10 the admission of the State of Hawaii into the
11 Union”, approved March 18, 1959 (Public Law
12 86–3; 73 Stat. 4); and

13 (C) more than 150 other Federal laws ad-
14 dressing the conditions of Native Hawaiians;

15 (4) Native Hawaiians have—

16 (A) an inherent right to autonomy in their
17 internal affairs;

18 (B) an inherent right of self-determination
19 and self-governance; and

20 (C) the right to reorganize a Native Ha-
21 waiian governing body; and

22 (5) the United States shall continue to engage
23 in a process of reconciliation and political relations
24 with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) **IN GENERAL.**—There is established within the
4 Office of the Secretary of the Department of the Interior
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) **DUTIES OF THE OFFICE.**—The Office of Special
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust
9 relationship between the Native Hawaiian people
10 and the United States through the Secretary, and
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-
13 ian governing body by the United States as provided
14 for in section 7(d) of this Act, effectuate and coordi-
15 nate the special trust relationship between the Na-
16 tive Hawaiian governing body and the United States
17 through the Secretary, and with all other Federal
18 agencies;

19 (3) fully integrate the principle and practice of
20 meaningful, regular, and appropriate consultation
21 with the Native Hawaiian people by providing timely
22 notice to, and consulting with the Native Hawaiian
23 people prior to taking any actions that may have the
24 potential to significantly or uniquely affect Native
25 Hawaiian resources, rights, or lands, and upon the
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-
2 grate the principle and practice of meaningful, regu-
3 lar, and appropriate consultation with the Native
4 Hawaiian governing body by providing timely notice
5 to, and consulting with the Native Hawaiian people
6 prior to taking any actions that may have the poten-
7 tial to significantly affect Native Hawaiian re-
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-
10 agency Task Force, other Federal agencies, and with
11 relevant agencies of the State of Hawaii on policies,
12 practices, and proposed actions affecting Native Ha-
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-
15 mittal to the Committee on Indian Affairs of the
16 Senate, the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee on Re-
18 sources of the House of Representatives of an an-
19 nual report detailing the activities of the Interagency
20 Task Force established under section 6 of this Act
21 that are undertaken with respect to the continuing
22 process of reconciliation and to effect meaningful
23 consultation with the Native Hawaiian people and
24 the Native Hawaiian governing body and providing
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated
2 under the authority of Federal law;

3 (6) be responsible for continuing the process of
4 reconciliation with the Native Hawaiian people, and
5 upon the recognition of the Native Hawaiian govern-
6 ing body by the United States as provided for in sec-
7 tion 7(d) of this Act, be responsible for continuing
8 the process of reconciliation with the Native Hawai-
9 ian governing body; and

10 (7) assist the Native Hawaiian people in facili-
11 tating a process for self-determination, including but
12 not limited to the provision of technical assistance in
13 the development of the roll under section 7(a) of this
14 Act, the organization of the Native Hawaiian In-
15 terim Governing Council as provided for in section
16 7(b) of this Act, and the reorganization of the Na-
17 tive Hawaiian governing body as provided for in sec-
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate
22 official within the Department of Justice to assist the Of-
23 fice of the Special Trustee for Native Hawaiian Affairs
24 in the implementation and protection of the rights of Na-
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the
2 Native Hawaiian governing body as provided for in section
3 7(d) of this Act, in the implementation and protection of
4 the rights of the Native Hawaiian governing body and its
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) **ESTABLISHMENT.**—There is established an inter-
8 agency task force to be known as the “Native Hawaiian
9 Interagency Task Force”.

10 (b) **COMPOSITION.**—The Task Force shall be com-
11 posed of officials, to be appointed by the President,
12 from—

13 (1) each Federal agency that establishes or im-
14 plements policies that affect Native Hawaiians or
15 whose actions may significantly or uniquely impact
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native
18 Hawaiian Affairs established under section 4 of this
19 Act; and

20 (3) the Executive Office of the President.

21 (c) **LEAD AGENCIES.**—The Department of the Inte-
22 rior and the Department of Justice shall serve as the lead
23 agencies of the Task Force, and meetings of the Task
24 Force shall be convened at the request of the lead agen-
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of
2 the Office of Special Trustee for Native Hawaiian Affairs
3 established under the authority of section 4 of this Act
4 and the Attorney General’s designee under the authority
5 of section 5 of this Act shall serve as co-chairs of the Task
6 Force.

7 (e) DUTIES.—The primary responsibilities of the
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-
10 fect Native Hawaiians or actions by any agency or
11 agencies of the Federal Government which may sig-
12 nificantly or uniquely impact on Native Hawaiian re-
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops
15 a policy on consultation with the Native Hawaiian
16 people, and upon recognition of the Native Hawaiian
17 governing body by the United States as provided in
18 section 7(d) of this Act, consultation with the Native
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**
5 **TERIM GOVERNING COUNCIL AND A NATIVE**
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**
7 **RECOGNITION OF THE NATIVE HAWAIIAN**
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-
11 bers of the Native Hawaiian community who wish to
12 participate in the reorganization of a Native Hawai-
13 ian governing body shall prepare a roll for the pur-
14 pose of the organization of a Native Hawaiian In-
15 terim Governing Council. The roll shall include the
16 names of—

17 (A) the adult members of the Native Ha-
18 waiian community who wish to become mem-
19 bers of a Native Hawaiian governing body and
20 who are the lineal descendants of the aborigi-
21 nal, indigenous, native people who resided in
22 the islands that now comprise the State of Ha-
23 waii on January 1, 1893, and who occupied and
24 exercised sovereignty in the Hawaiian archipel-
25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not lim-
2 ited to)—

3 (i) genealogical records;

4 (ii) Native Hawaiian kupuna (elders)
5 verification or affidavits;

6 (iii) church or census records; or

7 (iv) government birth or death certifi-
8 cates or other vital statistics records; and

9 (B) the children of the adult members list-
10 ed on the roll prepared under this subsection.

11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to
13 be established a Commission to be composed of
14 9 members for the purpose of certifying that
15 the adult members of the Native Hawaiian com-
16 munity on the roll meet the definition of Native
17 Hawaiian, as defined in section 2(6)(A) of this
18 Act. The members of the Commission shall have
19 expertise in the certification of Native Hawaiian
20 ancestry.

21 (B) CERTIFICATION.—The Commission
22 shall certify to the Secretary that the individ-
23 uals listed on the roll developed under the au-
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall
4 promptly provide notice to the Secretary if any of
5 the individuals listed on the roll should be removed
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-
8 ceipt by the Secretary of the roll developed under
9 the authority of this subsection and certified by the
10 Commission under the authority of paragraph (2),
11 the Secretary shall certify that the roll is consistent
12 with applicable Federal law by publishing the roll in
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication
15 of the roll developed under the authority of this sub-
16 section shall be for the purpose of providing any
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the
19 roll the name of an individual who meets the
20 definition of Native Hawaiian, as defined in
21 section 2(6)(A) of this Act, and who is not list-
22 ed on the roll; or

23 (B) petition the Secretary to remove from
24 the roll the name of an individual who does not
25 meet such definition.

1 (6) DEADLINE FOR PETITIONS.—Any petition
2 described in paragraph (5) shall be filed with the
3 Secretary within 90 days of the date of the publica-
4 tion of the roll in the Federal Register, as author-
5 ized under paragraph (4).

6 (7) CERTIFICATION OF ADDITIONAL NATIVE
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—

8 (A) SUBMISSION.—Within 30 days of re-
9 ceiving a petition to add the name of an individ-
10 ual to the roll, the Secretary shall submit the
11 name of each individual who is the subject of a
12 petition to add his or her name to the roll to
13 the Commission for certification that the indi-
14 vidual meets the definition of Native Hawaiian,
15 as defined in section 2(6)(A) of this Act.

16 (B) CERTIFICATION.—Within 30 days of
17 receiving a petition from the Secretary to have
18 a name added to or removed from the roll, the
19 Commission shall certify to the Secretary
20 that—

21 (i) the individual meets the definition
22 of Native Hawaiian, as defined in section
23 2(6)(A) of this Act; or

1 (ii) the individual does not meet the
2 definition of Native Hawaiian, as so de-
3 fined.

4 Upon such certification, the Secretary shall add
5 or remove the name of the individual on the
6 roll, as appropriate.

7 (8) HEARING.—

8 (A) IN GENERAL.—The Secretary shall
9 conduct a hearing on the record within 45 days
10 of the receipt by the Secretary of—

11 (i) a certification by the Commission
12 that an individual does not meet the defini-
13 tion of Native Hawaiian, as defined in sec-
14 tion 2(6)(A) of this Act; or

15 (ii) a petition to remove the name of
16 any individual listed on the roll submitted
17 to the Secretary by the Commission.

18 (B) TESTIMONY.—At the hearing con-
19 ducted in accordance with this paragraph, the
20 Secretary may receive testimony from the peti-
21 tioner, a representative of the Commission, the
22 individual whose name is the subject of the pe-
23 tition, and any other individuals who may have
24 the necessary expertise to provide the Secretary
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-
2 tion meets the definition of Native Hawaiian, as
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30
5 days of the date of the conclusion of the hear-
6 ing conducted in accordance with this para-
7 graph, the Secretary shall make a determina-
8 tion regarding whether the individual whose
9 name is the subject of a petition meets the defi-
10 nition of Native Hawaiian, as defined in section
11 2(6)(A) of this Act. Such a determination shall
12 be a final determination for purposes of judicial
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United
16 States District Court for the District of Hawaii
17 shall have jurisdiction to review the record of
18 the decision developed by the Secretary and the
19 Secretary's final determination under para-
20 graph (8) and shall make a final judgment re-
21 garding such determination.

22 (B) NOTICE.—If the district court deter-
23 mines that an individual's name should be
24 added to the roll because that individual meets
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-
2 ual's name should be removed from the roll be-
3 cause that individual does not meet such defini-
4 tion, the district court shall so advise the Sec-
5 retary and the Secretary shall add or remove
6 the individual's name from the roll, consistent
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except
9 for those petitions which remain the subject of judi-
10 cial review under the authority of paragraph (9), the
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-
13 ister within 290 days of the receipt by the Sec-
14 retary of the roll prepared under the authority
15 of paragraph (1); and

16 (B) subsequently publish in the Federal
17 Register the names of any individuals that the
18 district court directs be added or removed from
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-
21 tion of the final roll shall serve as the basis for the
22 eligibility of adult members listed on the roll to par-
23 ticipate in all referenda and elections associated with
24 the organization of a Native Hawaiian Interim Gov-
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within
5 90 days of the date of the publication of the
6 final roll in the Federal Register, the Secretary
7 shall announce the date of a general meeting of
8 the adult members of those listed on the roll to
9 nominate candidates from among the adult
10 members listed on the roll for election to the
11 Native Hawaiian Interim Governing Council.
12 The criteria for candidates to serve on the Na-
13 tive Hawaiian Interim Governing Council shall
14 be developed by the adult members listed on the
15 roll at the general meeting. The general meet-
16 ing may consist of meetings on each island or
17 at such sites as to secure the maximum partici-
18 pation of the adult members listed on the roll.
19 Such general meeting (or meetings) shall be
20 held within 30 days of the Secretary's an-
21 nouncement.

22 (B) ELECTION.—Within 45 days of the
23 general meeting (or meetings), the Secretary
24 shall assist the Native Hawaiian community in
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-
2 bership of the Native Hawaiian Interim Govern-
3 ing Council from among the nominees submit-
4 ted to the Secretary from the general meeting.
5 The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-
7 prove the Native Hawaiian Interim Governing
8 Council elected pursuant to this subsection if
9 the requirements of this section relating to the
10 nominating and election process have been met.

11 (2) POWERS.—

12 (A) IN GENERAL.—The Native Hawaiian
13 Interim Governing Council shall represent those
14 on the roll in the implementation of this Act
15 and shall have no powers other than those given
16 to it in accordance with this Act.

17 (B) TERMINATION.—The Native Hawaiian
18 Interim Governing Council shall have no power
19 or authority under this Act after the time which
20 the duly elected officers of the Native Hawaiian
21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian
24 Interim Governing Council shall conduct a ref-
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited
2 to) the following:

3 (i) The proposed elements of the or-
4 ganic governing documents of a Native
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-
7 ties to be exercised by a Native Hawaiian
8 governing body, as well as the proposed
9 privileges and immunities of a Native Ha-
10 waiian governing body.

11 (iii) The proposed civil rights and pro-
12 tection of such rights of the members of a
13 Native Hawaiian governing body and all
14 persons subject to the authority of a Na-
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOVERN-
17 ING DOCUMENTS.—Based upon the referendum
18 authorized in subparagraph (A), the Native Ha-
19 waiian Interim Governing Council shall develop
20 proposed organic governing documents for a
21 Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall
23 distribute to all adult members of those listed
24 on the roll, a copy of the proposed organic gov-
25 erning documents, as drafted by the Native Ha-

1 waiian Interim Governing Council, along with a
2 brief impartial description of the proposed or-
3 ganic governing documents.

4 (D) CONSULTATION.—The Native Hawai-
5 ian Interim Governing Council shall freely con-
6 sult with those listed on the roll concerning the
7 text and description of the proposed organic
8 governing documents.

9 (4) ELECTIONS.—

10 (A) IN GENERAL.—Upon the request of
11 the Native Hawaiian Interim Governing Coun-
12 cil, the Secretary shall hold an election for the
13 purpose of ratifying the proposed organic gov-
14 erning documents. If the Secretary fails to act
15 within 45 days of the request by the Council,
16 the Council is authorized to conduct the elec-
17 tion.

18 (B) FAILURE TO ADOPT GOVERNING DOCU-
19 MENTS.—If the proposed organic governing
20 documents are not adopted by a majority vote
21 of the adult members listed on the roll, the Na-
22 tive Hawaiian Interim Governing Council shall
23 consult with the adult members listed on the
24 roll to determine which elements of the pro-
25 posed organic governing documents were found

1 to be unacceptable, and based upon such con-
2 sultation, the Council shall propose changes to
3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the
5 Native Hawaiian Interim Governing Council,
6 the Secretary shall hold a second election for
7 the purpose of ratifying the proposed organic
8 governing documents. If the Secretary fails to
9 act within 45 days of the request by the Coun-
10 cil, the Council is authorized to conduct the sec-
11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-
13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of
15 the Native Hawaiian governing body of the indige-
16 nous, native people of Hawaii to organize for its
17 common welfare, and to adopt appropriate organic
18 governing documents is hereby recognized by the
19 United States.

20 (2) RATIFICATION.—The organic governing
21 documents of the Native Hawaiian governing body
22 shall become effective when ratified by a majority
23 vote of the adult members listed on the roll, and ap-
24 proved by the Secretary upon the Secretary's deter-
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-
2 cial trust relationship between the United States and
3 its native people. If the Secretary fails to make such
4 a determination within 45 days of the ratification of
5 the organic governing documents by the adult mem-
6 bers listed on the roll, the organic governing docu-
7 ments shall be deemed to have been approved by the
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—

10 Within 45 days after the Secretary has approved the
11 organic governing documents or the organic govern-
12 ing documents are deemed approved, the Secretary
13 shall assist the Native Hawaiian Interim Governing
14 Council in holding an election by secret ballot for the
15 purpose of determining the individuals who will serve
16 as governing body officers as provided in the organic
17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of

19 this initial election and notwithstanding any provi-
20 sion in the organic governing documents to the con-
21 trary, absentee balloting shall be permitted and all
22 adult members of the Native Hawaiian governing
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections

25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and
2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-
4 MENTS.—When ratified by a majority vote of the
5 adult members of those listed on the roll, the organic
6 governing documents shall be revocable by an elec-
7 tion open to the adult members of the Native Ha-
8 waiian governing body, and amendments to the or-
9 ganic governing documents may be ratified by the
10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-
12 dition to all powers vested in the Native Hawaiian
13 governing body by the duly ratified organic govern-
14 ing documents, the organic governing documents
15 shall also vest in the Native Hawaiian governing
16 body the rights and powers to—

17 (A) exercise those governmental authorities
18 that are recognized by the United States as the
19 powers and authorities that are exercised by
20 other governments representing the indigenous,
21 native people of the United States;

22 (B) provide for the protection of the civil
23 rights of the members of the Native Hawaiian
24 governing body and all persons subject to the
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian
2 governing body exercises its authority consistent
3 with the requirements of section 202 of the Act
4 of April 11, 1968 (25 U.S.C. 1302);

5 (C) prevent the sale, disposition, lease, or
6 encumbrance of lands, interests in lands, or
7 other assets of the Native Hawaiian governing
8 body without the consent of the Native Hawai-
9 ian governing body;

10 (D) determine the membership in the Na-
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other
16 provision of law, upon the approval by the Secretary
17 of the organic governing documents of the Native
18 Hawaiian governing body and the election of officers
19 of the Native Hawaiian governing body, Federal rec-
20 ognition is hereby extended to the Native Hawaiian
21 governing body as the representative governing body
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-
24 LEGES.—Nothing contained in this Act shall dimin-
25 ish, alter, or amend any existing rights or privileges

1 enjoyed by the Native Hawaiian people which are
2 not inconsistent with the provisions of this Act.

3 (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-
4 ERNING BODY.—

5 (1) CHARTER OF INCORPORATION.—Upon peti-
6 tion of the Native Hawaiian governing body, the
7 Secretary may issue a charter of incorporation to
8 the Native Hawaiian governing body. Upon the
9 issuance of such charter of incorporation, the Native
10 Hawaiian governing body shall have the same status
11 under Federal law when acting in its corporate ca-
12 pacity as the status of Indian tribes that have been
13 issued a charter of incorporation under the authority
14 of section 17 of the Indian Reorganization Act (25
15 U.S.C. 477).

16 (2) ENUMERATED POWERS.—Such charter may
17 authorize the incorporated Native Hawaiian govern-
18 ing body to exercise the power to purchase, take by
19 gift, bequest, or otherwise, own, hold, manage, oper-
20 ate, and dispose of property of every description,
21 real and personal, including the power to purchase
22 lands and to issue an exchange of interests in cor-
23 porate property, and such further powers as may be
24 incidental to the conduct of corporate business, and
25 that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

7 (a) REAFFIRMATION.—The delegation by the United
8 States of authority to the State of Hawaii to address the
9 conditions of Native Hawaiians contained in the Act enti-
10 tled “An Act to provide for the admission of the State
11 of Hawaii into the Union” approved March 18, 1959
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13 (b) NEGOTIATIONS.—Upon the Federal recognition
14 of the Native Hawaiian governing body pursuant to sec-
15 tion 7(d) of this Act, the United States is authorized to
16 negotiate and enter into an agreement with the State of
17 Hawaii and the Native Hawaiian governing body regard-
18 ing the transfer of lands, resources, and assets dedicated
19 to Native Hawaiian use under existing law as in effect
20 on the date of enactment of this Act to the Native Hawai-
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23 Nothing in this Act is intended to serve as a settle-
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations and such delegations of authority as the Sec-
4 retary deems necessary to carry out the provisions of this
5 Act.

6 **SEC. 12. SEVERABILITY.**

7 In the event that any section or provision of this Act,
8 or any amendment made by this Act is held invalid, it
9 is the intent of Congress that the remaining sections or
10 provisions of this Act, and the amendments made by this
11 Act, shall continue in full force and effect.

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Senator INOUE. It is my privilege to call upon the cochair of these proceedings, Congressman Abercrombie. Chairman Abercrombie.

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

Mr. ABERCROMBIE. Thank you very much, Senator.

Aloha. This bill was drafted in response to concerns raised by *Rice v. Cayetano*. So that there's no confusion as to what we're about, it acknowledges a Federal trust responsibility for native Hawaiians. It recognizes native Hawaiians' right of self-governance as a native people, and it lays out a process for native Hawaiians to establish a structure of self-governance. Nothing more, nothing less.

The bill addresses two pressing goals and needs. No. 1, it will protect native Hawaiian programs, including Hawaiian homes, from court challenges by those who would deny or ignore the unique historical circumstances that makes these programs legitimate and necessary. I cannot emphasize enough that whatever your views on the bill, remember that we are dealing with court challenges here that could upset and overturn everything that anyone in this room might have by way of an opinion or a judgment as to what should be the future for native Hawaiians.

We are attempting to put together on the Federal level a bill which will enable us to address any challenge coming in a court of jurisdiction in the United States. No. 2, it will provide a mechanism for native Hawaiians to organize and establish a legal entity for self-government again which cannot be challenged successfully in the courts. Absent that, we have only rhetorical flights of fancy. We do not have any practical application.

The legislative language in this bill is not carved in stone. It is a starting point for discussion, a framework that will move us toward these goals. We are looking to the native Hawaiian community for guidance in completing a final draft. We urge every Hawaiian and all people of good will to attend these hearings and to share or submit testimony on the hearings.

I want to conclude by reminding everyone that this is not a town meeting. This is an official hearing of the Congress of the United States. The U.S. Senate Committee on Indian Affairs, chaired by Senator Inouye and the House Committee on Resources, chaired by myself under the sanction of the Chairman, Don Young of Alaska. Everyone will be heard in good order. Good order will be maintained during these hearings. We expect everyone to indicate by their testimony and by their demeanor in these hearings that they understand that these are official hearings and everyone's right to be heard will be respected in order.

Thank you very much.

Senator INOUE. May I now call upon my distinguished colleague, Senator Akaka.

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

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

Aloha. In March, when we formed the task force on native Hawaiian issues, our immediate priority was to clarify the political relationship between native Hawaiians and the United States. As chairman, I wanted to ensure that our process involved the community at the very beginning of the process. For that reason, we created five working groups to assist us. The members of these working groups have provided valuable insight and input.

I want to especially thank the members of the native Hawaiian community working group for all their time, effort and dedication, dedication to this important initiative. I deeply appreciate all of your hard work. I look forward to hearing what you have to say about the legislation today.

Let me say at the outset that I welcome the discussion on this legislation that this legislation has generated. It is only through addressing these concerns that we begin to resolve longstanding issues facing native Hawaiians. Resolving these issues will not be easy. It will not be quick, and it will not be free of turmoil. Our emotions about these issues run deep, and are influenced greatly by those who have gone before us: our parents, our grandparents and our kupuna. The time has come, however, for us to address and resolve these issues, so that we can begin to provide a better future for the children of Hawaii.

Throughout this process, we have worked to ensure that the community has an opportunity to be heard. We must listen to one another with respect. We must give each other the opportunity to speak without interruptions. Many of you have had the opportunity, and I ask that you provide others with the same respect that was given to you.

This is an incremental process. This legislation addresses the Federal relationship only. It does not affect claims, it does not affect alternatives sought at the international level. It certainly does not resolve the issue of sovereignty. It does not resolve the issue of sovereignty.

The legislation does, however, make it easier for the native Hawaiian community to deal with the issues of sovereignty, self-determination and self-governance. It makes it easier because it provides for the reorganization of a Hawaiian governing, native Hawaiian governing body for government to government relationship with the United States. It provides a process for native Hawaiians to come together and to begin to address and resolve longstanding issues that we can move forward as a people. This legislation is one step in our journey toward a better future.

I have been asked many times, why shouldn't we have a government to government relationship. My simplest answer is that a government to government relationship provides native Hawaiians with a seat at the table, to provide input, to be consulted, and to participate in any Federal policies affecting native Hawaiians.

How is this relationship beneficial to native Hawaiians? A government to government relationship is beneficial because it provides native Hawaiians with increased control over local issues. Right now, native Hawaiians have very little control and hardly any opportunity for input on Federal policies which impact them.

Native Hawaiians continue to have a unique and distinct community, with recognized culture and tradition. Native Hawaiians lack

a governing entity, however, through which they can interact with the Federal Government. This legislation provides a process for the reorganization of the governing entity. This legislation provides for the empowerment of native Hawaiians through a government to government relationship with the Federal Government. This legislation clarifies the legal and political relationship and forces the trust responsibility that the United States has with the native aboriginal, indigenous people of Hawaii, and recognizes native Hawaiians' right to self-determination.

Federal recognition does not impact alternatives sought at the international level. Those pursuing alternatives at the international level will be able to continue their efforts. There is no reason why native Hawaiians should not be able to pursue a better future within both the Federal and international context.

This legislation is also important to non-native Hawaiians. I have heard this legislation referred to as race based and divisive. I strongly disagree. Failing to address these issues is divisive. Ignoring these issues does not make them go away. We must begin to resolve them if we are going to move forward as a State and as a community. Native Hawaiians are the indigenous people of Hawaii, and as such, have a special political and legal relationship with the United States. This legislation clarifies that political relationship.

This legislation provides the next step in a long process towards resolving these longstanding issue. This legislation brings all of us together, native Hawaiians, kamaina and malahini. It does not pull us apart. We must not be afraid to move forward together.

I have been asked, why do we need to rush this legislation. I am surprised by this question. The political relationship between native Hawaiians and the United States has been the topic of discussion, as you all know, for many, many, many years. This is not the first time the Federal legislation has been drafted to address this issue. This is not a new issue. The political relationship between native Hawaiians and the United States goes to the heart of many of the longstanding issues facing native Hawaiians, including ceded lands and self-determination.

For the past 2 days, we have asked you, the people of Hawaii, to share your mana'o on how we can make this legislation better. Again, I ask that in sharing your mana'o, you respect everyone who is here.

I look forward to your input as we continue to move forward as a people and as a community to provide a better future for the children of Hawaii.

Thank you very much, Mr. Chairman.

Senator INOUE. Thank you very much, Senator Akaka.

May I now call upon Representative Mink.

STATEMENT OF HON. PATSY T. MINK, U.S. REPRESENTATIVE FROM HAWAII

Mrs. MINK. Thank you very much, Senator Inouye.

I want to first thank Senator Inouye and my colleague, Congressman Neil Abercrombie, for convening these hearings as an official part of the record on these two important bills, one in the Senate and one in the House. And I'm especially pleased that so many of

you have signed up to offer testimony today and many of you have sent in written testimony as well.

We are certainly deeply appreciative of your participation in these very, very important hearings. I consider the deliberations that we are undertaking to perhaps even parallel or exceed the importance of the deliberations that this community conducted during the years in which we debated statehood. These hearings have tremendous significance and will deeply affect the outcome of this legislation.

So I thank all of you for coming. Mr. Chairman, I would like to reserve my comments on the legislation until the conclusion of these hearings on Friday. Thank you very much.

Senator INOUE. And now may I call upon Delegate Faleomavaega.

**STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, U.S.
DELEGATE FROM AMERICAN SAMOA**

Mr. FALEOMAVAEGA. Mr. Chairman, thank you for giving me this opportunity. If I had not said it earlier, I do want to thank the co-chairman of our congressional hearing this morning, my good friend and colleague, Congressman Neil Abercrombie. We serve together as members of the House Resources Committee, and we really appreciate his extending this invitation.

As you know, Mr. Chairman, I'm probably the odd person as a member of our hearing this morning, as a delegate from American Samoa. But because of such a close linkage in all that we have discussed this morning, the issues touching on the needs of the native Hawaiians, I want to thank Congressman Abercrombie for extending that invitation for me to participate in these hearings.

Mr. Chairman, I just want to reiterate and say again both in spirit and in content that I want to associate myself with the comments and the sincere desire that has been expressed earlier by the good Senator, the chief sponsor of this legislation, Senator Akaka. And I want to note for the record, that I look forward to hearing from the members of our community here in Hawaii on their ideas on how we can better improve this proposed legislation.

Thank you, Mr. Chairman.

Senator INOUE. Thank you very much.

Before proceeding, I'm pleased to advise one and all that your written statements will be made part of the record in total.

May I now call upon our first witness, Clayton Hee, chairman of the board of trustees of the Office of Hawaiian Affairs.

Please proceed.

**STATEMENT OF CLAYTON HEE, CHAIRMAN, BOARD OF
TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS, HONOLULU, HI**

Mr. HEE. Good morning, and thank you.

Mr. Cochairs and members of the Senate Committee on Indian Affairs, Congressman Faleomavaega, Congress Member Mink, I am Clayton Hee, Chairman of the Board of Trustees for the Office of Hawaiian Affairs. And I'm here to testify on behalf of OHA in support of S. 2899 and its House companion bill relating to Federal recognition for native Hawaiians.

Let me start by thanking our congressional delegation for their hard work over the years in securing programs for the benefit of native Hawaiians, and for their leadership in support of the Hawaiian community at this critical time.

The pursuit of justice for Hawaiians has been a long and arduous journey. For the overwhelming majority of Hawaiians, justice means political status and Federal recognition, the restoration of our inherent sovereignty and the redress from the United States for the illegal overthrow of the kingdom of Hawaii in 1893.

Our struggles have intensified in the last 40 years in pursuit of justice for Hawaiians. But we have reached a crossroad in that journey, where recent events have shown us all too clearly that we must act now, and we must take a monumental step forward in our efforts to find justice for Hawaiians, or risk the loss of essential programs and benefits gained for our people.

By recent events, I am referring of course to the *Freddy Rice* case and its fallout and its future fallout. Earlier this year, in *Rice v. Cayetano*, the U.S. Supreme Court ruled that Hawaii's denial of *Rice's* right to vote in OHA trustee elections violated the 15th amendment of the U.S. Constitution. As a result, all registered voters in Hawaii have the right to cast ballots in the election of trustees to the Office of Hawaiian Affairs, regardless of ancestry.

Another lawsuit has been filed recently to eliminate the Hawaiians-only restriction on candidates seeking office as trustees for the Office of Hawaiian Affairs. One of the plaintiffs in this matter has succeeded in obtaining a preliminary injunction from the Federal district court allowing him as a non-Hawaiian to file nomination papers to run as an OHA trustee. The plaintiffs have made no secret of their desire to bring about the demise of the Office of Hawaiian Affairs. The *Rice* decision will continue to breed similar lawsuits. It will continue to utilize, to erect roadblocks along the path to justice for Hawaiians.

As I have said, it is not only our future progress that is at risk, but erosion of many advances Hawaiians have gained in health, education, economic development and housing benefits with the dedication and support of our congressional delegation. Both State and Federal policymakers have acted on the premise that programs provided for the benefit of native Hawaiians have been legal, constitutional and morally correct.

The *Rice* decision opens the door to challenge the entire framework of Federal and State laws put in place to benefit native Hawaiians until our status as a native people has been settled. So we are at a critical moment in our history as people. The *Rice* and *Arakaki* cases directly impact the Office of Hawaiian Affairs. But if we fail to act now, these challenges to our rights as native people will have a far-reaching and more devastating impact on Hawaiians and non-Hawaiians who also benefit from programs made available to Hawaiians.

All of these concerns and the urgency felt in the community have given rise to the legislation before us. We are fortunate that Senators Akaka and Inouye and Congressman Abercrombie and Congress Member Mink have undertaken leadership in this matter and have sought and continue to seek the mana'o of the community,

both Hawaiian and non-Hawaiian, to move us forward toward justice for Hawaiians by seeking formal recognition of our political status as a native people.

Today, more than 550 indigenous peoples have already attained such recognition from the Federal Government. Federally recognized indigenous people have the right under United States law to special benefits in the areas of health, education, housing, social services and economic development. They have the authority to govern themselves, to elect their own leaders, to determine their own membership and to have their own land base. The Navajo Indians have over 14 million acres of land in several States. The Alaska Natives have over 44 million acres of land.

Although there are more Hawaiians than Navajos, Alaska Natives or any other native people in the United States, Hawaiians have remained without recognition to our right to self-govern and a settlement that would provide us with a land base which is crucial to our economic and spiritual well-being. The best scenario is for Congress to formalize the political status and federally recognize Hawaiians. And this bill expedites constituting a representative political entity.

This legislation provides us with the opportunity not only to protect current programs for Hawaiians, but to meaningfully addresses the lingering injustice. As such, it is a first but essential step on the journey for Hawaiians toward reconciliation. The President and Congress have committed themselves to the process of reconciliation with Hawaiians through the Apology Bill. The Senate and House companion bill promotes such reconciliation by acknowledging as a matter of policy that native Hawaiians are unique and distinct aboriginal, indigenous native people with whom the United States has a political and legal relationship.

The United States has a special trust relationship to promote the betterment of native Hawaiians. Congress possesses the authority under the Constitution to enact legislation to address the conditions of native Hawaiians and has exercised that authority.

Native Hawaiians have an inherent right to autonomy in their internal affairs, self-determination and self-governance. And reorganization of a native Hawaiian governing body, and that the United States shall continue to engage in the process of reconciliation and political relations with the native Hawaiian people.

To that end, the proposed legislation provides for a process which native Hawaiians can organize themselves for the purpose of self-governance. Significantly, this process is inclusive. There is no pre-determination as to the form that the governing body will take. The establishment of the Office of Special Trustee for native Hawaiian Affairs. The office is not the federalization of OHA, but a new office within the Department of the Interior to, among other things, effectuate the special trust relationship between the native Hawaiian people and the United States, to assist the native Hawaiian people in facilitating the process toward self-determination and to be responsible for continuing the process of reconciliation with the native Hawaiian governing body.

The bill also provides for the designation of a representative of the Department of Justice to assist the Office in implementation and protection of the rights of native Hawaiians, the native Hawai-

ian governing body and its political and legal relationship to the United States. The bill provides for the establishment of an inter-agency task force to coordinate Federal policy concerning native Hawaiians. Notwithstanding any other provision of law, notwithstanding the decision in *Rice*, the bill provides for Federal recognition of a governing body organized by native Hawaiians as a representative governing body of the native Hawaiian people.

We are pleased that many of the foregoing initiatives were recommended by OHA in its reconciliation testimony to representatives of the Department of the Interior and Justice in hearings held this past December and January. We are also gratified that there has been a tremendous support in the community to include in the process for self-determination in the bill a position which the board of trustees has consistently supported.

In conclusion, we would like to acknowledge our congressional delegation once again for their leadership. While we recognize there remains a difference of opinion in the Hawaiian community regarding the methods of achieving the goal of self-determination, we believe this bill provides us with constructive process and a timely opportunity to achieve our ultimate goal of self-governance. And with a truly representative governing body, the achievement of a settlement with native Hawaiian for the unlawful taking of our kingdom and its lands.

It rightfully leaves potential divisive issues, such as blood quantum, for Hawaiians to decide as a self-governing people. The timing of this bill is absolutely critical in terms of the threats to Hawaiian rights that have only begun to surface in the wake of the *Rice* case. And as a matter of policy, if we are to achieve any kind of meaningful reconciliation with the United States, for Hawaiians the time is now. The opportunity is ours to seize, to move forward together on our common journey for justice.

In closing, Mr. Chairman, I would like to point out that in my view, there are no other meaningful alternatives present, and that this bill does not preempt others from continuing their positions, regardless of whether it is in the international arena. I'm reminded of a phrase by Queen Lilioukalani when she said, [phrase in native tongue], to see what cannot be seen, to hear what cannot be heard, and to know the unknowable, that is the meaning of aloha.

Thank you very much.

[Prepared statement of Mr. Hee appears in appendix.]

Senator INOUE. I thank you very much, Chairman Hee.

Now may I call upon the Honorable Colleen Hanabusa, member of the Senate of the State of Hawaii, Ray Soon, director, Department of Hawaiian Home Lands, and Rowena Akana, Trustee, Office of Hawaiian Affairs.

May I recognize the Honorable Colleen Hanabusa.

STATEMENT OF HON. COLLEEN HANABUSA, HAWAII STATE SENATOR

Ms. HANABUSA. Thank you, Senator Inouye.

Honorable members of the panel, thank you for this opportunity to testify here this morning. And I do come to testify in support of S. 2899.

First of all, as everyone probably is aware, I am not native Hawaiian nor do I speak for anyone but myself. But what I do speak here with is having served as the chair of Water, Land, and Hawaiian Affairs for the Senate for the past 2 years, and also having taken the Senate's position into the community this past legislative session on the *Rice v. Cayetano* matter.

Many of the people here are very familiar to me. Either they've appeared before us in the committee or took the time out to come and give us their mana'o on the issue of *Rice v. Cayetano*.

The reason why I am here to support this legislation and to testify here is to share my thoughts with those who have patiently come to the Senate and shared their thoughts with us. And I believe the least we can do, or I can do, is to reciprocate in that manner.

As many of you know, in the wake of the aftermath of *Rice v. Cayetano*, the legislature enacted S. 2477, relating to the Trustees of the Office of Hawaiian Affairs. Governor Cayetano signed that bill into law on April 26, 2000. The intent of the measure was to ensure that the trustees of OHA would continue to be native Hawaiians. And as everyone is aware, with the filing of *Arakaki v. State* in the United States District Court for the District of Hawaii, that now is subject to challenge with final determination to be made on September 8.

The reason why this legislation is important from my perspective is because if you look at what is being said in that specific case, you will understand what is at risk and how this legislation is the only mechanism by which we can address that. There is a process in the Federal courts which requires what they call concise statements of fact. The plaintiffs have said, Hawaiians are not a distinct people. Nor are they aboriginal or indigenous.

They have also said Hawaiians are culturally, socially and in every other material respect manifest none, none of the elements of common culture, tradition, language, institutions or belief which would distinguish them as a group from the rest of Hawaii's people. To the contrary, this racial group is fully integrated with the people of the State of Hawaii.

These are true misstatements. And no one who sits in this room can say that they believe in these misstatements.

But these misstatements have come about because of the *Rice v. Cayetano* decision, and because of the holding of the United States Supreme Court, and because the Court has not found in our congressional legislation, in the laws of this Government, that say to the contrary. The findings section of this bill is critical. The findings section clearly establishes that native Hawaiians are indigenous and aboriginal people.

It also states that native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands. And there is an admission of the special trust relationship that the Government has recognized. And we all know, that special trust relationship was transferred to the State by way of the Hawaiian Homes Commission Act of 1920, as well as the Admissions Act of 1959.

Now, how the mechanism works in terms of the creation of the native Hawaiian governing body, members of the committee, that is something that the native Hawaiian community and the commit-

tee should discuss. I take no position in that, because I will not have participation in it, as it should be. This should be something that's determined by native Hawaiians with the committee.

However, as an elected official in the State legislature, I would like to say that absent these critical findings, irrespective of what avenue one may choose, as long as the avenue is in the United States and I am an elected official, I have sworn my allegiance to the Constitution of the United States and the Constitution of Hawaii. That is the arena in which I operate.

For me, I need those findings. As Chairman of the Senate Committee on Water, Land, and Hawaiian Affairs, those are essential in order for us to go forward and in order for the native Hawaiians to continue this journey of self-determination. And this legislation is a necessary step.

I would like to thank Senator Akaka and Representative Abercrombie, because I noticed that in this bill, a concern that I raised on the State task force was what direction do we, as the elected officials on the State level have, when this process comes to possibly the end. What do we do with that public trust to which we have been entrusted?

And many of you know that I believe in section 9, there is the reaffirmation, the recognition, and in there is a statement that the Federal Government, State of Hawaii and the native Hawaiian governing body will come together to negotiate the transfers of lands and all other benefits of the native Hawaiians to the native Hawaiian governing body.

If there's any reservation that I do have in the bill, I still request consideration to be given to give us direction on the beneficial class, which is clearly spelled out in the Hawaiian Homes Commission Act, as well as in the Admission Act. We, the legislature, are entrusted with that responsibility and we still don't have a clear determination. But I trust that in this process, that issue will also be resolved.

In summary, my support of this bill is because of the strong language which is so necessary for us to move forward.

Thank you very much.

[Prepared statement of Ms. Hanabusa appears in appendix.]

Senator INOUE. Congressman Abercrombie.

Mr. ABERCROMBIE. Senator, could you elaborate briefly on your last point? I'm not quite sure I got it. Your reservation on the beneficial class, were you asking us to make the legislation more clear? I wasn't quite certain as to what direction you were going.

Ms. HANABUSA. No; the only thing that I asked is if in that record, that negotiation process, it could be clearly spelled out either that the native Hawaiian governing body determines who that beneficial class is. You know, my concern has always been that the beneficial class of the Admission Act is the same as the Hawaiian Homes Commission Act. So that blood quantum issue either must be resolved clearly with the native Hawaiian governing body, so that when we come to the table as anticipated under section 9 part B, we all know what the basic ground rules will be at that time. That's all I ask.

Mr. ABERCROMBIE. Thank you.

Senator INOUE. May I now recognize Director Soon.

STATEMENT OF RAYNARD C. SOON, DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS

Mr. SOON. Senators Akaka and Inouye, Congresswoman Mink, Congressman Abercrombie, and Faleomavaega, aloha.

This bill needs to be passed and it needs to be passed now. I stand before you with the full support of all nine commissioners and all the employees of Hawaiian Homes, all of whom deal every day with the issues on Hawaiian Home Lands. I stand also with the support of the State Council of Hawaiian Homestead Associations representing over 30,000 homesteaders.

I come before you this morning to urge your hard work on this matter and to offer all the assistance that we can muster. I have submitted over 40 pages of written testimony. I leave that for your review at a subsequent time.

I would like to instead give some personal thoughts. For 10 years, I have dedicated my life to homesteading. In that time, I've had the distinct honor of watching our people grow. I've hammered nails with kupuna proud to be building their own homes. I've planted kalo with makua building their own communities.

I've seen the people of Anahola take a beach that was littered with debris of broken dreams and the pain of evictions and turn it into the most beautiful beach park on Kauai, no help from anyone, just from each other. I've seen the people of Holahua rebuild recreation centers long destroyed by neglect, and turn them into gathering places and places of education where true sense of community is being reborn.

In homestead area after homestead area, I have seen homesteaders gathering and taking control of their communities, taking control of their problems and charting a future of vibrant, supportive Hawaiian communities. It is not an easy journey. We fail as often as we succeed. But it is our efforts and it is our successes.

Off Hawaiian home lands, I have watched with pride the empowering impact of hundreds of Hawaiian organizations, of language immersion schools, Polynesian Voyaging Society, Hawaiian institutions like Kiosese, Queen Emma, Kamehameha, Au Like, the University of Hawaii's Hawaiian studies program. I've seen the richness created by the challenges of civic clubs, the Hui Malamas, the Kalahuis, the Nations of Hawaii.

The list goes on and on, hundreds of Hawaiian organizations. These are our organizations and it's our good work. Although rarely in step and often not in agreement, we have been working individually for the betterment of Hawaiian people, and in the reconstruction of our culture, each of us in our own way. And if one could add the impact of each of these disparate parts, we have in sum been heading in the direction of self-determination for decades.

Sovereignty is not granted in a 2-year period. Sovereignty is taken. It is won by sacrifice and hard work, and we have been doing that and we are getting there.

This bill to a large extent is merely the next logical step in the process. It is the next logical step in the congressional history as we try to document in our written testimony. But more important, it is the next logical step in the cultural evolution of our people.

Rice v. Cayetano has accelerated the process. Your bill offers us the opportunity to build a nation. I, for one, would like to get on with it.

The bill is important for a second reason. The good work of many Hawaiian organizations, and in particular, the one I know best, Hawaiian homes, is seriously endangered. As we all know, the words of the majority opinion in *Rice* lay a rich foundation for attacking Hawaiian programs under the cloak of the 14th amendment. We have witnessed an explosion of homesteading in the last 10 years. More development has taken place on Hawaiian homesteads in the last 10 years than in the first 70 years of the program.

There are all kinds of good reasons for that productivity. But the good news is that there's more to come. We have nearly 1,000 homesteads in production now, and 1,000 more on the drawing boards. We're building community centers, and are primed as the market comeback to capitalize on economic development, development that could lead to jobs and business opportunities for native Hawaiians.

At no time in the past have we come as close to delivering on the promises and expectations of Prince Kuhio as we are today. And yet never have we been more threatened as we are in the aftermath of *Rice*.

This bill will help us weather the storm. But we must act now and we must act fast. It is a race to the finish as to whether we get there before Conklin or Burgess or others as they wind their way to the Supreme Court.

This bill is by no means perfect. We have submitted a list of amendments in our written testimony. Some are factual, others are structural in nature, and others are only conceptual. And we offer our assistance in detailing wording on it, if you find the concepts to have merit. Just let us know.

In conclusion, again, we support the bill and offer our help. It provides us an opportunity to build a nation, a nation toward which we have been working for years. As indigenous people we have a right to self-determination and we are prepared for it.

The bill allows existing Hawaiian organizations to continue working. The promises of political future with the United States and that relationship is key to keeping the organizations going. It would be painfully ironic that just when the promises of many of these programs are being fulfilled that the rug would be pulled out from under us.

Mrs. Mink, gentlemen, this bill needs to be passed. We urge you to make haste. Let us get on with building our nation. Thank you. [Prepared statement of Mr. Soon appears in appendix.]

Senator INOUE. Thank you very much, Director Soon.

Now the chair recognizes Carina Tagupa, aide to Trustee Rowena Akana, who will present Trustee Akana's remarks.

STATEMENT OF ROWENA M.N. AKANA, TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS

Ms. TAGUPA [reading]:

Aloha, members of this joint hearing on the Senate Committee on Indian Affairs, the House Committee on Resources and our Hawaii delegation, Senator Daniel

Inouye, Senator Daniel Akaka, Congressman Neil Abercrombie, and Congresswoman Patsy Mink. My name is Rowena M.N. Akana, and I am a trustee of the Office of Hawaiian Affairs. Thank you very much for this opportunity to testify today on this important measure. I regret that out of State business precludes me from personally being here. However, I am hopeful that you will favorably consider my testimony as it relates to this important measure.

I speak today as a concerned Hawaiian in my individual capacity as an OHA trustee and as a member of the State working group that was appointed by the Task Force on Native Hawaiian Issues to review the draft legislation and make recommendations to strengthen the language contained within the measure.

I support S. 2899 and H.R. 4904, relating to Federal recognition for native Hawaiians. I am grateful to Hawaii's Congressional delegation for taking the initiative and introducing legislation that seeks to clarify the political relationship between native Hawaiians and the U.S. Federal Government. Clarification of this special relationship between native Hawaiians and the Federal Government is important, given the Congress' recognition of native Hawaiians as referred to in the Apology Bill.

As an indigenous people with a special status, similar to that of Native American Indians and Alaska Natives, further recognition of native Hawaiians by the Federal Government is appropriate. Nearly all of the native Hawaiian community agrees that justice translates to political status and Federal recognition, restoration of our inherent sovereignty, and redress from the United States for the illegal overthrow of the Kingdom of Hawaii in 1893.

Earlier this year, the U.S. Supreme Court in *Rice v. Cayetano* ruled that the State of Hawaii's denial of Harold Freddy Rice's right to vote in OHA trustee elections violates the 15th amendment. As a result, the OHA elections are now opened up to all registered State of Hawaii voters, regardless of ancestry.

This case has opened the door to similar attacks on Hawaiian rights and entitlements. It has put a wrench in essential programs, services and benefits afforded our people. This dire situation stands to erode and diminish the many advances Hawaiians have enjoyed in the areas of health, education and housing at the Federal level. We cannot aid the erosion of the progress that has been made by our people.

The urgency to secure Federal recognition has reverberated throughout our islands and has echoed in the Nation's capital. It is my hope that this joint hearing will reinforce what the majority of the indigenous people of Hawaii have been waiting for for more than 106 years. On August 23, 2000, the U.S. Departments of Justice and Interior released a draft recognition report entitled *From Mauka to Makai: The River of Justice Must Flow Freely, Draft Report on the Reconciliation Process between the Federal Government and native Hawaiians*. One of the report's recommendations was "The Departments [Interior and Justice] believe Congress should 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."

Furthermore, the report states that "the past history of the United States-native Hawaiian relations reveals many instances in which the United States' actions were less than honorable. Native Hawaiians continue to suffer the effects of these actions, for which our Nation continues to have moral responsibility." For justice to be served, the report recommends that the past wrongs suffered by the native Hawaiian people should be addressed. The Departments believe a more productive approach to reconciliation would be through more general efforts to promote the welfare of the native Hawaiian people, respect their rights, and address the wrongs that their community has suffered.

However, I would offer that the issue of ceded lands be incorporated in the measure to further strengthen the present language. As presently written, the bill does not include a mechanism for the State of Hawaii to transfer ceded lands subsequent to the establishment of the "new" nation.

What it does is seek a process by which an entity will be formed to determine how Hawaiians undertake the issue of obtaining ceded land revenue payments. I believe that a further step must be taken to address ceded lands and ceded land revenues. A nation without land is not a nation. I propose that 20% of the 1.4 million acres of ceded lands presently held by the State of Hawaii be transferred to the new nation, and the process be delineated in the measure.

To bolster my proposal, the Federal recognition report states that "it is the Department's recommendation that a priority should be developed for the transfer of future surplus Federal lands to the native Hawaiian people in appropriate circumstances through legislation. The NH [native Hawaiian] Office will provide appropriate assistance to Congress on this issue."

Another important issue not currently addressed in the measure is blood quantum. I believe that it is important to include blood quantum in the measure, even

if it is only 1/32d. Although the native community has suggested that no blood quantum be written into the bill, I believe that if a blood quantum is not inserted into the bill the Congress may question how a nation could be formed absent of proof of being a native person.

The U.S. Supreme Court Justices in the *Rice* case also questioned the blood quantum issue. Blood quantum is a sensitive issue. However, in order to begin the process of self-determination it may be necessary to make this insertion.

In summary, native Hawaiians are at an important juncture in our history. This proposed legislation is the framework from which native Hawaiians' political status will be constructed. S. 2899 and H.R. 4904 assists native Hawaiians in their quest for self-governance and self-determination.

Again, I would like to express my appreciation for the efforts of our Hawaii delegation, the cochairs and members of this committee in bringing this important issue to the forefront. I hope that you will favorably consider my testimony that I have just presented. Thank you for the opportunity to share my thoughts with you today on this very important measure.

[Prepared statement of Ms. Akana appears in appendix.]

Senator INOUE. Thank you very much, Ms. Tagupa. Thank you very much.

Our next panel, may I call upon Lady Gladys Brandt—

[Interruption to proceedings.]

Senator INOUE. Ladies and gentlemen, for the past 2 days I have been extremely patient and I have tolerated conduct and activities that would not be tolerated in any meeting of the U.S. Senate. It is my duty and responsibility as presiding officer to maintain order. Accordingly, I wish to read the rules of the Senate. With your permission, Chairman Abercrombie.

Mr. ABERCROMBIE. Without objection.

Senator INOUE. Rule 26. Whenever disorder arises during a committee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chair to enforce order on his own initiative, and without any point of order being made by a Senator.

Rule 16. The chairman of the committee may establish such other procedures and take such actions as may be necessary to carry out the foregoing rules, or to facilitate the effective operation of the committee.

With that, may I now call upon Corbett Kalama, Beadie Dawson, Keoni Agard, Kenneth Conklin, and Kina'u Boyd Kamali'i.

May I first recognize Corbett Kalama.

STATEMENT OF CORBETT A.K. KALAMA, CHAIRMAN, NATIVE HAWAIIAN WORKING GROUP

Mr. KALAMA. Aloha to everybody.

Again, thank you to the Senators and our Congresswoman and Congressman for supporting this legislation. My name is Corbett Aaron Kamohaikiokalani Kalama. I'm the 7th of 11 children born to Charles and Lani Kalama. I'm Hawaiian when I was born, I'm Hawaiian now and I'll be Hawaiian when I go into the next life.

I'm here to speak in behalf of the Native Hawaiian Working Group as their chairman. The Working Group supports passage of the above-referenced legislation. The Working Group recognizes that the legislation will be refined to reflect and address community concerns prior to final passage. The Working Group also recognizes that passage of this bill is tantamount to the process of reconciliation and self-determination for the native Hawaiian.

The Working Group also believes that native Hawaiians have a cultural, historical and land-based link to the aboriginal native people who exercised sovereignty over the Hawaiian archipelago. We also believe that the purpose of this legislation is to clarify the political, legal and trust relationship between the native Hawaiian and the United States.

We also understand that this legislation is intended to protect the current programs and services afforded to our native Hawaiians, not to be exclusive or all-inclusive, Hawaiian homelands, Native Hawaiian Health Care Improvement Act, the native Hawaiian Education Act, protection of the Alii Trust, and other related legislation.

We recognize the historical significance of this bill in that it provides a mechanism and process whereby native Hawaiians can begin the process of self-determination. We also recognize that this legislation is not intended to serve as a settlement of any claims against the United States, nor is it intended to impede legal action in the international arena.

Since being appointed to this group, the members of the Working Group's involvement has been one of commitment, a great deal of intensity and a great deal of emotion. We fulfilled our responsibility of soliciting community input and providing comment on the legislation. We've met weekly since being appointed to the working group and have analyzed, critiqued and worked with the Congressional staff in making changes based on making community input to the legislation.

We've conducted a number of community informational meetings on all islands to make sure that the Hawaiian community understand the implications of this bill. These meetings have overflowed with emotion. A number of independent groups have expressed strong opposition to the bill. However, polls of the Hawaiian community reflect the opposite.

These meetings have witnessed the highest level of Hawaiian consciousness related to self-determination. The importance of incorporating the Hawaiian culture as the process and the significance of gaining control of land assets and related revenue generating mechanisms. Hawaiians realize that this can only occur through the continued education of Hawaiian youth, through their involvement in the political process as a unified body, and the continued willingness and true opportunity to influence the legislative process.

Reflecting back on these public meetings fills me with a great deal of emotion. Beneath the differing points of view ranging from the independent groups to groups asking that the bill not result in a nation to nation model, and to those who support it, I sense a great people crying out to this great Nation of the United States to do what's right.

We believe that the, and pardon my bank analogies, I work for a bank, we believe that the bank of justice is full of opportunity for self-determination. We also believe that there are great opportunities for everyone in this room, the differing points of view, to sit at a table, to share ideas, and come up with a meaningful solution, again as a first step. The year 2000 is a beginning, it's not an end. When people look back on history, they're going to look

back upon this time as a significant moment in Hawaiian history. I see it as a great opportunity for all of us.

I think it's ironic that 37 years ago, the Reverend Martin Luther King stood at the Lincoln Memorial speaking to 300,000 people, and he spoke of a dream. We as Hawaiians, we, too have a dream. We have a vision. Our dream is that we can all some day walk hand in hand and go ahead and move toward this process of self-determination.

The first step is this bill. The first step is to acknowledge our uniqueness as a people. And this will provide us a first step for self-determination. Aloha, thank you.

[Prepared statement of Mr. Kalama appears in appendix.]

Senator INOUE. Thank you very much, Mr. Kalama.

And now the Chair recognizes Beadie Dawson.

STATEMENT OF BEADIE KANAHELE DAWSON

Ms. DAWSON. Aloha, kakou, Chairman Danny Akaka, in his absence, Senator Inouye, Congressman Abercrombie, and Congresswoman Mink, and the distinguished Representative from Samoa.

Aloha Pumehana Kanaka Maoli and others.

My name is Beadie Kanahele Dawson. I'm an attorney. I come from the Kanahele Ho'ona, [names of families] families. My parents were both Kanaka Maoli, my father a civil engineer, my mother an educator. My father fought for the United States in Europe in World War I. His family grieved upon notice of his death in France. Through a very fortunate error, he survived in a hospital in France and served in World War II.

My testimony today is in support of the Akaka bill with substantial amendments. I believe certain amendments are necessary before this bill can be responsive to the mana'o of the many Kanaka Maoli with whom our native Hawaiian community working group, of which I am the vice chairman, and I individually and together have met to discuss the issues involved. My testimony is based on extensive observation, experience and facts. I will be candid.

I believe this bill, if amended, can be the beginning of the United States' justice for our people. This bill, if amended, can be a first step to the nationhood that was taken from the Kanaka Maoli and our Queen in 1893. This bill, if amended, can be the first step to reconciliation between the Kanaka Maoli people and the U.S. Government.

This bill, however, must not be a final step to permanent wardship for the Kanaka Maoli people. There is no joy in being needy. There is no joy in having to receive support from elsewhere. Kanaka Maoli don't want to be dependent forever. The history of our people is one of centuries of self-sufficiency. Kanaka Maoli long to be self-sufficient again and self-supporting in the future. And we will.

Sadly, after 100 years, Kanaka Maoli have become dependent on programs and support systems. Kanaka Maoli needs for health, education, housing and economic support are real and immediate and will not go away overnight.

Reality, however, is a sharp wakeup call. Without the amended Akaka bill, the U.S. Supreme Court and the Federal Court have ruled against Kanaka Maoli in very substantial ways.

OHA, the Office of Hawaiian Affairs, and its constitutionality, is being challenged as we speak in the courts. Further, we are on notice at this time, and we expect the Hawaiian Homes Commission Act, the Alii trusts and all 150 Federal laws which benefit our people to be challenged as well. With the Supreme Court's decision in *Rice* leading the way, giving us a blueprint to predict future rulings, and without this Akaka bill, it is my legal opinion that all of these challenges will succeed against the Kanaka Maoli people.

Why? Simply because Kanaka Maoli have not been formally recognized by the United States as being entitled to the same constitutional protections accorded to other native peoples in the United States.

Before I talk about the amendments, let's be clear who we are. We are Kanaka Maoli. Let's lose the native Hawaiian, the Native American, the Indian and tribal labels. Respectfully, I must also say, I am in completely disagreement with Ms. Agtuca's proposed definition of native Hawaiians out of the Office of Tribal Justice. I believe it is limiting to the numbers of people, Kanaka Maoli that can participate in this process to the very extreme. So it is divisive and it is a disaster. I would ask that that definition be looked at very carefully. I recognize the legal reasons why it is being proposed.

I have many amendments that I am asking for the S. 2899, but I will simply mention a few of them. First and foremost is I believe that a new first paragraph is absolutely imperative for this bill. An added introductory paragraph must clearly state the intent and purpose of the act, including a statement that the United States recognition and protection of Kanaka Maoli under Federal law are not intended to extinguish any Kanaka Maoli claims under international law. And that participation in the authorized process and the resulting Kanaka Maoli governing body is not intended to preclude future action by Kanaka Maoli either under Federal law or international law.

This is not a sovereignty bill. It is not a reparations bill. It is not a ceded lands bill. It is a recognition bill, and we need to recognize it for that purpose. Because it is this purpose that the bill has been written.

I wish to also comment that the U.S. Constitution both explicitly and implicitly does give the Congress plenary power over the indigenous people of the United States. And our court has never questioned that authority.

This act aligns us with the other indigenous people of the United States. But it must be amended to expressly bring the Kanaka Maoli under the constitutional provisions of article I, section 8, the Commerce Clause, article II, section 2, the Treaty Clause, and article I, and the 14th amendment, the Indian Tax Clause, in order to enable Kanaka Maoli to receive the same benefits and protections accorded to Indian tribes and Alaska Natives.

However, there's no need to perpetuate the error made by Columbus, who called the natives in America Indians. The term Indian was first applied by Columbus to the native people of the new world based on a mistaken belief that he had found a new route to India. That term has been understood ever since to refer to the indigenous people who inhabited the new world.

A simple explanation in the bill will retire the word Indians, certainly as it refers to Kanaka Maoli, and properly equate it to what they are, the indigenous native people of the land. Labels such as tribes and Indians are patently offensive to many Kanaka Maoli. Thus, I believe this section should be amended, because tribes and Indians do not describe who we are, nor do they describe our traditional form of government.

I believe that our history is so important that we must include in this act at least 25 of the recitals of our Hawaiian history that were placed in the Apology Act. Sadly, the American people and many in the Congress do not know our history. They don't understand that. They don't understand the facts of what has happened to our independent kingdom and our people. And therefore, I believe that it is critical that they be included, along with the acknowledgement that at the time of the overthrow, this kingdom had 20 treaties with other foreign nations in addition to 5 existing treaties with the United States. And it had 91 consulates throughout the world.

I think the subsection on findings which calls the Hawaiian Homes Commission Act establish a homeland for native Hawaiian people is both inaccurate and misleading. This statement must be amended to state that the Hawaiians Home Commission Act was enacted for the express purpose of rehabilitation of certain Kanaka Maoli back onto the land. The act was never intended to establish a homeland or a reservation for the native people of Hawaii.

[Applause.]

Ms. DAWSON. A few more comments here. In the findings it also states that the desire of the native Hawaiian people is for an enhanced self-determination. This statement is entirely presumptions and should be deleted. It presumes to know what the Kanaka Maoli people want. Only after an extensive educational period and referendum will the true desires and wishes of the Kanaka Maoli people be known.

Under policy, it is important that we be included under the protective provisions of the U.S. Constitution. But I would like to give a warning that in section 3, the referee, and in other sections, the references to the Admissions Act are problematic. A court of law may construe these references to the Admissions Act to be an implied or constructive legitimization of the illegal overthrow of the kingdom of Hawaii, or to be a legitimization of the questionable annexation and cession of Hawaii lands to the United States or be a legitimization of the questionable referendum preceding Hawaii's admission which failed to meet the requirements of international law.

Therefore, the references to the Admission Act, the overthrow and the annexation in the bill must be expressly limited to preclude such a legal conclusion.

I would like to finally say that in the Office of Hawaiian Affairs, the Federal office of Kanaka Maoli affairs, I think it is important that this office be substantially, as far as the Secretary is concerned, be substantially changed. I would like to request that Kanaka Maoli be represented in this office, and that Kanaka Maoli be given a preference to naming a qualified Kanaka Maoli to head this office.

Finally, and this is my conclusion, section 7, which outlines the process, is flawed considerably. Many in our working group found that the role and authority of the Secretary of the Interior in the process section was overbearing and unnecessary. More so since we were aware of the recent revelation of mismanagement and loss of \$2.4 billion of Indian trust funds by the Secretary and the Department of Interior in the *Cobell v. Babbitt* case. The entire section 7 should be amended so that the rolling authority of Interior is substantially reduced and removed entirely, except for administrative purposes only.

Kanaka Maoli should self-certify ourselves. We already know who we are, and for 22 years, we have self-certified ourselves in the OHA elections. I know of no reason or law why Kanaka Maoli cannot self-certify their roll and their elections through the utilization of sworn statements and oversight of an expanded commission. The commission that is called for must be an elected commission and not an appointed one. There roles and authority must be amended and expanded to certify the roll in the elections. And I believe that the size of this commission should have representation from all islands.

Throughout this bill, the amendments accomplish two purposes. The first is the elimination and authority of the Secretary of the Interior throughout the bill. The second is the express statement that the purpose and intent of the acts are expressed at the beginning as well as in the disclaimers in section 10. These amendments are necessary for this bill to become both viable and acceptable. When amended, I believe most Kanaka Maoli who hold a large spectrum of beliefs and convictions will be able to rally behind this act.

I give my aloha and mahalo to our chairman and our working group members for their passion, energy and devotion to studying and shaping this bill, and reaching out to people under such taxing circumstances. Many of my fellow Kanaka Maoli have presented testimony against this bill. I ask that you hear them well, for they have given much passion, energy and devotion to their studies and efforts on the bill. We in our working group have spent many hours with some of the leaders of these groups.

To some observers, our positions may appear to be opposing each other. I believe that our support and the criticisms of the bill where they are constructive are meritorious. I also believe the big working group individuals and all those who have testified in favor of this bill, as well as the independence proponents, have the same goal, the best interest and future of our people.

We have before us a magnificent opportunity to begin making history pono once again. Let us not squander this opportunity. If we work together, we can make it pono for us, for Kanaka Maoli and for the United States. You, Congressman and Senators, together with us Kanaka Maoli, we are building a nation. It is a daunting and inspiring task.

Imua and mahalo.

[Prepared statement of Ms. Dawson appears in appendix.]

Senator INOUE. May I now call upon Keoni Agard.

STATEMENT OF KEONI AGARD

Aloha kakou. Aloha, Senators Daniel Akaka, Daniel Inouye, distinguished committee members. We, the duly elected representatives of Kanaka Hawaii Maoli, residing on Oahu, in the districts of Moku o Ko'olaupoko and Moku o Ko'olauloa, submit this testimony for the record. We are elected delegates of Kanaka Hawaii Maoli from Oahu of Ko'olaupoko of Ko'olauloa. We oppose the bill, based on the 19 separate grounds outlined in our written testimony that we submitted. I, Keoni Agard, present this testimony on behalf of our joint moku.

First, this bill proposes to take our sovereignty process in Hawaii and shift jurisdiction and control of native Hawaiian issues to Washington, DC, over 6,000 miles away. We cannot agree. In the past, and recently, many protested State of Hawaii involvement in assisting and facilitating our sovereignty efforts in Hawaii. So where is the logic in shifting control and oversight to the U.S. Government that is 6,000 miles away?

This paradigm shift will effectively deny ready access by grass-roots Kanaka Hawaii Maoli to the political powers in Washington, DC. We have the right to develop our own sovereignty process, keep jurisdiction here under our control, within our own 'aina. This bill is unacceptable in its present form.

Second, Federal recognition is being withheld, withheld by this legislation. The Akaka bill states on page 32, line 15, upon the approval of the Secretary of the Interior, upon the approval of the Secretary of the Interior of the organic governing documents and the election of officers of the native Hawaiian governing body, Federal recognition is hereby extended. This leaves to the discretion of the Secretary to approve or not approve. In short, Federal recognition is withheld and is not extended by United States until and unless, until and unless the Secretary first approves our organic governing document and approves our election of officials.

There's no timeframe to force the Secretary to act. There are three instances in this bill that require the Secretary approvals. But no time limit is imposed on those approvals.

As such, depending on the politics at the time, the Secretary can stall, stall, stall, can withhold, withhold, withhold, his approval indefinitely. Let's look at the Native Americans, the track record. President Clinton appointed Paul Homan, special trustee, assigned to the Department of the Interior. He was denied cooperation and support by the Secretary. He languished in his position until his resignation without achieving any of the congressional objectives to correct the \$2.4 billion mismanagement of funds and assets for Native Americans nationwide.

Likewise in our case, if the Secretary is not cooperative, we could find ourselves in a similar situation. Is that what we really want?

Pursuant to Dan Anderson's testimony this week, counsel for the Department of the Interior, the Department of the Interior defines a reasonable time period as 20 to 30 years to complete the process as described in this bill. We submit that is not, that is not Federal recognition, but political suicide. All our programs will be eliminated by legal challenges if we must wait that long.

As such, we strongly oppose this legislation.

What is the answer? Federal recognition, if it's to be granted at all, must be granted without any strings attached, immediately upon passage of the act. The justification is simple. The justification is based on the history of the United States, who owes it to Kanaka Hawaii Maoli as a first step, as a first step, in the reconciliation process, not as a lock into a nation within a nation status.

The U.S. Congress, according to this bill, not Kanaka Hawaii Maoli, will make the choice as to political status. If passed in its present form, this bill will grant Federal recognition, but lock us in to a nation within a nation political status. So much for the right to freely choose.

History will be repeated once again, the same history which occurred to us 100 years ago, when our right to political status was denied. Nation within a nation creates the political status we see with our Native American brothers and sisters, token promises, talk, double talk, endless years of hopes and dreams dashed, no financial accountability for native trust, relocation off of prime lands and blind justice to Native Americans.

The choice must be ours. Our right to freely choose our political status cannot be determined or taken away by others. Nor should the U.S. Congress exercise this right on behalf of native Hawaiians. We were equal with all the major powers of the world as an independent nation, with all world powers, through diplomatic relations and solemn treaties in the 19th century. What justification is there to relegate our status to nation within a nation without consent of our people?

This is our alternative. Our alternative is that we suggest first, there must be express language in this bill that specifically states that nothing in the bill shall be construed as diminishing or extinguishing our rights to freely choose any of the options available to us under international law. We have a right to preserve the options as available to us. After we make that determination, then we can proceed.

Second, the bill needs to require the United States to fully fund our sovereignty process by setting up a trust fund separate from U.S. intervention to avoid controls of those funds by the United States as a ploy to force compliance by the United States of Kanaka Hawaii Maoli.

We have an alternate suggestion. Thirdly, use the reconciliation clause of the Apology Law to extend Federal recognition effective the date the law is passed, rendering 14th amendment challenges inapplicable. The Congress can under the Commerce Clause protect all our programs and provide these protections as a first provision of reconciliation under the existing Apology Law.

A government to government relationship would be established under the congressional power to regulate Indian affairs, but not, not be tied to a nation within a nation status.

Also, fast track. We need to use the existing sovereignty process that has been ongoing for years in Hawaii, transfer that community momentum, hold an election of delegates, finalize our organic document for ratification here, here in Hawaii, thus avoiding an imposition of the process to be controlled at the Federal level.

We have been loving and gracious to all races that visit these islands. We have served the United States faithfully in war and in peace. We are and continue to be a strong ally. Our ancestral lands have strengthened the U.S. military position in the Pacific. Moreover, our national lands have been used for decades by the U.S. military forces free of charge, free of charge. Indeed, it's time for the United States to show its loyalty in the same degree as we have shown ours in serving the United States.

We are not racists. We have intermarried every race that visits these islands. Our offspring demonstrates that. This movement is not about exclusion, but instead about restoring and rebuilding a culture and its people. Hawaii is the safest place in the world to have an independent nation. We have peacefully co-existed with the State and U.S. Government in these islands for over 100 years. Others have nothing to fear. The record is clear of any violence. Upon restoration and reinstatement of our nation, Kanaka Hawaii Maoli will peacefully co-exist with our neighbors, as we have done for the past over 100 years.

As the invisible cloak of the U.S. Government extends over these islands, 6,000 miles away, the invisible ahuula unites all Kanaka Hawaii Maoli as one. Finally, we cannot turn our back on our ancestors, 38,554 of the 40,000 residing in Hawaii 100 years ago who stood up to fight against annexation for retaining independence. Hui Aloha Aina walked the nation shore to shore to every island, and secured these 38,554 signatures in a period of 2 months, without the aid of airplanes, telephones, fax, or e-mail. Over 100 years ago, the nation of Hawaii, kingdom of Hawaii's choice for political status was usurped by the illegal overthrow and unlawful occupation by the United States of the independent state-kingdom of Hawaii.

We today cannot stand by and allow the U.S. Congress to repeat history again by preempting our right to make that choice for ourselves. What would our ancestors say?

They would say kue.

We resist respectfully in the spirit of aloha. [but we say, kuha]. A highly respected Senator once said, justice delayed is justice denied. We ask that justice prevail. I ask all those in the audience who support our Queen and our ancestors who signed the petition 100 years ago to stand up now.

[Audience responds.]

Mr. AGARD. Mahalo.

Senator INOUE. Thank you very much, Mr. Agard.

Now may I recognize Mr. Kenneth Conklin.

STATEMENT OF KENNETH R. CONKLIN

Mr. CONKLIN. Aloha kakou a pau.

Currently we have a unified State of Hawaii under one government. This Akaka bill would divide us along racial lines. Currently we are all equal under the law. This bill would establish by law two classes of citizens, a racially defined hereditary elite would have special voting rights and property rights in addition to all the rights of every citizen. Aren't the days of racial supremacy and second class citizenship over?

The Supreme Court in *Rice v. Cayetano* identified "Native Hawaiian" as a racial classification.

Senator INOUE. Will you yield?

May I request that Mr. Pa leave the front.

Please proceed.

Mr. CONKLIN. Over 150 racial entitlement programs might now be found unconstitutional because of that decision. The Akaka bill tries to save those programs at the expense of carving up Hawaii along racial lines. Government help should be based on need and not race. Are ethnic Hawaiians like any Indian tribe you ever heard of? In the year 1840, that's 53 years before the overthrow, the sovereign King Kamehameha III exercised self-determination by creating a constitution giving voting rights to all subjects of the kingdom, regardless of race. As time went by, thousands of non-natives became subjects of the kingdom through naturalization or birth.

By the overthrow of 1893, only 49 percent of the population had any native blood at all. Most high government officials had no native blood. Most of the wealth and political power was held by non-natives. And all of this happened under the authority of the sovereign monarchs.

Has there ever been an Indian tribe where most of the wealth and most of the elected or appointed office holders are non-Indian?

Sovereignty activists and Federal officials are well aware that Hawaiians would never qualify as an Indian tribe under the seven mandatory criteria for Federal recognition. That's why the Akaka bill was introduced, to have Congress create a phony Indian tribe through a political process setting aside long established procedures. Didn't Congress learn a lesson from the scandal over a similar political recognition of the Mashantucket Pequot Tribe in Connecticut? It was documented in Jeff Benedict's book, *Without Reservation: The Making of America's Most Powerful Indian Tribe and the World's Largest Casino*. And now you're thinking of doing it all over again?

Only 157 U.S. soldiers came ashore to maintain order during the overthrow. Ten times that many local members of the Honolulu Rifles took over government buildings and disarmed the royal guard. These local residents maintained power through 4 years of a hostile Grover Cleveland administration that tried to restore the Queen and secretly supported the failed Wilcox counterrevolution.

The United States has apologized for its small role in the overthrow and wants to give reparations.

Senator INOUE. Will the witness cease?

I hope the demonstrators don't tempt the Chair, because I am prepared to take action.

[Interruption from audience.]

Senator INOUE. Will you please proceed.

Mr. CONKLIN. Thank you, Senator.

The United States has apologized for its small role in the overthrow and it wants to give reparations. But to whom would such reparations be owed? Would they be owed to just one race of people?

The kingdom of Hawaii was not limited to Kanaka Maoli, and pardon me if I am repeating myself, but this point needs to be

made. Many non-natives had full voting rights. Only 40 percent of the population at the time of the overthrow had any native blood at all. Most of the high government officials were non-native. Thousands of ethnic Japanese, Chinese, Americans, and Europeans were naturalized or were native-born subjects of the kingdom before the overthrow. Their descendants today have equal standing with native Hawaiians regarding any reparations that the United States wants to give for its very small role in overthrowing the monarchy; yet the Akaka bill totally ignores them.

The kingdom that had treaties with the United States was not Hawaiians only. Government power, land ownership and economic wealth were not Hawaiians only. So why should Congress offer reconciliation and reparations to Hawaiians only?

And by the way, in response to the previous speaker, there were only a little over 21,000 people who signed petitions in 1897 opposing the annexation. That represented only slightly more than one-half of the Kanaka Maoli, and only less than 20 percent of the total population at that time.

[Interruption from audience.]

Senator INOUE. Proceed.

Mr. CONKLIN. In conclusion, I would like to focus on what brings us together here in Hawaii instead of what tears us apart. I would hope that the Akaka bill is defeated. Let us maintain a State of Hawaii unified under one government with equality and aloha for all.

[Interruption from audience.]

Mr. CONKLIN. Please do not divide us along racial lines and put us on a path toward Bosnia, Fiji, Rwanda, and Zimbabwe. Thank you very much.

[Prepared statement of Mr. Conklin appears in appendix.]

Senator INOUE. May I now call upon Lady Gladys Brandt.

STATEMENT OF GLADYS BRANDT

Ms. BRANDT. First of all, I would like to extend my appreciation to the congressional delegation who is here today, to you, our senior Senator, my aloha. I have known you since days long, long ago. And I appreciate your help and your deportment and your patience.

To representative Neil Abercrombie, I remember some 50 years ago you used to sit with the Salvation Army, helping our young people in Hawaii. And Patsy, my friend of my school teacher days. I do want to especially want to give my aloha to Eni. It's so nice to have our Polynesian cousins come here and hold hands with us. I ask you, Eni, to please put your arms around your very lovely wife for me.

There's been much said today, much of import. My comments, strangely, will be very, very brief. First of all, I want to say that I support the Akaka bill with the amendments as proposed by the native Hawaiian community working group. I have heard the words of those who disagree. And I understand their reasons. I welcome their sincerity and passion. To question and to dispute is our right and our responsibility. Debate and disagreement are as much a part of the Hawaiian way as are the many efforts we make as Hawaiians to promote harmony and agreement.

But now, in my opinion, is a time for our differences to be put aside. We must walk one path now, and speak with one voice for the distant goal we have some tirelessly pursued for a century is closer than ever before. It is my view that the Akaka bill will give native Hawaiians new opportunities to control their destiny and to determine their future.

So I ask for the sake of our people who have lived before us and for the sake of those will live after us, let us now agree, let us now claim the justice denied us, and nurture the hope long buried within us.

Aloha.

Senator INOUE. Thank you very, very much.

And now may I call upon Kina'u Boyd Kamali'i.

STATEMENT OF KINA'U BOYD KAMALI'I

Ms. KAMALI'I. Mahalo, Mr. Chairman. Aloha to my ancestors, to [phrase in native tongue]. Mahalo for your guidance, your wisdom and your support as I continue to walk in your footsteps in leadership.

My great-grandfather worked side by side with Kamehameha. He helped to build his ships in order to bring us together in unity. The Boyd name has served us in our kingdom with our queens and our kings. My grandfather, Robert Nupuna [name in native tongue] Boyd was sent to Italy by King Kalakawa to work with and to learn what other nations could bring us in supporting our kingdom. But he was called home prior to 1893 because of the unrest that was swirling about our nation during that time.

Our ohana has continued to serve in government, continued to serve even before Kamehameha. My ancestors have been in leadership on all islands. And I thank them with all my heart for their guidance and their wisdom as I move forward in their footsteps. Mahalo.

I want to say thank you for the opportunity to testify on S. 2899 and H.R. 4904. I am Kina'u Boyd Kamali'i, a member of the working group appointed to review the Federal legislation being considered today and I am also chairperson of Ho'omalua ma Kualoa.

As you know, I have served in the State House of Representatives for 10 years as trustee for the Office of Hawaiian Affairs, and as the presidentially-appointed chair of the Federal Native Hawaiian Study Commission, which is the genesis of the Apology Bill. And it has been my privilege in each of these roles and in my presence here today to have worked with each of you in coming to this day and to this bill.

Eni, mahalo for your love, and for taking care of me in those days in Washington, DC. It was Eni Hankin in those days.

And to all of you who sit there at the table, mahalo for your graciousness to me in the early 1980's when I had to fight the Reagan administration. It was his administration that wrote that we had no legal or political, they had no legal or political responsibility to us as Kanaka Maoli. It was the Reagan administration that forced me as the chair of that commission to write the minority report to disagree with that political entity.

And if you think they have changed, awake. That's why the elections coming up in November are very important to all of us in America.

After 30 years of commitment, I also fully expect each of us to be there when the Hawaiian nation is formally ratified by the Hawaiian people and recognized by the United States of America, for accompanying the Hawaiian people on this voyage to renew reconciliation, dignity and self-government, mahalo nui loa.

We have very little time to present our testimony, so I would like to highlight my remarks and summarize some of my concerns, in particular, number one. I support this Congressional effort to affirm, to formalize and make explicit the trust relationship between the United States and the Hawaiian people. To avoid any misunderstanding regarding the intent of this legislation, I urge the inclusion of a purpose section, clearly stating the Congressional intent in the passage of this bill.

No. 1, to affirm the special legal and trust relationship between the United States of America and the native Hawaiian people.

No. 2, to provide a process for self-determination and the restoration of native Hawaiian self-governments within the framework of the United States Constitution and the preliminary powers of Congress.

No. 3, to establish an administrative procedure to extend Federal recognition to a restored native Hawaiian government that enjoys no less than the rights and the powers and the privileges exercised by the aboriginal, indigenous and native governments of the United States.

No. 4, to extend to the native Hawaiian people the rights, the protections, services and benefits available from the Federal Government consistent with the Federal trust responsibility to the aboriginal, indigenous and native peoples of the United States.

No. 5, to continue this commitment to a process of full reconciliation between the United States and the Hawaiian people, and shall include a settlement of claims to the former crown government and public lands, resources and assets of the kingdom of Hawaii.

Consistent with this purpose section, I further urge significant amendment to the findings section. As now written, this section confuses the constitutional basis for Congressional action and recitation of American actions that led to first, the successful overthrow of the kingdom of Hawaii and second, implicit parallels between the Hawaiian experience and current thresholds for extending recognition and redress to tribal entities.

These elements need to be separated and more fully addressed. The Apology Bill contains an exemplary step by step reiteration of events and consequences linked to the overthrow. I will leave to your judgment whether these findings can be simply incorporated through reference or need to be repeated.

However, the Apology Bill did not include the conspicuous denials of native Hawaiian rights at the time of annexation and during the territorial period needed to amplify this threshold of recognition. Central to this second component of the historical denials of rights, specifically self-government, extended to other native and indigenous peoples within the United States. Among these viola-

tions were the lack of a treaty, the denial of a popular vote, the omission of a disclaimer provision, recognizing and reserving native rights to the lands, resources, included in every other territorial organic act from 1863 and on and the guarantee of fair dealing under the auspices of the United States.

Currently, these bills speak of process for reorganizing a native Hawaiian government. We need a straightforward commitment to Federal recognition. The commission section needs to identify how these individuals are to be selected and also require that they be Kanaka Maoli. I believe that the Office of Special Trustee for Hawaiian Affairs shall be given the rules making powers to develop the qualifications and application process for selection and appointment.

The described enrollment process will work, if a date to close the enrollment for purposes of qualifying in the reorganization process is set and an identification card is issued as part of the process. To my mind, two years should be an adequate amount of time to conclude this enrollment and the issuance of an enrollment card will facilitate verification of voting eligibility later.

Further, reflective of our family structures, allowance for kupuna to register minor grandchildren and great-grandchildren should also be permitted. A provision explicitly protecting and reserving the future rights of those individuals and children who are not registered should also be included.

I am also recommending the creation of a simultaneous Apportionment Commission of 15 native Hawaiian members, again selected from applications to the Office of Special Trustee. These members would also serve for 2 years. It would be this commission's recommendations regarding the size, composition and elections process that would be considered for ratification at the called for general meetings to be held on each island and at as many sites as necessary to assure the full participation.

Eligibility to attend, participate and vote in these general meetings would be verified by presenting an enrollment card.

The Interim Native Hawaiian Governing Council also needs a timing mechanism and more description. Members should be elected to a 2-year term and complete the work of drafting an organic document within that time.

If that document is rejected or fails to generate the required level of support, then a new interim body should be elected again, be provided with a maximum of two years to rework an organic document for ratification.

A new section describing the powers of government should be included to assure the native Hawaiian entity has at the very least powers similar to other native nations within the United States, including but not limited to, dual membership, self-definition of membership, domestic powers of justice, taxation, and control over inheritance and other family matters.

Essential to this new section would also be the power to hold title to land and other real or personal property acquired from any source. All such property would be a part of the trust and subject to the laws and decisions of the new nation. These attributes are already in State law regarding the assets of OHA, and there should

be no need to require additional negotiation, consultation or consent from the State.

Linked to this position, I am opposed to the incorporation section, allowing the Hawaiian government to form a corporation if desired. If the need for this section is to allow ownership of property, then make that a power of the government. Do not force us to assume the trappings and traps of a corporate mentality that have not served the best interests of either the Alaska Natives or the Office of Hawaiian Affairs.

I realize that I am urging major revision of the bills before us. However, taking more time at this juncture to detail the process will save us years of frustration later.

At this time, I want to again thank the members of the Hawaii congressional delegation for your dedication and determination to seeing the Hawaiian people and the government of their design, choosing, recognized. You and the members of these two committees, and ultimately the full Congress, hold not only the future of the Hawaiian people in your deliberations, but the future of all Hawaii.

Anger, hurt and resentment continues to build within the Hawaiian spirit, within the Hawaiian spirit and soul as the promise of making right what has so long been wrong is delayed and deferred. You must act. The Apology Bill promised reconciliation. Please keep that promise.

And if I may, Mr. Chairman, on a personal privilege, I want to take this opportunity to thank Gladys Brandt for being here with us today and to wish her a belated happy birthday of a couple of days, her 94th. Mahalo.

[Applause.]

[Prepared statement of Ms. Kamali'i appears in appendix.]

Senator INOUE. Thank you very much, Ms. Kamali'i. I thank the panel very much, and happy birthday, Lady Gladys.

And now may I call upon the president of the National Congress of American Indians, Sue Masten, and the former director of the Office of Tribal Justice of the United States Department of Justice, Mark Van Norman.

I am now pleased to recognize President Masten.

STATEMENT OF SUSAN MASTEN, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. MASTEN. Aloha, or in my language, [remarks given in native tongue]. Warmest greetings and good morning to Vice Chairman Inouye, Senator Akaka, Representative Abercrombie, Representative Mink, Representative Faleomavaega. And of course, the Kanaka Maoli.

It is a distinct honor to be here in your beautiful homelands and in your warm aloha spirit. I ask in advance for your forgiveness for I mean not to offend you here in your homelands by speaking to you on this issue.

I understand the seriousness of this issue to you and future generations. My name is Susan Masten. I have the distinct honor of serving as president of the National Congress of American Indians, as well as the chairperson of my people, the Yurok Tribe in north-

ern California. We are fishing people, located on the Pacific Coast and along the beautiful Klamath River.

NCAI is the oldest and largest American Indian organization in the United States, organized in 1944 to fight against termination of tribal sovereignty and the assimilation policies enforced by the Federal Government. Today, NCAI remains dedicated to protecting the rights of all Indian nations and working to help tribal governments and native people achieve self-determination and self-sufficiency.

On behalf of NCAI, I would like to thank you for the opportunity to testify before the joint committees regarding S. 2899 and H.R. 4904. NCAI strongly supports the recognition of the sovereignty of the native Hawaiians by the Federal Government and the creation of a process that will lead to self-determination for native Hawaiians, the aboriginal indigenous people, the Kanaka Maoli.

NCAI's membership unanimously passed two resolutions supporting the sovereign rights of native Hawaiians. There has been an ongoing effort for many years to formally address the organization of native Hawaiian community into an entity that would be recognized as having a government to government relationship with the United States. There are many different concepts that have been debated in the Islands. I understand that there are many different points of view regarding the potential relationship between the native Hawaiians and the United States. And I urge the committees to pay attention to all perspectives of the native Hawaiian people concerning their future.

The Federal Government has acknowledged the wrongdoings on its part in relation to the native Hawaiian people. The most obvious instance of this is Public Law 103-150, or the Apology Resolution. This bill enumerates the various wrongdoings of the U.S. Government in relationship to the native Hawaiians and the kingdom of Hawaii, including describing the illegal overthrow as a substantial wrong and as an act of war.

This alone entitles the native Hawaiian people to compensation and reconciliation and calls for Congress and the President to support those efforts.

In addition to the need for reconciliation, there is another stimulus to the introduction of S. 2899 and H.R. 4904. A recent U.S. Supreme Court decision in *Rice v. Cayetano* determined that the election of trustees of the Office of Hawaiian Affairs solely by native Hawaiians violated the 14th amendment of the U.S. Constitution. This decision allowed for non-natives to run for office positions and thus put the interests of the native Hawaiians in jeopardy.

In part to remedy the situation created by this decision, and in part to fulfill the Government's trust responsibilities, S. 2899 and H.R. 4904 both create a system by which the native Hawaiian people, with the assistance of the Secretary of the Interior, through the Office of the Special Trustee, may organize and create their own entity that the United States will recognize. It is clear that native Hawaiians must support any process designed for this purpose in order for it to be successful.

NCAI will support whatever path the native Hawaiian people choose to assure their self-determination and will assist by sharing our own experiences where they are relevant. S. 2899 and H.R.

4904 are based in part upon the recognition or restoration process that Congress has followed for several decades with many tribes, including my own Yurok Tribe. The Yurok Tribe, though federally recognized since the mid-19th century, had never formally organized its governmental structure. We shared a reservation with the Hoopa Valley Tribe and individuals were in frequent litigation over resource distribution, fishing and cultural rights.

In 1988, Congress divided our formerly joint reservation and set out a process that included creating a membership roll, electing an interim council, drafting a constitution and then receiving Federal recognition or acknowledgement of our government. It was a successful but not a problem-free process.

During our constitutional process, there was a debate in our community over whether having an organized government with the potential of the Department of Interior interference, was preferable to our then-current situation. The benefits of being an organized government, including the enhanced control over our own destiny, far outweigh the power that the Department of Interior might have.

Let me assure you that time has shown this to be true. Our ability to serve our people and to protect our resources does indeed far outweigh any problems with the Federal bureaucracies.

I would now like to turn my attention to the subject of sovereignty. It is important to formally recognize the sovereignty of the native Hawaiian people because of the historical wrongdoings and the deprivations that native Hawaiians faced at the hands of the United States when their government was taken from them. But self-determination is needed not only to ensure a measure of justice, but more importantly, to protect the unique Kanaka Maoli culture which is constantly threatened by the predominant non-native culture.

Self-determination is also necessary for the protection and governance of homelands, which are necessary for any culture to continue to survive, as well as to allow native people to come live together as a community, continue traditionally land-based cultural practices, and provide the economic means to live productive and healthy lives. Through S. 2899 and H.R. 4904, Congress is taking the initiative to help native Hawaiian people create a sovereign political entity of their own creation.

The legislation provides for the creation of a native Hawaiian interim governing council. This council, comprised of native Hawaiians, will serve as a first step in the creation of a native Hawaiian governing body for the native Hawaiian population. The creation of a native Hawaiian governing body will begin reconciliation between the Federal; State governments and the native Hawaiian people. With a representative council, the native Hawaiians will have a unified voice to speak to local, State, and Federal governmental entities on a government to government basis.

The creation of the council, along with the recognition of native Hawaiian sovereignty, will protect it against attacks from non-natives who do not respect the inherent rights of native people to self-government. With a governing council in place, native Hawaiians will no longer have to worry about non-native individuals running for seats on their governing body.

For example, on the mainland, we have seen how respect for tribal sovereignty has transformed failing Indian communities into strong partners in providing law and order and governmental services as well as in economic development. We would strongly urge that all Hawaiians consider the merits of the legislation and support its passage in the U.S. Congress.

I would like to speak to two sections of this legislation that I have a close personal experience with. During the division of the Hoopa Valley Reservation in 1988, I went through the same process that you are proposing for the native Hawaiian governing board, specifically, with respect to defining who is a tribal member, creating a membership roll, and establishing a governmental body. In section 2 of the legislation, an important definition is that of native Hawaiians, which provides for the lineal descendants of the native people who resided in Hawaii on January 1, 1893. This definition requires the broad-based support of the native Hawaiian people.

My own experience as a member of the interim council for the Yurok Tribe, which was responsible for developing our Tribe's constitution, was that the congressional criteria for our membership excluded many whom we at home considered Yurok. Under our own constitutional standards, our membership rose over 50 percent. Although we cured the problem in practice, the effects linger and we still have to fight to have our real numbers used as the basis for Federal funding.

The process of establishing a roll in section 7 of the legislation is extremely time-consuming and labor-intensive. The commission must have an adequate budget, a basis for community input as to who the members will be, how the commission will be compensated, and what their term of office will be.

One more item missing from the bill is a timeframe for development of the roll. As I have experienced, this process is extremely time consuming. Native Hawaiians know their own community and should be able to suggest an appropriate timeframe for the roll process.

The number of members for the interim council is not set in the legislation. Nor is any process described for determining that number. I realize that issues of representation need to be worked out by the native Hawaiians. But generally, the place for that is in their own governmental documents.

S. 2899 and H.R. 4904 also limits the interim council to only those powers provided in these bills. We had a similar restriction in our legislation and as such, were not able to contract with any Federal agencies for funds. And we were forced to go back to Congress for an amendment.

With respect to developing governing documents, a most important thing we did was to encourage as much community input as possible. We established a community based drafting committee, held numerous community based meetings, we polled the community on specific policy questions before drafting, and we utilized our attorneys as an integral part of the drafting process.

Finally, with respect to claims and potential land base, I understand that this bill does not directly address these issues. It does provide that the United States is authorized to negotiate an agree-

ment with the State of Hawaii for the transfer of land and assets to the native Hawaiian government. Although not self-executing or binding on the State of Hawaii, it is important recognition of this significant issue.

In our own experience, we are still struggling with our claims issues, as well as trying to develop an appropriate and viable land base, and adequate funding for our needs. We are, however, better able to address these issues as an organized government. Organizing our government has not automatically cured these issues. I would suggest at a minimum with respect to claims this legislation include a provision that makes clear that nothing therein waives any of the claims or can be used as a set-off of those claims.

Distinguished committee members, as you know, the issue of self-government and sovereignty is the most important one for native people in this country. The survival of our cultures, our homelands, and our ways of life depend on our ability to control our own affairs and govern ourselves. The most basic of our inherent rights as native people is sovereignty.

It is the essence of our very being.

The first and most critical step of lifting a people to a level of parity with other governments is recognizing the deep-seated right of our people to self-government. As President of NCAI, an organization whose primary goal is to assist indigenous people in the attainment of sovereignty, I commend you for your continued efforts in assisting our native Hawaiian brothers and sisters in doing just that.

I'd be happy to respond to any questions you might have. Thank you.

[Prepared statement of Ms. Masten appears in appendix.]

Senator INOUE. Thank you very much, President Masten.

Before I call upon the next witness, may I most respectfully request that those who are carrying on conversation in the back do so outside. It is very difficult for us who are following the testimony to hear the testimony. So those of you who wish to continue to talk, please go outside to carry on your conversation. Otherwise, please extend to the witnesses the usual courtesy that we extend to each other.

Mr. VAN NORMAN.

STATEMENT OF MARK C. VAN NORMAN

Mr. VAN NORMAN. Mr. Chairman and members of the committee, thank you for this opportunity to testify today. My name is Mark Van Norman. I'm the former director of the Office of Tribal Justice in the Department of Justice.

I have left the Department, and today the views I present are my own. However, I thought this measure was very important, so I wanted to travel out here and share some of my experience.

First of all, I think this is very important, formative legislation. It would reaffirm that the native Hawaiian people is a political community, not a racial group. Last year, when John Berry and I traveled throughout Hawaii, the message that we heard very clearly from the native Hawaiian people was: "We they want a better life for themselves and their children. We want better educational programs, better health care, better housing and better jobs. And

we want to address the ceded lands issues. We want to control their own affairs, lands and resources.”

This bill would provide the native Hawaiian people with an opportunity to maintain their own distinct community and to transmit their culture, lands and traditions to their future generations. By providing for the formation of a representative body to speak on behalf of the people, the bill would empower the native Hawaiian people to promote progress for themselves in these areas. The native Hawaiian people could be empowered to manage their own lands and resources.

In short, the measure promotes native Hawaiian self-determination within the framework of Federal law.

The Interior and Justice report on the reconciliation process made a similar recommendation. I believe that for the native Hawaiian people to make progress on these issues, it's important for them to be able to address the injuries they have suffered as a community. And to do so, they need a clear representative voice.

Congress has the authority to enact such legislation. The Supreme Court's relevant case law, the *Sandoval* case, states that Congress may legislate on behalf of distinctly native communities. The native Hawaiian people are a distinctly native community, who maintain their language, culture and traditions and a strong historic connection to the land.

The Interior-Justice report deals with this in detail, and significantly, S. 2899 contains findings on these points.

Indeed, the Congress has historically dealt with native Hawaiians as a distinctly native people, as demonstrated by the Hawaiian Homes Commission Act of 1921.

I agree that there are very strong challenges, legal challenges that will now be brought against the native Hawaiian community in light of the *Rice v. Cayetano* case. And it is very important for this legislation to be enacted to reaffirm the political status of the native Hawaiian community. Thank you.

[Prepared statement of Mr. Van Norman appears in appendix.]

Mr. ABERCROMBIE [ASSUMING CHAIR]. Thank you, Mr. Van Norman.

We'll move on to our next panel. Dawn Wasson from Laie; Leimomi Khan, from Honolulu; Harry Friel, from Honolulu; Evelyn Lane from Haleiwa; Charles Rose, from Honolulu; Anthony Clapes, from Honolulu.

Ladies and gentlemen, we appreciate your kind attention and aloha toward our speakers. We have nine full panels to go through today. We want to give everybody their opportunity. So if you would kindly give your respect to those giving their testimony, we would appreciate it, and I'm sure that they would.

Ms. Wasson, am I pronouncing your name correctly?

Ms. WASSON. Yes; you are.

Mr. ABERCROMBIE. Would you begin, please?

Ms. WASSON. Mr. Chairman, I would like to be the last speaker.

Mr. ABERCROMBIE. Well, we have you listed first, and we want to go in good order.

Ms. WASSON. Thank you, but my sovereignty depends on my own ability to be able to choose. Thank you very much.

Mr. ABERCROMBIE. Ms. Khan, is it all right if you go next, then?

Ms. KHAN. Certainly.

Mr. ABERCROMBIE. Please proceed, then, Ms. Khan.

**STATEMENT OF LEIMOMI KHAN, PRESIDENT, OAHU COUNCIL,
ASSOCIATION OF HAWAIIAN CIVIC CLUBS**

Ms. KHAN. Aloha [remarks given in native tongue].

I could not turn back the time for the political change, but there is still time to save our heritage. You must remember never to cease to act because you fear you may fail. The way to lose any earthly kingdom is to be inflexible, intolerant and prejudicial. Another way is to be too flexible, tolerant of too many wrongs, and without judgment at all. It is a razor's edge. It is the width of a blade of pele grass. So stated Lilioukalani in 1917.

And so today is the challenge facing our congressional delegation. Aloha, honorable committee members. Leimomi Khan, [remarks given in native tongue], Oahu Council of the Association of Hawaiian Civic Clubs.

My testimony this morning is on behalf of the Oahu Council of the Association of Hawaiian Civic Clubs. A representative number of members who are here this morning, mahalo.

In December 1918, Prince Jonah Kuhio Kalaniana'ole, Hawaii's delegate to the Congress at that time, brought together a group of leaders to organize a strong and cohesive group within the Hawaiian community to lead Hawaiians to become actively involved in legislative matters. Today, there are 46 clubs located throughout the United States, 23 of those sit on Oahu.

Since its founding, the Oahu Council has actively participated in legislative matters, initiating numerous resolutions on health, education, economic, cultural, and land issues. We are proud to say that we were the first to sponsor an informational forum for the public at the State Capitol auditorium on July 31 on S. 2899 and H.R. 4904, recognizing the importance of and need for this legislation.

Additionally, at its annual convention held in 1997 and 1999, the Association of Hawaiian Civic Clubs passed resolutions urging a comprehensive settlement of the outstanding claims of the Hawaiian people for land and sovereignty and urging native Hawaiian participation in a reconciliation process with the Federal Government as called for in Public Law 103-105, or more commonly known as the Apology Bill, by attending and speaking out at community outreach meetings, and testifying and/or submitting written testimony at the public hearings. Copies of those resolutions were circulated with hard copies of my testimony.

Today, we are here to speak in support of the concept of S. 2899 and H.R. 4904, with amendments. We wish to applaud the initiatives of Senator Akaka and the support of our other congressional leaders to seek legislation to begin the steps toward some form of recognition to the indigenous people of Hawaii, with the intent of preventing further erosion of and threat to current benefits and entitlements. We wish also to applaud the members of the native Hawaiian working group who have met since March 2000, all of whom are like all of us, they are Hawaiian, who reviewed the proposed legislation and made recommendations to strengthen it.

However, we are concerned about the following aspects of the bill. First, most of the decision making authority rests with Federal officials. The following are examples. The Secretary of the Interior would hold the cards in terms of timeliness and appropriateness to approve our organic governing document and election of government officials. The track record of that office as regards the affairs of American Indians has not been favorable. Thus, we have strong concerns about the authority being proposed for that office.

The Native Hawaiian Interagency Task Force is composed primarily of Federal officials to be appointed by the President. Thus, while the intent of the bill appears to be to facilitate Kanaka Maoli in seeking their right of self-determination, perception is that the Federal Government will be controlling the important aspects of the process. Therefore, we strongly urge that the roles of various Government officials be reevaluated with a view to more involvement in the process by the native Hawaiian community.

Second, to leave no doubt about the question of entitlements, we recommend that strong language be included in the bill that makes clear that the race based benefits currently provided for Hawaiians is not a violation of equal protection under the 14th amendment, but rather is a reconciliation measure under the Federal mandate of the Apology Bill.

Last, the bill does not clearly set forth provisions to address the following. When would the Office of Special Trustee for Native Hawaiian Affairs be established? Who would take the lead to begin the preparation of the roll? Who will appoint the commission by certifying the roll? How soon after passage of the bill would the roll be taken? And how much time would be allowed for it to be established?

Section 7, paragraph (a)(10) says final roll will be published in the Federal Register within 290 days of the receipt by the Secretary. Could this period be shortened?

Within 90 days after the date of the publication of the final roll, the Secretary shall announce the date of a general meeting of the adult members on the roll to nominate candidates. Who will facilitate the discussion with the roll in establishing the criteria for candidates to serve on the Native Hawaiian Interim Governing Council?

We appreciate the opportunity to comment on S. 2899 and H.R. 4904, and we are optimistic that legislation will be passed that protects all existing and future native Hawaiian programs, the opportunity for self-governance, and the protection of our lands and monies that are derived from it. Mahalo.

[Prepared statement of Ms. Khan appears in appendix.]

Mr. ABERCROMBIE. Thank you, Ms. Khan. Thank you for making specific recommendations.

Now we'll move to Mr. Friel.

STATEMENT OF HARRY FRIEL, REPUBLICAN CANDIDATE FOR THE U.S. SENATE

Mr. FRIEL. Aloha. My name is Harry J. Friel. I am a Catholic. I am a Republican candidate for the U.S. Senate from Hawaii. And I wanted to share with the committee where I come from in regards to my testimony today.

I attend mass daily at the Cathedral of Our Lady of Peace, where Blessed Damian of Molokai was ordained as a priest. It is in his path that I walk in service to the Kanaka Maoli, to the native Hawaiians and to the people of the United States of America.

I would like to thank the Senate Indian Affairs Committee for allowing me the opportunity to express my position on S. 2899 and H.R. 4904. I speak in strong opposition to the Akaka bill. The Akaka bill is a step back from Public Law 103-150. The acknowledgement of the illegal overthrow of the kingdom of Hawaii by the United States should open the door to nation to nation recognition.

Senator Akaka, in threatening the Kanaka Maoli people by suggesting that the window of opportunity is closing, because the Clinton administration is coming to an end, does a great disservice to native Hawaiians.

I also wanted to state that this bill does not move toward restoring the kingdom of Hawaii.

I once again would like to thank the Senate Indian Affairs Committee for this opportunity. I trust you will act in the best interests of both the United States of America and native Hawaiians by eliminating this measure.

Briefly, I wanted to make a couple of comments off the cuff here. I think that I am very appreciative for the spotlight being finally placed upon this issue. And I do believe that we can move forward. I would urge Kanaka Maoli and native Hawaiians to hold onto your dream for a nation of your own, despite all that you're seeing here.

I want you to know that my prayers and thoughts are with you, and that this issue is extremely important to me, and that I am devoting my life towards helping you achieve your dream.

Thank you.

Mr. ABERCROMBIE. Thank you very much.

Ms. LANE.

STATEMENT OF EVELYN LANE

Ms. LANE. Thank you very much. Good morning, Representatives, Congressional delegates, Chairs, the Indian Affairs Committee, Senator Inouye, Senator Akaka, Representatives Abercrombie, Mink, and our delegate from Samoa. Thank you for being here.

It's very difficult, my first inclination in my testimony here this morning is to show outrage and indignation to the propositions that are being put before the Hawaiian people. The reason that I feel that way is first, as an American citizen who was born in Hawaii, unaware of what was happening here, came back in 1993, discovered the injustices that have occurred here at the hands of the Government that I pledge my allegiance to, I feel that it's important to bring these concerns up as an American citizen as well as a resident and inhabitant and born here in the islands.

I want to apologize before I begin for anyone that I might offend by my testimony. It's not my intention, I don't want to provoke outrage by anyone. But I also want to consult with the delegation about what I think is very important here. I think the reason that we're here is because of the *Rice* decision. I don't think that we're here because we want to help Hawaiians gain more independence.

I think that Congress has had the responsibility for 109 years to enforce the treaties that existed during the kingdom of Hawaii's re-

lationship with the United States, which was recognized by the United States as a full diplomatic internationally fully recognized country with treaties with other countries.

And I believe that all of the members of our congressional delegation have done a lot of work to try to help native Hawaiians along the way ad hoc, as Representative Abercrombie mentioned a few days back, that all of the legislation has been ad hoc. And that there is no policy, really, regarding native Hawaiians. We have resolutions, joint resolutions which don't have really any weight in law. Neither does the joint resolution that annexed the kingdom of Hawaii into the United States or the people.

So I feel that it's important after the Supreme Court decision that the real question that we're talking about here is, does Congress have the authority to define and recognize the political status of Indians, based on the Indian clause. And I would agree that based on that definition, Congress does have that authority.

But does Congress have the authority to take a sub-group of the potential citizens of the kingdom, the Kanaka Maoli, and exact them out of the whole population of the kingdom potential citizens, and treat them differently than the treat the rest of the people that were injured by the illegal overthrow?

Does Congress have the authority to treat individuals as a group, collectively put them together, identify their characteristics and then reduce their political status for the purpose of maintaining control over their homelands? The answer is clearly no.

According to the Supreme Court decision in the *Rice* case, they said that of course, Congress has the authority to regulate domestic relationships within the Federal framework. But it does not give Congress the authority to make treaties with people on a collective, individual classification by discrimination, to say these people are the ones we're going to treat differently out of this whole group of citizens of the kingdom of Hawaii. So that we can change the nature of their political status.

It's the political status that we're trying to determine here. It's the political status that you're trying to clarify for yourselves as congressional members.

So we know that Congress does not have the authority to set up new governments and set up new relationships with people that already have a political legal status. I think the proposal cannot move forward until that hurdle has been overcome. So for that reason, I'm not going to be addressing the provisions that you have set up in the legislation for recognition, because I think that that would be going, that would step over your authority, your boundaries in this relationship.

And I think that from a congressional point of view, that it is your responsibility, it is your obligation, it is your duty as citizens of the United States and residents of Hawaii, to tell your congressional members the truth, to urge them to take the high road, to urge our Government to do the right thing. It is very difficult to be an American citizen in Hawaii today, because of the shame that we have as citizens of the United States, for the corrupt behavior that our Congress, and I'm not saying that each and every member here is responsible for what happened 100 years ago. But you have a duty and an obligation to your family, your ohanas and the peo-

ple who live here, to tell Congress in no uncertain terms what the truth is and to bring justice.

We, as Americans, we have to uphold our own laws for the rule of law. America has the potential to be a great nation of integrity and decency and fairness, and that is the principles that we were founded on. And I urge everyone here, if you haven't seen the movie Patriot, go and see it. That's what American is about, fighting for freedom.

[Interruption from audience.]

Ms. LANE. We Americans left Europe because we did not want to be controlled by some offshore country. They didn't want to pay taxes to a country that didn't recognize their special needs. There's nothing wrong with being an American in another land and supporting another country. And America has a historical relationship with the kingdom of Hawaii.

I feel like I'm here not only for myself, but for my late cousin, Grover Cleveland, which, you know, I'm still amazed to find out that I was related to Grover Cleveland, but I think that the Congress needs to review Grover Cleveland's message to you and his following letters to the American people. What's happened here in my estimation is that Americans have been as duped and deceived on the mainland as the people here in Hawaii about what happened. When I came back into Hawaii in 1993, I was born here, came back in 1993, I was shocked to find so much hostility toward the Government. And then when I investigated to find out, I mean, you would have to be a 2-year old not to recognize the injustices here.

And it's disingenuous for Congress and the Department of the Interior and the Department of Tribal Justice to come to us and tell us that this is the only way that we can deal with this issue. We have laws that allow us to deal with this issue. They're called treaties. The treaties of the United States are the law, the supreme law of the land.

It seems to me that the reason that Congress wants to treat with the Kanaka Maoli only is because they are the only people in this island that are indigenous, aboriginal, and have vested, inalienable, inextinguishable tenant rights. So why should the Kanaka Maoli one more time take and believe the United States Congress that they are trying to look out for their best interests? Why? Would I, if I were a Kanaka Maoli who had been here all my life have the faith of a thimble for the Congress, for any decisions that they would make, considering the shameful and horrendous history of our country towards Hawaiians who have been our friends, who are the embodiment of racial, ethnic tolerance to the world?

To me, it is one of the most shameful discoveries that I have learned about my country. And I cannot sleep at night, and I cannot talk to people without apologizing first to all of the people of Hawaii that are the descendants of the subjects and citizens of the kingdom of Hawaii.

The only way that we can effect a united group of people here on these islands is to unite, not to divide. And this bill, even if it is with all the best intentions, for all the right reasons, will do more damage than it would do good. Because the kingdom was not racially based. The sovereignty that exists here was as good as it

gets. It can't get any better than what was here, except for more people, maybe.

It's just, I mean, you have this inclusiveness. We have inclusiveness. We do not have bars to put people, I can't imagine what it would be like to live in my north shore neighborhood when the financial situation gets so bad that all of my Hawaiian neighbors have to go live on some reservation that the Congress has set up for them, and then my neighborhood will just become filled with people who are Americans instead of people who are native Hawaiians or subjects and citizens of the kingdom. I won't be able to look out my window and watch my neighbors and their ohana playing music, serenading our neighborhood with Hawaiian songs. That would be a disaster.

Mr. ABERCROMBIE. Ms. Lane, I understand that. But could you confine your remarks to the bill.

Ms. LANE. I think it is to the bill.

I will confine, I will. And you know, I find, I've been here for 3 days. And I have to say that every time that I have ever testified for something to do with the United States, that I would be the only person that would be asked to hurry up.

[Interruption from audience.]

Ms. LANE. I want to also say that in the bill, then, that the organic proposal that you suggest that Hawaiians should adopt would alienate them from their inherent interest in the land. And that anything less than reinstatement of the kingdom will do nothing for the Kanaka Maoli who will not be able to exercise their rights over the land, because they will be extinguished by changing their allegiance.

I would, I also wanted to mention the working group that were set up in the Task Force. I thought it was interesting that a task force had been set up by Congress which was the congressional delegates of the State of Hawaii who appointed themselves to a task force. As I understand it, and if I'm wrong, I'm more than willing to be corrected. But that is my understanding of how the task force got started.

And then when the task force decided to have working groups, they didn't put any citizens that would be considered Americans on the panel, so that we could come and tell our Congress how much we disapprove of this process. Or if we approved of it. We didn't even have a chance to put in a say, because there was no working group set up for citizens, only for native Hawaiians. And I agree that this is an issue that should be decided by native Hawaiians, but if our Government is going to have a hand in it, then I have a right to come and speak here.

And I appreciate the opportunity and thank you, and I'll end my testimony now.

Mr. ABERCROMBIE. Thank you very much.

Mr. ROSE.

Senator INOUE. Mr. Chairman, I just want the people to note that there are 37 witnesses waiting to testify.

[Interruption from audience.]

Senator INOUE. And as much as we would like to have witnesses speak as long as they want, we just cannot do that. And so

I hope witnesses following Ms. Lane will try their best to abide with the rule.

Mr. ABERCROMBIE. Mr. Rose.

STATEMENT OF CHARLES ROSE

Mr. ROSE. Members of the committee, thank you very much for this opportunity to appear before you. I have submitted my testimony in writing, as requested, and I believe you have it before you. So I will not read it in total, in the interest of time, but hit some of the highlights.

First of all, I have been involved in the uplift of the Hawaiian people for the past 29 years. During that time, there's never been an entity that is created by the Hawaiian people to represent all of the Hawaiian people. I have been working towards that objective.

I believe in the people. And I believe that the people should choose. So as a result, I have difficulty with some of the language of this bill. The provisions that provide for the establishing of a roll, and naturally, forming an interim government council and creating a native Hawaiian government, I believe is not proper. And I object to those provisions, and ask that you consider eliminating them from the bill.

I just want to point out that, as I indicated in my testimony, that in 1998, staff of Senator Inouye circulated throughout Hawaii a proposed bill that would recognize the Hawaiian people, once we have created our nation. And this bill, for various reasons, did not go anywhere. But I would recommend that the committee consider language that was in that bill, and eliminate those provisions that give authority and power to the Department of the Interior to manage our affairs.

As I've indicated in my testimony, and I am quite confident that we can and will create our own government, without interference, control or monitoring from any outside agency. Senator, since I submitted my testimony, I understand that at hearings held this week, representatives of the Department of the Interior have come before you and proposed amending your bill to include some type of blood quantum. And I would strongly oppose that proposal. And I would ask that those decisions rest with the Hawaiian people, once we have had the opportunity to select our own entity.

When this legislation first came out, my worst fear was that the U.S. Government would treat us like an Indian nation, and in compliance with Indian law, and set up a blood quantum. If you adhere to the recommendations of the Department of the Interior, my fears will become a reality. I'm very, very concerned about that, and I ask you not to allow, in this legislation, any type of language that would create a blood quantum.

Your bill does not create a blood quantum. Your bill goes back to 1893. The Department of the Interior, I understand her name was Jacqueline Agtuca, appeared here Monday, suggesting that the roll book be based on Hawaiians from the Department of Hawaiian Homelands Act of 1920. And I believe that would eliminate three-fourths of the Hawaiian people from participating in this process. So I find that very difficult to understand. And I would ask that

you seriously consider not allowing that kind of language in this legislation.

Senator Inouye and Congressman Abercrombie, I have submitted a packet to you which contains, yes——

Mr. ABERCROMBIE. We have it here, and we will make it part of the record, Mr. Rose.

Mr. ROSE. Could I ask that it be introduced as part of the record?

Mr. ABERCROMBIE. Yes.

Mr. ROSE. Thank you very much.

In that packet of material, it covers a 2-year period of articles that I have had good fortune to have the news media publish. But those articles contain only one common theme. And that theme is that all of the Hawaiian people should be making the choice, not just one portion of us. All. Everyone. And I want to let you know right now, and I say this with all candor and as inoffensive as I can ever be, the people in the back of the room that are holding up those signs, they do not speak for all of the Hawaiian people. The people sitting in this room, they do not speak for all of the Hawaiian people. We have not heard their voices.

So my manao is I want to put into place a creative process that we can hear the voices of all of our people. And we are in the process of doing that today.

As an example, we have created a what I consider to be a unique——

[Interruption from audience.]

Mr. ROSE. The problem is I cannot out-yell you guys who are in the back. Please, E kala mai.

In this process, members of the committee, we have created what I consider a very unique and innovative approach of getting to our people. And let me point out to you that we have had numerous times publications sent out, media mailouts, advertising in the newspaper, that HA Hawaii document, the blue one that's on the top of the packet, was sent to 100,000 registered voters in the State of Hawaii in 1998. There were three communications sent out to every registered voter in the State of Hawaii. There was only a 10 percent turnout in the election.

For this hearing, thousands of dollars have been spent, publicizing this hearing, encouraging people to participate, in ads and everything. My understanding, from what I've read, and maybe 200 people who have asked to sign up to testify. There are 200,000 Hawaiians. So 200 is a very small quantum.

So what we have created or proposed and developed is what I call a face to face approach to this process. And what this approach would be is that we would contact Hawaiian families and go to wherever they are, they don't come to us like here today. We go to wherever they are, and we say to them, what's your manao on this subject matter. And we are now in the process of doing that.

Our problem is, we do not have funding. So to me, if you can help our effort in any way, if you can provide appropriations in this measure that would give us funding to go out and go home to home, one on one, discussing this crucial, crucial issue, I think that's the most, that's very beneficial to us. If you can help us in that regard.

And like I said, I hope my comments are not offensive to anybody. But I tell you right now, I believe in the people. And I believe that the people should choose, and not the guys in the back of the room, and not the guys in the front of the room, because we have all come here, we need to go to them.

Mahalo.

[Prepared statement of Mr. Rose appears in appendix.]

Mr. ABERCROMBIE. Thank you, Mr. Rose.

Mr. Clapes, am I pronouncing your name correctly?

Mr. CLAPES. Yes.

Mr. ABERCROMBIE. Please continue.

STATEMENT OF ANTHONY L. CLAPES

Mr. CLAPES. Thank you.

There is probably nobody in the room who knows who I am. I'm a lawyer. I represent high tech companies on the mainland from my office here. I also write books and the most recent is a book on bringing high tech business to Hawaii, which I think is an important thing to think about.

I'm not, as I said, I'm a lawyer for high tech companies, I have nothing to do with the little pamphlets about Microsoft that are on these chairs. In fact, I sued Microsoft last year on behalf of one of my clients.

I commend the drafters and the sponsors of this bill for having undertaken to solve a thorny, serious problem. I'm not here to participate in or to try to derail the efforts of the Kanaka Maoli to achieve sovereignty. It's not my struggle.

On the other hand, it may affect me, it may well affect me in one way or another. I'll have more to say about that in 1 minute.

I'm here to testify about the importance to Hawaii's future of three things in connection with these bills. One, honesty. Two, inclusiveness. And three, due deliberation.

Unfortunately, those three points mean that I will say some things that are critical, and I hope that they're not just critical, but constructive.

The bills are being sold as providing for Federal recognition or self-determination, reparations, restitution, as a clarification of the relationship between the United States and native Hawaiians, and as a way of establishing government to government relations. They really do none of those things that are reasonably implied by those phrases.

What they do do, and it's enough to do in one bill, is to provide for the possibility of continued funding for programs for the Kanaka Maoli that may be unconstitutional now. That they do so using the American Indian model is only a byproduct of the drafters' interest in haste in the wake of the *Rice* case.

The bills have lengthy recitations at the outset that take parts of history, leave out other parts and portray the native Hawaiians as having long been wards of the State. And indeed, the bills themselves propose to continue to treat them that way in the future, substituting the Federal Government for the State.

But the right to self-determination doesn't need to depend on a history of trustee and ward. It can better be justified by a present

relationship of equality. And equality is one thing that this bill's recitations deny.

There has been some talk about land already here. The bills don't provide the land base. There's a discontinuity between the setting up of the native Hawaiian governing body and the availability of land to govern on. Without the land base, a people cannot be sovereign.

So what's happening here is that in exchange for the potential of future funding for these programs, and they may well be important programs, but in exchange for the potential for future funding, the Kanaka Maoli would give up their quest for true sovereignty. And I disagree with anyone who says that that is not the consequence of what this bill would do.

Again, maybe that's a good deal. It's not for me to say, that's not my struggle. It's for the people who know the programs, know what they accomplish, or know what they fail to accomplish, and can decide what they need to do in order to get the flow of Federal money is worth the price.

Well, I'm here to say, by selling this bill as something other than it really is, you are just going to increase the acrimony and bitterness in the native Hawaiian community.

And the second point kind of goes the other way. Ms. Lane already made the point that a large portion of the Hawaiian population was not represented in the working groups leading up to the bill. I think that was a big mistake. Because this bill will affect—I don't know what to call them now—the non-Kanaka Maoli, other people living in Hawaii, OPLIH.

This is how it works. A right, just thinking about rights, a right is a relationship with other people where the other people have a duty, have a duty to treat you in a certain way. So to recognize the native Hawaiian right to self-determination is also to impose duties on the other people living in Hawaii.

Now, in the same way that this bill doesn't really make clear what rights it's proposing to grant, it doesn't make clear what duties would go along. It's all to be figured out somewhere down the line, once we're all committed to this process that is only vaguely outlined.

Now, the third point I would make is that, and this point I think has been made eloquently by the testimony of the people who have spoken before, giving you specific recommendations for changes in the bill, or specific points that are wrong in the bill. There's been quite a volume of that, and I won't rehearse it myself.

But this bill is in no shape to be rushed through the Congress. The bill establishes, or would establish a native Hawaiian governing body that can adopt its own laws. But since the bill provides no land, where would those laws apply? Can they conflict with the laws of the State? Can the governing body that's set up under this bill govern those native Hawaiians who don't want to be governed by it? There might be some.

Things like casinos and tobacco and liquor, tax-free prices, those are a different kind of issue. But having come from the place where the Mashantucket Pequots set up that big casino, as was mentioned this morning, I can tell you that the duties that go along,

or the burdens that go along with the right to have done that are substantial.

Now, another problem this bill faces is that the Rice opinion has language in it suggesting that this kind of American Indian solution for the Kanaka Maoli may be unconstitutional. It may not work at all. And that ought to be fleshed out, and whatever can be done to correct it, if anything can be done to correct it, needs to be done if this bill is to succeed.

The notion that we need to rush for some reason before the end of this Congress hasn't been explained, I think, to my satisfaction, and maybe other people's as well. No one's predicting a radical change in the Congress for the next term. Maybe one or more Supreme Court justices will retire. And maybe a new President and maybe it will be a Republican President would appoint one or more replacements.

But so what? The *Rice* decision was a seven to two decision against the State. In order to be sure that that kind of thing wouldn't happen again, you'd need to have three or maybe four new justices on the Court, depending on who retires, all of whom agree with the State's position. Now, that would be a little bit of a judicial miracle.

A bad bill can be improved by redrafting and inclusive public debate. And that takes longer than October. It can't be improved by enactment, in the same way that spilt milk can't be unspilt, or a scrambled egg can't be unscrambled.

So there are a lot of questions over what the bill really means. There are larger questions that also have to be considered, perhaps not in this committee kind of context, but certainly by members of the congressional delegation. For example, will this bill satisfy the wishes of the Kanaka Maoli, or will it only inflame the debate? What effect will the bill and its aftermath, whatever the aftermath is, have on the economy of the State? The Kanaka Maoli and the rest of us here live in the economy of the State. And that's something that has to be considered for all of us.

I'm interested on what effect the bill would have on the ability to build a meaningful high tech sector here, because I think supplementing tourism with something that doesn't do the things that tourism does is a useful thing to do.

In the end, I think that for many of the other people living in Hawaii, respecting the deeply felt wishes of the Kanaka Maoli is a very high order value. And if most native Hawaiians felt strongly that this bill would help them more than it hurts them, I think a large number or large proportion of the other people living in Hawaii would support the bill, despite its flaws.

On the other hand, if Mr. Rose's survey came out the other way, then I think the non-native Hawaiians would not support the bill.

I thank you for the opportunity to speak.

[Prepared statement of Mr. Clapes appears in appendix]

Mr. ABERCROMBIE. Thank you very much.

This panel will now conclude with Ms. Wasson's testimony.

STATEMENT OF DAWN K. WASSON

Ms. WASSON. You know what this looks like, right?

E na 'Akua e na 'Amakua, e na Kupuna. Aloha kakou.

This is an historical event. And before I go any further, I would like to acknowledge the Alii, Kamehameha, the first mo'i wahine and also Queen Lilioukalani. It is through their efforts that we come here today. It is through their efforts that they have left a legacy for us to come here today and to protect and preserve what they have left for us to do, from now into the future.

We cannot support this bill. This bill and the people here before us are agents of the U.S. Government. As agents, they have sworn allegiance to the Constitution of the United States of America. Allegiance not to us. So America and its representatives do not come before us with clean hands. We cannot sit with them as equal partners, because they refuse to acknowledge us.

In this entire bill, it talks about subjugation. I will not subjugate myself to another power. I cannot subjugate myself to another power.

In 1804, my kupuna recieved their kuleana land, in 1795, Kamehameha came here to Oahu. By the year of 1804, a kupuna kane kuanonoehu was able to live on this island Moku 'o Kakuhihewa in the Ahupua'a of Lai e wai, 'aina Kulaulani, Ili of Okilehelehe. I live there today. I am able to get up in the morning any time I want to and do as I do like to do, to learn about my people, my history, and to malama, the aina of Kupuna.

One hundred and six years have gone by and I'm able to do this. And to my Kupuna, I say thank you, mahalo.

I come from a court case this morning [phrase in native tongue]. This poor haole has signed an agreement that they will never desecrate the sacred sites of my Kupuna. Those are one of the battles that we have to fight to keep our lands pure from the native people who claim they have a right to us, the U.S. Government. The State of Hawaii, the City and County of Honolulu, we have had to live under their rules for too long.

Look what happened from the very beginning, the change of venue, the way that they treated our people from the neighbor islands, from Kauai, Molokai, Maui, Hawaii. The change of venue on them, and give no accommodations to them.

If you think we will be treated fairly under this bill, you are wrong. Just coming here, you can tell we have not been treated fairly. A kupuna said to me, I like living on my homestead land. And I have to support this bill, because I've been on my homestead land for 30 years. I told kupuna, nobody will ever move you off your land. It is a contract that is given to you. But did kupuna know and understand, it is a lease agreement of a land that was originally her people's land. And the subliminal messages that we get from the Federal Government and agents of the government, Social Security tell our people, if you don't support us, you will not have your Social Security. Poor kupuna, put fear in them about this kind of stuff. They will never lose their Social Security. Never. They put into it, they're going to get it. Foreigners get it anyway.

The bill doesn't even mention Kuleana lands. We are like a feather in the wind.

But I want to say this to all of you. There is an agency in the Federal Government called, it's called Trust Assessment. Trust Assessment and Accounting Management Systems. And the purpose of this organization is to develop a comprehensive national system

for land title records and realty activity to all our people, with the [phrase in native tongue] who love aloha [phrase in native tongue]. You will never see your land again. Never. Not in my lifetime, not in your lifetime, not in your grandchildren and on into the future and in perpetuity, you will never see your land from this day forth if you support this bill.

You will have to go through all this different agency and hope that you'll get heard and hope that someone will at least listen to you. You see, they're busy counting all the money they're going to make from your land.

I live on Kuleana land, I will always live on Kuleana land. I will fight until my death to protect this land.

I do not own this land, I have never said I own this land. But I am a caretaker. I take care of this land to pass onto the next generation and for them to pass it on into the future. Malama i ka 'aina.

Nana ia 'oukou. Nana i ka mana'o, i ka pu'uwai, i loko i ka na'au. Look into your thoughts, look into your heart and look into your gut feeling. He maka'u ame ia'u. I am afraid. I am afraid of what this bill would do to us. But in all of this, what is the recommendation. It's a real Heaha i ka mana'o. Oh, you know, what's your recommendation? Well, my recommendation is this. Go back to the lands of your kupuna. Go back to the sovereignty of your kupuna. It is in the land.

And go back to the government that was left for us. And where do we begin? First, we start with our ohana. Then we go to the aina, into the ili, into the ahupua'a and into the moku. And most important, stay out of everybody else's business. 'Aole niele no, mind your business. Hawaii will take care of their business and Oahu will take care of our business.

But we must have the right to rule ourselves, and we will. I say these words because I brought my mo'opuna, my two grandchildren with me. And I wanted them to be here, because I wanted them to know that it is important for them to see why our kupunas, our makua and our peers are here to listen, to hear what these people are doing to us. And it is important for them to know now and into the future.

And I asked my mo'opuna this morning, what do we say to people who come on our land and have no business to be here? And he said, get off my land.

So to all the Kanaka Maoli, tell everybody else, get off our land. Amama ua noa.

[Prepared statement of Ms. Wasson appears in appendix.]

Mr. ABERCROMBIE. At this point, we will call a recess, and we will reconvene at 1 p.m.

[Recess.]

AFTERNOON SESSION

Senator INOUE [resuming Chair]. Our next panel consists of the following: Leona Atcherley of Wainae; Patrick Barrett of Honolulu; Dr. Kekuni Blaisdell of Honolulu; Lilikala Kame'eiehiwa of Honolulu; Keali'i'olu'olu Gora of Honolulu; Nicole Kinalau of Waipahu; and George Theis.

Ms. Atcherly, you have the floor.

STATEMENT OF LEONA ATCHERLEY

Ms. ATCHERLEY. Thank you very much, Senator Inouye.

Good afternoon, Senator Inouye, Delegate Eni Faleomavaega of Samoa, Representative Neil Abercrombie, and Representative Patsy Mink and Senator Akaka, members of this U.S. House and Senate panel. Thank you for allowing me to bring my testimony to your attention.

First of all, I am here to speak about the rights of the native Hawaiians who are defined as those having not less than one-half part of the blood of the ancestors who existed prior to the arrival of Captain Cook. These are the people we call the small "n" native Hawaiians, and I'm here to speak on their behalf, because they have been violated so thoroughly and so shamelessly by first the Territory and now the State.

Therefore, what I want to do is educate the general public about definitions and the legal ramifications that they need to know so that they can be thoroughly aware of who we are, what we are, what we represent and why we are being violated by the Office of Hawaiian Affairs, by resolutions put through by Senator Akaka; you name it, they're doing it, and they're right at this present time using our moneys and squandering our moneys and we're not getting one copper penny out of those millions of dollars.

So I'm speaking for the race of the 50 percent to 100 percent blood quantum native Hawaiian people, God bless all of us.

Now, I want to begin with what the legal definitions are about for us. We are the small "n" native Hawaiians, we are not Daniel Akaka's, Senator Daniel Akaka's big "N" Native Hawaiians, who are legally designated as non-native Hawaiians. They are Hawaiians, but they are non-native Hawaiians—according to the legal definition. I'll get to the reason for these definitions specifically; so what is being specified in this bill applies to those non-native Hawaiians, because they have been shut out legally from the Hawaiian Homestead Act, Hawaiian Homes Commission Act, and from the section 5(f) of the Ceded Lands Trust in the Statehood Admission Act. And I'm going to explain why this happened.

Well, we are clearly and constitutionally and legally forever and ever separated from all these types of bills that we have before us, this one in particular that's called the Akaka bill. We are forever severed from being joined into these kinds of bills. We cannot be lumped together and have our entitlements further stripped and taken away from us with these kinds of bills. And furthermore, it's illegal. And we can go to Federal court and sue the pants off of everybody, including yourself, Senator Inouye.

We don't need these kinds of things, simply because our Federal laws and our federally mandated provisions have been constitutionally approved, mark that word constitutionally approved, from long, long ago, because the lands that were set aside for us, the lands that were considered to be a scarce resource, could not be for everybody. It was being constitutionally correct to commit this resource only to those who were homesteaders under King Kalakaua and Queen Liliuokalani. And those were the 100 percent, full blooded Hawaiians.

However, when the delegation from Hawaii gave this news to the Territorial legislature, which was then comprised of more than two-

thirds percent of full blooded Hawaiians in that Territorial legislature, the members of the Territorial legislature demanded that the delegation be sent back to Washington to seek approval for the lowering of the blood quantum to 50 percent. Would that meet the limited constitutional criteria for defining a native Hawaiian? The answer was yes.

So I must put emphasis here on two things. First, the 50 percent blood quantum came from the Territorial legislature of Hawaii. It did not come from the haole in Washington, DC. And whoever told you all of that is just pulling the wool all over your face. It did not happen that way.

Second, the 50 percent blood quantum inclusion in the definition of native Hawaiian was constitutionally approved, even in the Federal courts. Why was this necessary? With regard to the United States possession of the ceded lands, a cap had to be placed on who Congress could allow to live on a portion of those ceded lands. I will shortly return to the subject, but for now, my educatory obligation is to make the entire world understand that there was one critical condition that sealed the provisions made for these 50 percent to 100 percent blood quantum native Hawaiians.

That critical condition is known as the Saving Clause. Remember that, the Safety Clause. This is where you have legal standing. And I'll read it to the public in a moment.

With regard to the Hawaii Statehood Admission Act, the 50 percent to 100 percent blood quantum native Hawaiians are the only direct population who are legally entitled to their fair share of the revenues and assets of the ceded lands trust, only them, are directly entitled. And this act is also capped with the Saving Clause.

So what does this Saving Clause say? I'm going to read it to you right now. In the Hawaiian Homes Commission Act, it reads like this. All acts or parts of acts in conflict with the provision of this Statehood Admission Act, whether passed by the legislature of said Territory/State, or by Congress are hereby repealed. And this is where we have the right to sue the pants off every legislative, administrative, whatever high mucky-muck official in any government, Federal or State, and the Office of Hawaiian Affairs, we can sue their damned pants off and leave them standing naked on the street. I swear, we can do that. I promise you, we can do that.

Okay, with regard to the Hawaiian Homes Commission Act, the same kind of savings clause that says, all acts or parts of acts, either of the Congress of the United States or of the Territory/State of Hawaii, to the extent that they are inconsistent with the provisions of this act, are hereby repealed. So now you know.

What? No, you don't have to be a lawyer to understand this. My friend this lawyer over here understands. Stand up, big guy, show them what a good looking lawyer you are. Six feet five, he knows, 41 years old, he knows.

So what does this mean? According to the Ninth Circuit Court, in at least three different opinions, any 50 percent to 100 percent blood quantum native Hawaiian person or persons, and this is the Ninth Circuit Court opinion, Federal court, has and have full legal standing in the Federal courts to bring injunctions against any law, act or bill by any legislator, administrator or official that constitutes a breach of the provisions of the Homestead Act and the

Ceded Lands Trust, as well as a breach of the trust responsibilities of both the State and Congress for and toward the 50 percent to 100 percent blood quantum Native Hawaiians.

And I daresay, most of these 50 percent to 100 percent blood quantum native Hawaiians have no bloody idea of the immense power that they have to sue every OHA trustee, to sue the Governor, to sue Congress and to sue everybody and anybody who has used their power and authority to rob them and steal from them, and steal their entitlements from them, and misuse our homestead lands and ceded lands revenues. That's going on right now today.

So why do I have to spell all of these things out so succinctly to all of you? And I'm not looking down on anybody. God knows nobody's going around teaching you these things. The entitlements of the small "n" native Hawaiians do not include Clayton Hee, Senator Akaka's children or any of the non-50 percent non-native Hawaiians or any so-called big "N" OHA and Akaka definition of Native Hawaiian. The Hawaiians have no treaty with the United States. And so all of this stuff in this Akaka bill is meaningless. We don't have a treaty. They're going to create a treaty? Excuse me. You think Congress is going to swallow that? Oh, well.

As Representative Abercrombie said, this bill in part is to acquire or secure continuous Federal funding for the non—this is implied—for the non-native Hawaiians under the guise of a fictitious nation. They are the only ones benefiting from what is ours and that is not coming to us. But they still want to have some more Federal funding. Well, God bless them, let them have it, I don't care.

My admonishments are as follows. I really don't care how much Federal money our congressional delegates can scare up for the non-native Hawaiians. That's not my business, it's not my problem, except maybe as from a taxpayer's point of view, which I can put aside.

But I have to say to Senator Daniel Akaka, don't tell the 50 percenters that are our entitlements were established for non-native Hawaiians. That's not true. Congress made itself the land, home and fiscal provider specifically for the 50 percent to 100 percent blood quantum native Hawaiians. Not for the big "N", or non-native Hawaiians.

So keep our faces out of this bill. We are tired of OHA using our money and each of the trustees, from 1979 to the dissolution of OHA needs to be sued, because we are tired of bills, resolutions and acts also that give our homestead lands to the non-native Hawaiians. We have our list growing and growing, and they're putting non-native Hawaiians on the land. This is a sick joke that's going on today. That's politics.

And I'll tell you this, I'll tell you this waihe'e Cayetano, Senator Akaka, whoever did this to us, they need to be sued. You know? Really. And time is on our side.

So this stupid, unfortunate—I call it a very stupid, very unfortunate, very tactless bill, however much it's geared to fool Congress into allowing the State to continue ripping us off and to look good for the non-native Hawaiian voters who they want to attract with this kind of dumb bill, it fortunately serves as a vehicle to educate the general public as well as the 50-percent to 100-percent blood quantum native Hawaiians who do not realize that they have the

power and the legal Federal standing to take back their homestead lands and their fair share of the Ceded Lands Trust.

They can take it any time they want it. They can go in there and say, "It's ours, we want it, give it to us now." This guy wants to set up a new law office; they tell him, come back with one-half of the money to put your office in business and maybe he will get a loan. And this is a native Hawaiian? What is OHA for? Not for me. Not for him. Not for the 50 percenters. But OHA has our money.

So give me a break, okay?

So anyway, this is why I, Leona M. Atcherley, am the Task Force Coordinator for Ka na Ha, which means the life and breath of the many 50-percent to 100-percent blood quantum native Hawaiians that I sit here and speak for. And I am obliged to say that we oppose this bill, because we do not want to be made a part of it, or to be included in it. It would be the stupidest thing we could ever do.

So God bless the 50-percent to 100-percent blood quantum native Hawaiians, and God bless everyone who wishes us well and who believes, also, in the preservation of the entitlements and the race of the 50-percent to 100-percent blood quantum native Hawaiians.

We need the support of the U.S. Senators, especially the U.S. Republican Senators, to undo the dirty work of Senator Daniel Akaka by killing this deplorable thing called the Native Hawaiian et cetera, et cetera, bill, S. 2899/H.R. 4904.

Aloha.

[Prepared statement of Ms. Atcherley appears in appendix.]

Senator INOUE. Thank you, Ms. Atcherley.

May I now recognize Mr. Barrett.

STATEMENT OF PATRICK BARRETT

Mr. BARRETT. Thank you, Your Honor.

I promised Congressman Neil that I would make all your life easy, or at least easier. Your Honor, I'm just like anyone else. I believe that every goofball thought that pops into my head deserves to be printed on the front page of the New York Times, or at least on the front page of the Advertiser.

So I'll make a deal with you. If you promise to take my testimony home and read it twice, read it to your spouses and your children, I'll simply go to the last paragraph on page 2.

Finally, the Democratic Party is the party of equal rights. The Republican Party is the party of race rights. If the Republicans want to support this kind of legislation, well, fine and dandy. But please, please, I beg your honors to vote against this nonsense.

Thank you. As they say in the United Nations, I waive consecutive translation, and as they say in the Congress, I yield back my time to the Chair. Thank you.

[Prepared statement of Mr. Barrett appears in appendix.]

Senator INOUE. Thank you very much.

Dr. BLAISDELL. And now may I recognize Dr. Blaisdell.

STATEMENT OF KEKUNI BLAISDELL

Dr. BLAISDELL. Mr. Chairman, members of the committee.

[Presentation of leis from audience.]

Senator INOUE. And now, Dr. Blaisdell.

Dr. BLAISDELL. Thank you, aloha 'aina, members of the Senate Indian Affairs Committee and the House Resources Committee. [Remarks in native tongue]. As Kanaka Maoli, we are compelled to reject this legislation [S. 2899 and H.R. 4904] for three main reasons.

No. 1, the bill calls for United States formal recognition of a United States trust government-to-government relationship to our Kanaka Maoli people similar to that of American Indians and Alaska Natives. This will result in further colonization rather than freedom. This will result in the permanent loss of all of our lands.

This will be construed as our having relinquished our inherent sovereignty and right to self-determination. These assaults on our Nation we cannot accept.

The second reason is that the whole process of developing this legislation since the creation of the Native Hawaiian Task Force in March of this year is in itself a blatant violation of our inherent sovereignty and right to self-determination. Since we Kanaka Maoli people did not initiate this process, we do not have full input in it, we do not have final consent on the outcome, we cannot accept it.

The right for self-determination is enshrined in two United Nations covenants, which the Akaka bill appears determined to take from us. The wording reads:

All peoples have the right to self-determination. And by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

We Kanaka Maoli are disappointed that in spite of our direct appeals to Senator Daniel Akaka, my classmate at the Kamehameha Schools, and in spite of our objections on April 24 and May 31 of this year, this Congressional Task Force has persisted in proposing a unilaterally-imposed, predetermined puppet political structure on our Kanaka Maoli people and nation.

No. 3, the third reason for rejecting this legislation is found in the substance and demeaning language of the Akaka bill, with its numerous errors, misrepresentations and contradictions.

While proposing to grant us self-determination, it violates our self-determination. While proposing to recognize our sovereignty, it violates our sovereignty. We must object. This to is not pono.

Our proposal, in place of the Akaka bill, calls upon the U.S. Congress, and you as members of the U.S. Congress, to recognize that within the framework of Federal law, is the U.S. Constitution. Article I, section 8, powers granted to Congress, which reads, to define and punish offenses against the law of nations. Article VI, states that "treaties shall be the supreme law of the land." The United States has violated treaties with our kanaka maoli nation, and international law, and thus the U.S. Constitution. Therefore, the way to correct these violations is to abide by international law in accordance with the U.S. Constitution.

Accordingly, we call upon members of the Congress to take the following steps. To draft legislation for the U.S. President and the U.S. Department of State responsible for dealing with foreign nations, to do the following:

No. 1, comply not with the Akaka bill trust that has been fabricated and is being imposed on us, but to comply with the United Nations sacred trust under and the United Nations charter, chap-

ter 11, article 73, which the United States adopted in 1946. As the colonial administering authority, the United States accepted a sacred trust obligation to our homeland of Ka Pae 'aina [Hawai'i], as a non-self-governing territory and colony, to promote self-determination for our colonized Kanaka Maoli people.

No. 2, to acknowledge the 1998 United Nations Human Rights Commission Study on treaties, agreements and other constructive arrangements between States and indigenous populations, drafted by Professor Miguel Alfonso Martinez, which states that:

The case of Hawaii could be re-entered on the list of non-self-governing territories of the United Nations and submitted to the body of the organization competent in the field of decolonization.

No. 3, to abide by five United Nations General Assembly resolutions which provide a process for our Kanaka Maoli authentic and full self-determination through peaceful decolonization. This process calls for the United States to cease all repression, to transfer power to our Kanaka Maoli colonized people, and to do this with international technical assistance and oversight, so that we Kanaka Maoli may proceed with the process of freely choosing among three main options, namely, independence, free association or remain integrated within the United States.

No. 4, to begin negotiations with our Kanaka Maoli people and nation on the basis of absolute political equality and mutual consent as provided by United Nations General Assembly's recommendations, using guidelines recommended by the 1993 Kanaka Maoli Tribunal.

No. 5, The United States begin these negotiations on Federal programs, meeting our Kanaka Maoli immediate health, social, educational and housing needs, as partial reparations for the United States colonial domination, exploitation, and subjugation, as acknowledged in part by the 1993 U.S. Apology Resolution, and detailed in the 1993 Kanaka Maoli Tribunal Report.

Mahalo.

[Prepared statement of Dr. Blaisdell appears in appendix.]

Senator INOUE. Now may I call upon Lilikala Kame'eleihiwa.

STATEMENT OF LILIKALA KAME'ELEIHIWA

Ms. KAME'ELEIHIWA. [Chant in native tongue].

Senator Inouye, Senator Akaka, in his absence, Representative Abercrombie, Representative Mink, and Representative Faleomavaega, aloha.

Thank you for your support for justice for Hawaiians. I am Dr. Lilikala Kame'eleihiwa. I'm the director of the Center for Hawaiian Studies at the University of Hawaii at Manoa. I'm also a member of the State working group of Senator Akaka's Task Force on Native Hawaiian Issues.

I thank you for the opportunity to speak on this single most important piece of legislation to come before the American Congress since the overthrow of the Hawaiian government, the government of my grandmother, in 1893 by agents of the American military. I have found the latest draft of this legislation to be very carefully crafted and well thought out, and I can agree with much that has been written here. I agree with your analysis that given the dire needs of the Hawaiian people at this time, and given the attacks,

certain vicious attacks from certain quarters on Hawaiian entitlements, it is critical that Federal recognition of the political relationship between the American government and the Hawaiian people be clarified and established.

For that reason, I support this bill with amendments. No doubt during these hearings you will hear from people who are adamantly opposed to the bill. And their hearts, are support of all of our people and the next generation. But I would like to recall for you that a recent Honolulu Advertiser poll revealed that a majority of Hawaiians prefer a nation within a nation status——

[Interruption from audience.]

Ms. KAME'ELEIHIWA. I would hope that you heed the opinion of the majority of the Hawaiian people and not let anyone deter you in your enthusiasm for this stage of reconciliation.

And if I might add to my testimony at this point, in the last 10 years at the University of Hawaii, where my job is education, I have seen many, many Hawaiian come through the university with tuition waivers, Federal funded tuition waivers. The education they have received has made a difference in their lives, a great miracle in their lives, a great difference. And I would hate to see, I would hate to see our people precluded from going to the university without the tuition waivers.

It is obvious that all of you in Hawaii's Federal delegation have given this document a great deal of your time. It is also clear that you support justice for the Hawaiian people, and in undoing the past wrongs in the true spirit of reconciliation between the American Government and the Hawaiian people. And I thank you for your good work.

I would, however, like to propose the following friendly amendments to the document regarding certain issues. There are some inaccuracies in section 1 findings. The historical situation of native Hawaiians is different from any previous example of indigenous native people of the United States. Native Hawaiians are the only native people now residing within America who had an independent kingdom, treaties with many nations around the world and who were never conquered in war with the United States.

Because Hawaiians did not fight with America or oppose with arms the American military invasion of 1893, under the tenets of international law, the United States is still in illegal occupation of Hawaii. And I refer you to the United Nations Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations of August 1998, authored by Miguel Alfonso Martinez, Special Rapporteur and Chair of the United Nations Working Group on the Rights of Indigenous Peoples. And I know you have that before you, many people have testified.

In addition, since Hawaii was taken in 1900 as an American territory without any treaty, as required by American law, and without a vote of its native citizens as to their disposition on the matter, it is perhaps factually incorrect to say that the American Congress has the "authority" to address the conditions of native Hawaiians. It certainly has a moral obligation to do so, to undo the terrible wrongs that America has caused the Hawaiian people by taking our ancestral lands. But any legal authority in this matter is

sorely lacking, both under international law as well as under American law.

Given that unique history, the Hawaiian people want to shape a unique political relationship with America that is not reflected in the current draft language in the first section. Therefore, in the spirit of reconciliation, in the section 1 findings, I ask that the first few paragraphs be deleted and replaced with the following language.

From the Pala Hui Hawaii draft, Federal legislation of 618 2,000 lines 5 through 9, the first paragraph of that [phrase in native tongue] legislation. The United States recognizes the sovereignty of the Hawaiian nation and pledges perpetual peace and friendship between the United States and the people and subjects of the Sandwich Islands in the first United States-Hawaii convention dated December 23, 1826, and in subsequent conventions, we may see the treaty of friendship, commerce and navigation, December 1849, convention of reciprocity, June 1876.

And the following language I find very, very good and would be very well suited to replacing the language you have in the first few paragraphs and findings. It's from the Native Hawaiian Education Act, S. 1767, page 2, lines 7 through 26, page 3, lines 1 through 25, page 4, lines 1 through 22. You have it before you, I would just like to read a portion of it, not all of it.

But native Hawaiians, as you folks have written in the Native Hawaiian Education Act, native Hawaiians are a distinct and unique indigenous people with an historical continuity to the original inhabitants of the Hawaiian Archipelago, whose society was organized as a nation and internationally recognized as a nation by the United States, Britain, France, and Japan, as evidenced by treaties governing friendship, commerce and navigation.

The language that comes from the Native Hawaiian Education Act is very strong and very clear, rather close to that which is in the Apology Bill, and I'm just kind of mystified that we just didn't quote the Apology Bill in its entirety in the findings. I like this language very much. I like how it talked about us being sovereign and how the United States citizens and the United States minister and the United States naval representative invaded our country and caused the overthrow.

I especially liked the language in sections 7 and 8 of the Native Hawaiian Education Act that says the following. By 1919, the native Hawaiian population had declined from an estimated 1 million in 1778 to an alarming 22,600. And in recognition of this severe decline, Congress enacted the Hawaiian Homes Commission Act of 1920, et cetera, which designated approximately 200,000 of ceded public lands for homesteading by native Hawaiians.

The other part of this that I really like is when they quote Secretary of the Interior, Franklin K. Lane, who said, one thing that impressed me was the fact that the natives of the island, who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty. It is very important for the record and the findings to show that depopulation and poverty that is caused by the taking of our lands.

Point No. 2, on behalf of my mother's three brothers who died of starvation in Kalau, island of Oahu, in the 1920's, as a direct result

of America taking the ancestral lands of Hawaii, I must state the following. Under the laws of the kingdom of Hawaii, the rights of Native tenants included the right to enter into and live upon the crown, government and ali'i nui lands as they had from time immemorial, without paper deed and without payment of rent. When America took control of these lands and extinguished that facet of the rights of Native tenants, America caused great poverty, destitution and starvation among the Hawaiian people from which we have never recovered.

I therefore respectfully request that the following new paragraph be inserted between paragraphs 6 and 7 listed above. Six (a), as a result of America illegally taking control of the kingdom of Hawaii's crown and government lands, Hawaiians were denied their native tenants rights, held from time immemorial, of access to those lands for the purposes of building homes and for planting food. Denial of access to ancestral Hawaiian lands has caused great poverty among the Hawaiian people, as well as the highest rates of infant mortality, the shortest life expectancy and the worst health and socioeconomic statistics of any people in Hawaii.

Point No. 3, on behalf of my 80 year old Hawaiian mother, who under American rule was beaten in school for speaking Hawaiian, made ashamed of her Hawaiian identity, and still today mourns the loss of her ancestral language, I respectfully request that the following new language be added after the foregoing paragraph. Under American rule, Hawaiian language was outlawed in Hawaii and Hawaiian children were beaten for speaking their ancestral language and for using their Hawaiian names, which has resulted in almost complete loss the Hawaiian language upon the earth, and has dealt a terrible blow to Hawaiian identity.

It has also inculcated institutional racism in Hawaii's public schools so severe that Hawaiians have the highest dropout rate of any ethnicity in Hawaii. Hawaiians that lack high school education are more likely to live their lives in poverty or in prison.

Point No. 4, in order to complete the historical record with respect to the international rights of native Hawaiians under American rule, I respectfully request that in section 1 findings, page 3 between lines 12 and 13, the following language be added. This is from the Ka Lahui Hawaii draft Federal legislation of June 18, 2000, lines 31 through 55. You have it before you, I will not read all of it.

But the point that I would like to make is, in 1946, when the United Nations was created, the United Nations listed Hawaii as a non-self-governing territory under United States administration. Pursuant to chapter 11 of the United Nations charter, the United States had a sacred trust obligation to promote the political aspirations of the peoples of the territory and to assist them in developing self-government. Yet the United States never fulfilled its sacred obligation, nor did it comply with the international standards requiring that the peoples of the territory be provided with several options for self-government. And I believe that's very important to have in the findings section.

Further on down, when we look at Section 11 and 12, it addresses the lands that we use for homelands, the lands that were used that are listed under ceded lands, and in number 13 of the Ka

Lahui draft legislation, it says the United States has failed to protect the civil rights of Hawaiians and has further acted in collusion with the State by illegally acquiring for its own use trust lands set aside by Congress for homesteading. This must be part of the historical record because it is the truth. And we cannot have reconciliation without truth.

Point No. 5, even if the Hawaiian people seek to shape a unique political relationship with America based on Hawaii's unique history and political status, and in the spirit of reconciliation, I respectfully request that the language in Section 1 findings, page 6, section 17(a), (b) and (c), lines 8 through 19, be deleted as inappropriate. Instead, and for the same reason, I ask that language in Section 1 findings, etc., be replaced with the following language. This comes with the Native Hawaiian Education Act page 6, lines 23 to 25.

That is the political status of Native Hawaiians is comparable, it's not the same. And in many ways it's different. And we're going to reshape our relationship and make it a unique political relationship. But it is comparable to that of American Indians and Alaska Natives. And we support their rights as native peoples within America.

Point No. 6, in section 2 definitions, I very much admire the sensitivity with which you have handled the delicate issue of definition of Native Hawaiian, supporting methods culturally appropriate to Native Hawaiians to make our own determination about that issue. However, I would ask for accuracy's sake that you change the date on page 10, lines 6 and 7, to read January 17, 1778, instead of January 1, 1893, and do so throughout the document wherever appropriate for the following reasons.

January 17, 1778 is the day before Captain Cook and his men arrived in Hawaii, and everyone living in the islands then were native Hawaiians. That is the appropriate historical date.

On January 1, 1893, there were native Hawaiians living outside the borders of the kingdom of Hawaii whose descendants should be included in the parameters of this legislation, and as it is so worded, they might be excluded.

Point No. 7, in section 2 definitions, I respectfully ask that on page 11, between lines 12 and 13, the following definitions be added. This comes from the Ka Lahui Hawaii draft Federal legislation of June 18, 2000. You have it before you. They address the definition of ceded lands, federally controlled lands, Hawaiian homelands, the Hawaiian nation and self-determination. These have been left out of the bill in the section on definitions, and they are very important definitions in our relationship.

Point No. 8, as it is appropriate in all international examples of reconciliation between native peoples and colonizers, for the native peoples to also propose terms of reconciliation. I respectfully ask that a new section be added before section 3 United States policy with the following language. And this also comes from the Ka Lahui Hawaii draft Federal legislation of June 18, 2000, lines 114 through 178.

Because of the length of my recommendations, I will only read a portion of them. They do address congressional policy and recognition. And they do address certain parts of reconciliation, in-

cluding the termination of State wardship and a Federal recognition of our political relationship, but also recognition of the Hawaiian nation's sovereign rights to trade and conduct commercial activities based on treaties between the Hawaiian nation and other sovereigns before and after the overthrow and a commitment to decolonize Hawaii through the United Nations process for non-self-governing territories.

I believe this should be within this bill as well. It will be clear to everyone then that Federal recognition of our political rights does not preclude both of us working toward that goal.

Point No. 9, because Washington, DC is so far away from Hawaii, it is difficult for Hawaiians to have open and clear communication with Federal officials. In order to ensure that there be absolute clarity on terms, and in order to avoid the kind of delays that we saw in the crucial From Mauka to Molokai, the River of Justice must Flow Freely, which was 7 months overdue, please make the following language change. In section 4, establishment of the Office of Special Trustee for Native Hawaiian Affairs, wherever it says regular consultation, change that to annual consultation. We don't want to be consulted once every 10 years, after all, or once every 7 months.

Otherwise, I find the duties of this office provides an opportunity for much good work to be done at the Federal level on behalf of Hawaiians, and we hope that individuals with superior understanding of and empathy for the Hawaiian situation will be appointed to this office.

Point No. 10, because Washington, DC is so distant from Hawaii and misunderstandings can occur so easily over that distance, native Hawaiians need to have representation on the native Hawaiian Interagency Task Force. Therefore I respectfully request that in section 6 Native Hawaiian Interagency Task Force that you include the following language. Elected representatives from the native Hawaiian governing body be part of that task force.

Point No. 11, because 40 percent of the Hawaiian population has been forced to leave Hawaii for economic reasons, due to the taking of Hawaiian lands, it is important that those Hawaiians who live outside of Hawaii be included as members of the Hawaiian community, and the new Hawaiian nation, and not be doubly penalized for the modern diaspora suffered by our people. All Hawaiian have family members who live outside of Hawaii and who are yearning to come home. They would do so if lands were available for their use in Hawaii.

In addition, American citizens are allowed to retain their citizenship irrespective of their country of domicile. Therefore, I would like to have included within the language on section 7 process for the development of a role for the organization, adult members of the native Hawaiian community, including those who live outside the Hawaiian islands who wish to become members.

Point No. 12, finally and most importantly, while I find the sections in the bill on organization of the Native Hawaiian Interim Governing Council, the development of organic documents and the organization of a native governing body very well thought process for reforming the native Hawaiian governing body, it is imperative for me to insist that Hawaiians be afforded an annual opportunity

to petition for changes in this unique political relationship with the American Government.

Therefore, I ask and respectfully request that the last section of the Ka Lahui Hawaii draft legislation on amendments section 4 be included. The Hawaiian nation reserves the right to amend this legislation every year in order to properly effectuate the adopted congressional policy and recognition.

I thank you for your time, your patience, your consistent support for justice for the Hawaiian people. And as a Hawaiian historian, it is clear to me that your good work has the potential to create a unique political relationship for Hawaiians and the American Government as well as a path of great healing for all of us who live in Hawaii.

Mahalo nui loa, [phrase in native tongue].

Senator INOUE. And now may I call upon Keali'i'olu'olu Gora.

STATEMENT OF KEALI'I'OLU'OLU GORA

Mr. GORA. Aloha, Federal delegation, Senator Inouye, Representative Neil Abercrombie, Representative Patsy Mink and Representative Eni Faleomavaega.

My name is Keali'i'olu'olu Gora, and I am the [phrase in native tongue] lieutenant governor and chair of international affairs of Ka Lahui Hawaii, a native taro roots initiative for Hawaiian self-determination and Hawaii self-government. Ka Lahui Hawaii has an extensive track record in the local, national and international arenas relating to sovereignty and self-determination.

Ka Lahui Hawaii has also been the leader in the Hawaiian sovereignty movement for over a decade, and has written a constitution with two other conventions which made amendments to the original constitution and a master plan which addresses Hawaiian self-government issues and concerns.

Ka Lahui Hawaii is based on a democratic constitution created by and for native Hawaiians. Ka Lahui Hawaii identifies four branches of government, the executive, the legislative, the judiciary and the ali'i nui. Citizenship is open to all Hawaiians and honorary citizenship is offered to non-Hawaiians. Only full citizens can vote and hold office.

Mahalo for allowing Ka Lahui Hawaii the opportunity to testify at this important hearing which is to express the policy of the United States regarding the United States relationship with native Hawaiians and for other purposes. On June 18, 2000, at the 31st legislative session of Ka Lahui Hawaii, our legislature voted unanimously to support Ka Lahui Hawaii's draft Federal legislation as the recommended alterNative to the proposed measures S. 2899 and H.R. 4904. Our nation is formally submitting for the official Federal record our Federal legislation as the recommended legislation of choice, and we seek your support in adoption of our legislation.

Ka Lahui Hawaii strongly recommends that your committees review, analyze and definitely use our legislation to assist you in making more prudent and judicious decisions affecting native Hawaiians and our descendants. Ka Lahui Hawaii strongly believes that true reconciliation must be immediately implemented, which includes but is not limited to the following: The resolution of his-

toric claims relating to, number one, the overthrow, claims relating to State and Federal misuse of native trust lands and resources, number three, violations of human and civil rights, number four, federally controlled lands and resources.

Ka Lahui Hawaii unequivocally supports the structuring of a new relationship, a new relationship between the Hawaiian nation and the United States which acknowledges the rights of native Hawaiians and our descendants, including our right to self-determination.

My colleague, Lehua Kinilau will discuss further in detail what the elements as well as the goals of reconciliation will be. Additionally, the National Congress of American Indians, we have a speaker here today, the President, Susan Masten, their delegation and their membership unanimously adopted two resolutions which I authored, 99-042, in Palm Springs, California, and 00-032 in Juneau, AK, this past June. These adopted resolutions call upon the United States to number one, support the sovereign rights of Native Hawaiians, number two, call upon the United States to develop a true government to government relationship with the Hawaiian nation, and number three, support Federal legislation calling for the restoration of the Hawaiian nation and return of land to the Hawaiian nation.

The National Congress of American Indians wholeheartedly supports the efforts of Ka Lahui Hawaii to assert the rights of native Hawaiians to ancestral lands and the right to self-government. The National Congress of American Indians is currently drafting letters to the Hawaii State legislature, to you, the Hawaii Federal delegation, all members of the 106th Congress, the Secretary of the Interior, the Attorney General of the United States, the Secretary of State and President Clinton.

Members of the Senate Committee on Indian Affairs and House Committee on Resources, Ka Lahui Hawaii would like to inform you of the United Nations treaty study which was reported and adopted in 1998. The initial document that was submitted, the case law was *Ka Lahui Hawaii v. United States of America*. In this report, it had stated that the 1893 overthrow of the kingdom of Hawaii by the United States was illegal, the 1898 treaty of annexation by the United States was an unequal treaty, and that Hawaii could be relisted onto the list of non-self-governing territories.

Ka Lahui Hawaii continues to assert our rights to reinscription and decolonization in the international arena. Ka Lahui Hawaii truly believes it is time for the United States to fully comply with and implement the international covenant on civil and political rights, the international covenant on economic, social and cultural rights, the United Nations charters, of which the United States are signatories to.

Furthermore, Ka Lahui Hawaii calls upon the United States to also adopt the United Nations declaration on the rights of indigenous peoples without any delay and without any amendments. These international documents address the issue of self-determination, the right of Native Hawaiians to determine their political status and to freely pursue their social, economic and cultural development.

In closing, because of Ka Lahui Hawaii's commitment and dedication to self-determination and because of our extensive track record in our homeland, national and international arenas, our nation strongly recommends that you support Ka Lahui Hawaii's Federal legislation. Mahalo for this opportunity.

Senator INOUE. Thank you very much.

And may I now recognize Ms. Kinilau.

STATEMENT OF NICOLE KINILAU

Ms. KINILAU. Aloha, Senator Akaka, Senator Inouye, on behalf of the Senate Committee on Indian Affairs, and Representatives Abercrombie and Mink, on behalf of the House Committee on Resources. Aloha kakou.

Mahalo for this opportunity to testify on S. 2899 and H.R. 4904. I serve as the treasurer of Ka Lahui Hawaii, a native initiative for self-determination created in 1987. Ka Lahui Hawaii has raised numerous concerns with the process and various drafts of the Federal legislation to the Task Force on Native Hawaiian Issues.

Because these bills seem doomed for failure at a time when our rights and entitlements are under incredible attack, Ka Lahui Hawaii has chosen to exercise its self-determination by drafting its own legislation. Ka Lahui Hawaii's draft Federal legislation comes out of the Hoakuku a Ka Lahui Hawaii, or Ka Lahui Hawaii master plan unveiled in 1995, and disseminated extensively throughout the Hawaiian community, both here and on the continent.

Ka Lahui Hawaii's draft legislation delineates the essential elements of reconciliation with the United States, which shall include, but not be limited to the following. First, express termination of the United States policy of non-recognition of Native nations and Federal recognition of the jurisdiction of the Hawaiian nation over its national assets, lands and natural resources.

Second, Federal recognition of the Hawaiian nation as the indigenous sovereign Hawaiian nation and Federal recognition including repudiation of the United States policy of State wardship. Federal programs, legal and fiscal entitlements, tax benefits, reparations and other obligations to be negotiated, recognition of the Hawaiian nation sovereign rights to trade and commercial activities based on treaties between the Hawaiian nation and other sovereigns, before and after the overthrow. A commitment to decolonize Hawaii through the United Nations process for non-self-governing territories.

Most importantly, Ka Lahui Hawaii's draft legislation includes provisions for land, natural resources and cultural resources, including but not limited to an inventory and segregation of ceded lands, Hawaiian home lands and federally controlled lands, the allocation of no less than 2 million acres of these lands to the National Land Trust, and the inclusion of submerged lands, water, energy, minerals, air space and traditional and cultural resources, as well as the trust assets of the private trust, for their protection from State and Federal action.

Ultimately, the goal of sovereignty is to improve the conditions of our people. We must ensure that our kupuna receive adequate medical coverage instead of having to forego necessary medication because of the rising cost of health care. We must oppose continued

attempts by the State and Federal Governments to evict native Hawaiians from their ancestral homelands. We must not allow our people to continue to fill the prisons, live in poverty and fall through the cracks of the State's education system.

A Hawaiian nation is the way to begin to address these and many other issues impacting our community. Mahalo.

Mr. ABERCROMBIE [assuming Chair]. Thank you very much.

Mr. George Theis, thank you very much for coming.

STATEMENT OF GEORGE L. THEIS

Mr. THEIS. Good afternoon. My name is George Theis, and I appreciate the opportunity to give testimony before your committee and express my opinions on this issue.

To begin, I'm firmly opposed to this legislation.

Mr. ABERCROMBIE. Thank you for getting right to the point, Mr. Theis. [Laughter.]

Mr. THEIS. First and foremost, I feel it's fundamentally racist and totally contrary to all the basic principles for which America stands. And as we enter the 21st century, we should be working to end racism around the world.

But this legislation, if enacted into law, would divide our society along racial lines, and in effect, would legitimize racism right here—

Mr. ABERCROMBIE. Mr. Theis—just 1 moment.

Can we have some respect for the speaker, please? It is very difficult to hear.

Continue.

Mr. THEIS. Thank you.

To emphasize this point, my grandson was born in Queen's Hospital in January. Had he been born in Texas, he would be considered a native Texan. In California, he would be a native Californian. But under the provisions of your legislation, he would not be considered a native Hawaiian solely because of his ethnicity, and his rights as a citizen would by statute be restricted.

If your legislation results in any State sponsored right, benefit or privilege given to any other citizen which is denied my grandson solely because of his ethnicity, it is no more than institutionalized racism, regardless of how you try to mask that fact. Your legislation would deny my grandson and his heirs franchise in the native Hawaiian governing body, where Hawaiian citizens would be forever segregated along racial lines. I feel this is not only un-American, it's immoral. And it would create an environment for future conflict—uh-oh—just like on Fiji, whose actions was loudly condemned around the world.

Now, I've been talking to some of the people in the back of the room during the break. And while superficially it would appear that we're on opposite sides of this issue, we found during our conversation we had a lot of common ground. First, we're united in opposition to this legislation. And second, in response to the basic question, would my grandson be recognized as a native Hawaiian and be given full rights and benefits under the governmental construct that they propose, the answer is yes, that they don't desire to create a racially segregated society. And in that, we certainly do agree.

Second, I contend that this legislation is based on the false premise that it was the United States that overthrew the kingdom of Hawaii, and therefore, the United States owes compensation to ethnic Hawaiians for undefined losses. I believe an objective review of the facts would show it was the residents of Hawaii, not the U.S. Government, who initiated the overthrow and installed a democratic form of government in its place. In fact, it was the actions of the Queen, by announcing her intentions to unilaterally rewrite the constitution that precipitated the overthrow.

Another false premise is that ethnic Hawaiians are somehow excluded from the mainstream of society in our country and are relegated to a lower socioeconomic status. Therefore, they are due some special benefits as compensation. Considering one of our Senators is Hawaiian, and the past two term Governor is Hawaiian, and Hawaiians successfully serve as doctors, lawyers, college professors, military flag officers, and in fact, are well represented across the entire spectrum of society, clearly demonstrates this claim is fallacy.

I also strongly believe State sponsored assistance should be given solely on need, not ethnicity. That way, if one ethnic group truly is, has a disproportionate number of people in need, it will automatically receive a greater proportion of available benefits.

I also reject the claim that ethnic Hawaiians have been injured in any way by America. Quite the contrary. I feel they have in fact been blessed by having become sovereign citizens of the United States. The United States, which is the greatest, freest, most prosperous bureaucracy that has ever graced this earth.

[Interruption from audience.]

Mr. ABERCROMBIE. Let's show respect to the speakers. Everyone has done a pretty good job of that today. If this gentleman's views are different than yours, you're only reflecting on yourself if you do not grant him the respect that he has given to you.

Mr. THEIS. And I didn't say we agreed on everything.

There are literally billions of people around the world who would give anything to trade places with anyone on this island. And many risk their lives today for a chance to reach our shores and take advantage of the opportunity our freedom provides our residents.

I contend that it's only a small but, well, I might have to revise that, it looks like it's a majority, and even the more vocal ones are opposed to this legislation. So I'm not certain who is for it. I haven't heard a lot of people supporting it.

But anyway, I propose to ascertain the true wishes of your constituents, those that elected and sent you to Washington to represent their interests, that you table this bill and put a referendum on the November ballot asking the citizens to vote for or against this legislation. That way, if it passes, you'll have a mandate from the citizens of the State which will ensure easy passage next year.

But if it fails, it will validate my contention that the majority of people in Hawaii are proud to be Americans and believe this legislation would not be in their best interest, and therefore, should not be enacted. If you feel getting a mandate from your constituents is unnecessary, and you continue to pursue the legislation without referendum, I would ask it be modified to completely and accurately restore the status quo ante in the land, and fully rectify

wrongs done to the indigenous population. Specifically, American Indians are not viewed as a single monolithic ethnic group. Each tribe is recognized as a separate, independent entity.

Because there were several independent sovereign nations in the island before Kamehameha set out to expand his empire, each island should be recognized as a separate, independent entity, and the residents of each island should be allowed to create their own criteria for citizenship, and control their own, independent governing body. That way, should they choose to unite into one, it will be done freely and a decision by the citizens, and it will not be because of fiat and some law.

Now, when you contrast the actions of Kamehameha, who slaughtered thousands as he embarked upon his armed conquest for neighbor islands, against the overthrow of the kingdom of Hawaii, where the residents of Hawaii replaced a monarchy with democracy without taking a single life, it becomes blatantly obvious you cannot condemn the latter without also condemning the former.

Therefore, if you don't restore independent sovereignty to each nation, you will be in effect legitimizing the armed aggression of Kamehameha, while invalidating the non-violent transition to democracy by the citizens of the island.

And I predict, if you fail to establish an independent nation on each island, it's inevitable there will be cries from various groups in the State for this further division, and it will create a similar situation to the recent conflict in the Solomon Islands, where residents of one island demanded individuals from a nearby island go home, even though all individuals involved were ethnically Melanesian, and all islands are part of the same country.

For history has shown, once you begin the process of segregation, people will tend to create ever finer criteria in which to differentiate between us and them. And ultimately, this leads to the disintegration of civil society.

And I would caution those that support adding an additional layer of government exclusive for the benefit of one ethnic group, as called for in this legislation, they should seek the answers to the following three basic questions. What would this government do for the citizens? How much would it cost? And who would pay?

As citizens of the United States, you already receive and pay for a broad array of benefits from the Federal, State, city, and county governments. How many unique services would native Hawaiian governing bodies, one or more, provide the citizens? And how much would this cost every year? And the real question would be, who pays?

I contend that if this governmental body is for the exclusive benefit of a small segment of our society than its citizens should bear the cost. For that is the only way a rational level of equilibrium can be achieved between cost and benefits.

If the recipients must pay for the benefits the government provides them, then they will decide the level of taxes they are willing to bear, which benefits have sufficient value to warrant the cost. If someone else pays the bill, the needs of this group will be infinite. And the United States could never provide sufficient funding to fully satisfy all their desires.

And I'd like to remind everyone here of that old saying that goes, the only thing worse than not getting what you want is getting what you ask for. And the corollary being, be careful what you ask for, you may get it. And I predict, supporters of this legislation, that includes those for total independence, the reality of the benefits that will accrue from creating this separate government will fail to match your expectations. So think carefully, choose wisely. For not only you, but your children, grandchildren and future generations will live with the consequences.

As a related issue, if I'm totally disenfranchised from and have no representation in the Native Hawaiian governing body, then my tax dollars should not be used to support it. If this legislation creates a governing body for the exclusive benefit of one ethnic group, then they must be prepared to fully fund its expenses. One of the founding principles in the United States is, taxation without representation is illegal, immoral, and would no doubt be found unconstitutional by the Supreme Court. And I suggest it will certainly be challenged if enacted.

I would also suggest to the Kanaka Maoli that you are already sovereign citizens of the United States. And you don't need to create a government to retain the culture and traditions of your ancestors. For culture and tradition are maintained in the hearts of the people, not by rule of law.

The bottomline is, we can no more change the events of history for good or bad than you can un-ring a bell. We can't go back, only forward. And I feel it is much better to go forward together than separately.

So in conclusion, I would strongly believe this legislation would be detrimental to the equanimity of the multicultural society. So I would ask that you as the sponsors of this legislation reflect carefully and fully consider the potential for unintended consequences, then choose wisely, for you will be creating a legacy not just for us, but for our children, grandchildren and future generations. And what do we want that legacy to be, harmony or conflict?

Our destiny is in your hands. I pray God guides your actions.

And as a postscript, I would ask that this bill not be added as a rider to other legislation, that it be considered and voted upon in Congress on its own merits, not passed into law through the back door by being under the guise of some totally unrelated legislation.

So thank you for your time and consideration.

[Prepared statement of Mr. Theis appears in appendix.] Mr. ABERCROMBIE. Thank you very much.

That concludes our panel. Our next panel will consist of Kauai Jochanan Amsterdam, Lela Hubbard, Richard Kinney, Dorothy Lam, Kanohowailuku Koko.

We'll begin with Mr. Amsterdam.

STATEMENT OF KAUI JOCHANAN AMSTERDAM

Mr. AMSTERDAM. [Greeting in native tongue]. Aloha.

Good afternoon to our distinguished members of the committee, our distinguished Hawaiians, my wonderful family and friends, to my mother. Also to our visitors, to those who have worked so hard in advancing our causes.

Also to our friends and neighbors of the world, I say again, sh'alooha.

I come today with cultural symbols that are a part of my history and ancestry, with my keha, kapa——

Mr. ABERCROMBIE. Just 1 moment, Mr. Amsterdam. Excuse me.

Can we have some quiet in the back of the room, please, show respect for our speaker.

Mr. AMSTERDAM. This Hawaiian part of me I acknowledge through my dear mother, and also our ancestry, descendants through King Kalakawa, through Kalakawa Ahua Kama, and Queen Lilioukalani. And also through King Zedechia, and my father Amsterdam, through Sephardic Jews, King Zedechia and also up to King Solomon and King David, in our ancient land of the Holy Lands, Israel. These are part of our great and noble history, as also Kanaka Maoli, Hawaiians.

I bring this out in my book, actually, the Royal Crown of the Hawaiian Kingdom and the Catastrophe: The Hawaii Break-In and Cover Up. Actually, for those who would like to get it. [Laughter.]

You can get it on CharlesKJM@aol.com. I go into detail on many of the issues that we've discussed, and that we talk about today.

In regards to this bill that is before us today, one of the reasons why we can't accept is because of our Queen and descendant, one of our ancestors, Queen Lilioukalani. She requested that she be reinstated. The bill does not address this reinstatement. Reinstatement also involves the reinstatement or restoration of our kingdom, of our nation, of our constitutional monarchy, and our peoplehood. Because it does not address these important aspects, this bill is unacceptable.

Furthermore, it violates the opposition of our approximately 39,000 ancestors who signed this petition against annexation. We cannot be true to them if we disregard them and their important beliefs and their important actions. And they are depending upon us.

So it is very important that we respect them. Therefore, we cannot accept this bill.

It has been said, actually, since I am a Jew, this last period, I remember a fellow Jew, Joseph Lieberman. He said something that was kind of interesting. He said that the Republicans and the Democrats, or the Republicans, one of them said that actually there is no difference between Republicans and Democrats. It's kind of like a veterinarian and a taxidermist. After they're finished with the dog, the dog goes home.

Well, he said that there is a difference between the two. So there is a difference, using his rather humorous example, between what this particular bill claims and in reality what it really provides. It is, there is a difference, a great difference, because on the one hand, it claims to provide sovereignty, independence, restoration and also reinstatement.

But it doesn't. In a way, I don't know if it's an oxymoron, a contradiction or double talk. It doesn't really fulfill what it says it does.

I am a restorationist. And I am a part of the restoration movement, actually [phrase in native tongue]. And many of the great and noble Hawaiians have been working so diligently and are very

specialized in understanding the background and the technicalities of restoring our kingdom.

First, as I handed out to our distinguished panel, this is an example of the kingdom of Hawaii, an interim provisional government council. Those Hawaiians who put this together and who I know, amongst other of our people who are also working towards restoration, are very expert in understanding the form of government that we have had, that we are working to restore, and that we are in the process of restoring. I acknowledge you, and I encourage this involvement and this advancement in our important work.

Another reason why the bill is not acceptable is because it continues the coverup of the Hawaiian break-in by conspirators in 1893. As I mentioned, I go into elaborate detail on this in my book. It also continues a coverup through the annexation and also through the statehood, the statehood that took place, and also through this particular bill. By advancing this bill, what it does is it advances the coverup of the break-in that occurred in 1893.

So consequently, we can't accept that, because it continues to cover up what happened, and it denies the *de jure* kingdom of Hawaii. It recognizes a *de facto* government that it violated, as was beautifully elaborated on by our doctor previously, by those who are part of the conspiracy and the coverup.

So consequently, while the bill provides good intentions, it actually continues to cover up the conspiracy, and therefore it is unacceptable.

In regards to reconciliation—thank you, my dear family. [Laughter.]

In regards to this coverup, therefore, we must, in order to have reconciliation, I am a Native American Hawaiian Jew Mormon. [Laughter.]

And as I said before, everybody hates me. But I try. [Laughter.]

Now, in regards to this particular reconciliation, I'm taught that in order to be reconciled, first we must restore what we have taken. That's part of changing.

And by restoring what we have taken, then this provides the means of reconciliation. With the Apology Bill, the Apology Bill encourages this reconciliation. But in order to do that, there must be restoration. Therefore, the bill does not advance restoration. It excludes restoration. Therefore it's unacceptable. It's unacceptable also because of the trust relationship and Federal law by which Hawaiians and our resources would be treated. There is controversy as to whether the trust even exists. Just because legislation exists that provide benefits doesn't mean that a trust exists. We give billions of dollars to Israel in the Middle East, but they're not a trust of the United States of America.

So therefore, simply because legislation is passed doesn't mean that a trust exists. Assuming that a trust exists, we can't accept that. Because the trust and the existence of Federal law actually is diametrically opposed. It's the antithesis of independence and freedom and restoration which we really want.

Therefore, for these reasons, it's not acceptable.

In a way, with the use of language, it may appear very appealing. But if you look closely, again, I don't know if it's a pun or an

oxymoron. It's like saying, well, with this legislation, you'll be as free as a bird in a cage. [Laughter].

[Applause.]

Mr. AMSTERDAM. Thanks, brother. Excuse me, thank you. So consequently, it's the opposite. It gives us the illusion of freedom and independence, but the reality of being in a bird cage. Now, with all the changes and the amendments and the recommendations, it's wonderful, but it's only decorating the cage. The cage was actually the conspiracy and our being put into an annexation and a statehood existence.

Now, the door is the trust. Now, the key to lock the door is the bill. [Laughter.]

The thing is, the key may be shiny, but we don't want to stay in the cage. It's also like saying you'll be as free as a dead mouse in a special rat trap. [Laughter.]

We don't want to be in a rat trap. Or as free as a passenger on the special Titanic. We don't want that, either. Or last, as free as a ward in a special trust.

So naturally, it's not acceptable for those reasons. But we do appreciate the love and the concern that is aimed toward us. But practically, it doesn't work, unfortunately. The majority of our Native Hawaiian people are actually opposed to the bill. As we can see, work long and hard, have been facing these issues, they are important issues, our people are dying, we can't wait 16, 17, 20 years for this bill to initiate something. Our people are dying now, and many have died. They're depending on us. Many are in jail.

Well, if we would like to give some of our rights away, we would like to give some of these rights to have a greater population in jail, rather than having such a high percentage of our people in jail.

Also, Patsy Mink, she smells some stench in this bill. She has that intuition, so she's backed off. We must acknowledge that.

[Applause.]

Mr. AMSTERDAM. Is the restoration, this bill also is [inaudible] because it opposes the word of God. In the book of Isaiah, chapter 11, verse 11, it says:

And in that day, the Lord shall set his hand a second time to recover a remnant of His people, who shall be left from Assyria and from Egypt and from Kush and from Elam and from Sinar and from the islands of the sea.

If you look at the word recover, it's restore. He shall restore.

Now, to restore is to bring back. So to restore is to restore or to reinstate our Queen, our kingdom and our peoplehood. And to pass this bill and deny us full restoration, a partial, quasi-restoration is not consistent with the prophecy. For all those lands which I described in Isaiah, one of our ancient prophets, those lands are independent. And the people of the islands of the sea, consistent with those lands, it is said, will be recovered, restored. Therefore we must be independent.

Israel is a nation, it came into existence in 1948. And here we are, it's our turn to be restored.

[Applause.]

Mr. AMSTERDAM. The Hawaiian kingdom is a forerunner to the kingdom of our Lord. It is a sacred kingdom. It is part of the Lord's plan. We are His people, and His sheep and He knows our voice.

He appeared here as Lono, part of our ancient legends. And we acknowledge that in the Makahiki. Therefore it is important that we do our part in being the forerunner of the kingdom of God.

Also, our Native American people, misnomer, Indians, our Native American people are leaders, our people, our relatives in the mainland have counseled us. They have counseled us not to do this. To do it is to lose our inheritance. They have told us, and I have also worked among our Native American people as a Mormon missionary. I worked as a missionary with our Native American people in Omaha, in the slums of Omaha, or in the shacks of Oklahoma. Anadarko, the Indian capital of the world, I know how it is for our Native American people in these lands.

And they counsel us, their leaders, our leaders, they counsel us not to do it. Because they are in trouble. And they want to get out of trouble. Let's help them get out of trouble. And let's show what we have and be an inspiration and give some of our resources to our Native American people.

This also comes from our Native American people, on the aboriginal conference that I attended in the Big Island in 1999, with the educators of all the Native American colleges in the mainland. And they said when they go to the Indian——

Mr. ABERCROMBIE. Mr. Amsterdam, you're well into the red period. We have 25 people more to go. We've been patient all day long. We'd appreciate it if you'd stick with the bill and summarize.

Mr. AMSTERDAM. Okay, I will summarize, thank you.

[Interruption from audience.]

Mr. ABERCROMBIE. The audience will let the speaker and the Chair conduct business.

Mr. AMSTERDAM. I will be more concise. Thank you.

In this, delays is an important factor, while this is unacceptable. So I cannot delay, I must hurry. This delays the time for our people to enjoy this. It also maintains Federal control through the trust, through the Federal regulation which prevents our actual freedom, our restoration, our independence. We cannot accept the bill because of distance, because of time. When Secretary James Blunt met with our Queen and had a trust between him and her, he said that she shouldn't do anything. When he went to Washington, it was completely different. And when he came back, all the trust she had in him and in what the Federal Government would do was completely dissolved. She could see that the trust really wasn't there.

And once it goes to Washington, it's in a completely different dimension. So we acknowledge that. And so it's very difficult. So the bill is not acceptable.

So what can we actually do? Actually, there are things we can do. We encourage our Federal Government of the United States of America to maintain and advance the ideals, all our ideals, to continue financial support and technical assistance through legislation out of the Federal mandate of the Apology Bill, and out of moral and ethical responsibility, do it. Besides financial and technical assistance, compensation, reparations. We ask for memorials with what happened. And we work on that.

Accountability, research, and to abide by the laws, for instance, as was mentioned, in the United Nations, and to use and acknowl-

edge the law of nations. And to restore our wonderful kingdom, our constitutional monarchy, and our peoplehood.

Also, this bill shows us the importance of expanding our stride, lengthening our stride and quickening our pace. We can do it, we're doing it right now. We ask support and acknowledgement of what we're doing and support with our great leaders of the restoration movement, who I refer to and continue to keep up the good work so that we can restore our kingdom, reinstate our kingdom, our constitutional monarchy and our peoplehood.

And finally, it's important for us to continue keeping on keeping on what we're doing. I can read a statement here, it says, should not the wrong done to a feeble but independent state by an abuse of authority of the United States be undone by restoring the legitimate government. Anything short of that will not, I respectfully submit, satisfy the demands of justice.

Can the United States consistently insist that our nation shall respect the independence of Hawaii while not respecting it ourselves? Our government was the first to recognize the independence of the islands, and it shall be the last to acquire sovereignty over their, by force and fraud.

Now, these aren't my words. These are the words in the 1890s by the Honorable Secretary of State, W.Q. Gresham. So he reiterates this, the importance of doing this. The importance of also acknowledging, as was mentioned, President Cleveland and his efforts to recognize this restoration.

And finally, may I use the words of one of our ancient prophets. I acknowledge our wonderful representatives and ask for your recognition of these important proposals, because you want to do what our people want to do, now you know what our people want to do. If you don't do it, then you must also, the bill is unacceptable because it will encourage civil demonstration. It will encourage civil unrest. It will encourage civil disobedience. And even an armed movement that may be completely a different alterNative than we heretofore have witnessed.

Therefore, it's important to acknowledge and to do actually what our people really are asking and working for and advancing, which is restoration. So in conclusion, may I use the word, an acknowledgement again of you, my wonderful Hawaiian people and all of our wonderful neighbors, the citizens and people of the world, and you, too, our representatives today, and may I say, the words of one of our ancient prophets. He said, as he looked at the Pharaoh, let my people go. [Laughter].

[applause.]

Mr. AMSTERDAM. And may I say to our Hawaiian people, let's keep going, let's keep going, let's keep going. And by having authority, ask our Lord God to continue to help us. And I do so acknowledging our Lord God, even our Lord Jesus, Lono, the Messiah, in His name. Amen.

Mr. ABERCROMBIE. Ms. Hubbard, you're next.

STATEMENT OF LELA M. HUBBARD

Ms. HUBBARD. Mahalo. Aloha to our congressional delegation; aloha to our brother from Samoa.

My name is Lela Hubbard, and I am the granddaughter of Jane Buckle Clark and the namesake of Malina Kaneiakama. This bill seeks not justice, which Hawaiians, without a doubt, deserve. Nor does this bill seek restitution for the dastardly illegal acts of the United States against the sovereign nation of Hawaii.

Our first question is, why throughout this bill and throughout the Apology Bill, is there no real reference to the loss of a nation? Everything is addressed to the Hawaiian people, which lessens our rights. It's our nation we lost and our nation that we want restored.

Moreover, this bill reaffirms the power of the United States over Hawaiians and the delegation of that power to the State of Hawaii in the Statehood Admissions Act of 1959, section 9. The United States did not have clear title to our lands, which were under siege as part of an illegal activity as admitted in Public Law 103-150.

Thus, in accepting this bill Hawaiians accept the theft of our lands, the public trust imposed on us which made us wards and incompetents and all the American laws and actions that have followed. This bill strips us of any right to full restoration of our stolen assets by limiting negotiations.

The United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the native Hawaiian governing body regarding the transfer of lands, resources and assets dedicated to native Hawaiian use, under existing law as in effect on this date of enactment of this act to the native Hawaiian governing body, section 9, reaffirmation of delegation of Federal authority negotiations.

What does this include? The Hawaiian homelands? The income from 20 percent of the public land trust, which are our lands, mainly? The assets of the Office of Hawaiian Affairs? No moratorium on these lands, while we're still discussing things?

Truly, this bill is an attempt by the power brokers to undermine and kill the Hawaiian sovereignty movement and to keep control of Hawaiian assets in the hands of the traders and traitors who are making money off Hawaiian lands and assets.

Moreover, we are extremely concerned about this interim government, which has no controls on it; and if we know our history well, Hawaiians have often been sold out by our leaders. Therefore, there need to be controls on this interim governing body. Any negotiations by this interim governing body must be approved in a referendum of the people. And we support a recall petition by 10 percent of the eligible voters if these interim governing officers do something corrupt or illegal.

The United States must recognize the right of self-determination of the Hawaiians and our right under international law to re-establish our nation as part of the family of nations. This is domestic law. This is civil law, which has been broken by the United States and ignored for over 100 years. Why has our congressional delegation never taken up this question and confronted the Department of State and the President of the United States with this fact?

We also suggest that Public Law 103-150 be used as a venue for the protection of our nation and the programs funded by Congress. In 1898, the Newlands Resolution was used to annex our nation. In 2000, a resolution can be used to recognize the Hawaiian nation, protect the Native Hawaiians from legal challenges, and satisfy U.S. Supreme Court scrutiny.

Why do we need this recognition bill?

We have been warned by our Indian brothers and sisters, the Native Americans have told us, and the Native American kupuna sitting there has said they do not want us to walk in their moc-casins. We should walk beside them, but we should not have the same travail, the same sorrows and the same battles that they have faced as Native Americans in nation to nation governments.

Why is it so difficult to use creativity to create new policy and law which does not put us under the mantle of Native American nations? Our history is different. We have a unique legal status. We are ka po'e Hawaii.

Hawaiians have never asked for a trust relationship with the United States. Nor have we really benefited from that broken trust which the United States never enforced as they should have. The best lands were sold or given away. We all know the Hawaiian homelands were the worst lands in the territory that were given to Hawaiians to keep them from the rich agricultural lands coveted by the white plantation owners.

We do wish restitution and restoration, which is the United States' obligation under international law. We do not want a domestic Indian nation nor a corporation that can steal us blind. You know, we have talked to many Alaskan peoples, and they told us what happened to most of those corporations.

The entire process of self-determination needs to be controlled by Hawaiians. Our roll will reflect 60 percent of all eligible native Hawaiians to be considered a valid basis to begin crafting our nation. You know, they could start off with 10 or 20 or 100, and still consider it valid. We must put a percentage.

And those running for office should simply take out papers. They shouldn't have to jump through a nominating committee hoop.

Perhaps the greatest flaw of this bill is to place Hawaiians in the Department of the Interior. That agency has done such a wretched, deplorable job of caring for Native Americans and their assets. Horrible poverty, terrible education and health system, which really lacked resources.

Native American money has been stolen. Their BIA accounts have been plundered. The very agencies that should protect the Native Americans have burned incriminating evidence, 124 boxes. And in that battle, in court, the United States is saying they owe the Native Americans perhaps \$1 billion, a couple of billion.

But what is really lost, the Native Americans say, is \$10 billion. Is that what we want to happen to us?

Moreover, we would like to see, if this is a Hawaiian entity, more use of the Hawaiian language. Please, I'm not a native speaker. Those who are can make suggestions for names. If, unfortunately, this bill is pushed through [and generally these hearings are just pro forma], we demand that there be a survey, paid for by the Feds or the Office of Hawaiian Affairs, which will ask Hawaiians who prove their genealogy by stating who their parents are and who their grandparents are, whether they want the recognition bill or not and other pertinent questions on nation building.

We need to have proof that the Hawaiian people want x, y and z. So often, the elected representatives, and I don't mean those sitting here, but those who left, in their arrogance, do things to the

Native Hawaiian people that they don't really want. But they think that because they're elected to office, they are the final word.

The scope of the survey will be approved by Hawaiian sovereignty groups and other groups and even individuals. And anyone can participate in a well advertised and open forum.

In summary, this bill does not uphold true self-determination, nor does it protect program appropriations which can be changed by any Congress, nor does it protect the ali'i trusts, which are private trust established under U.S. law.

This bill does not reflect the will of the people, who refuse to give up their lands, resources, religious, cultural and historic sites, for a mere \$34 million a year, when rental of our lands at 50 cents an acre for a century is \$1 billion plus, plus, plus.

[Prepared statement of Ms. Hubbard appears in appendix.]

Mr. ABERCROMBIE. Mr. Kinney, you're next.

Mr. KINNEY. Mr. Chairman, I exercise my inherent sovereignty. I wish to make my presentation at the end of this panel, so I wish to allow other speakers to present before me. Aloha.

AUDIENCE SPEAKER. May I present the next lei to another kupuna of equal status and [phrase in native tongue] if this man should pass, my chant is [phrase in native tongue]. It would be a great loss if we never got the manao from this man. So I give to him a lei that I would wear, and I [phrase in native tongue].

I give a special lei that was given to me when my father-in-law [inaudible].

[Presentation of leis.]

Mr. ABERCROMBIE. Ms. Lam.

STATEMENT OF DOROTHY SOO-KIU LAM

Ms. LAM. Dear and Honorable Senators, Congresswoman, Representatives. My well wishes and respect to Senator Akaka and Senator Inouye, Congresswoman Patsy Mink and Representative Neil.

I am not a Hawaiian person. I am a pure Chinese. I am a naturalized immigrant. I am here speaking out of my great love for America as an American citizen. Hawaii is my home town. China is my mother country, and America is my home country. And as American citizen, which I believe America is still one of the greatest nation's on Earth, and I believe America is by large a honest and righteous Nation on the Earth, compared with the many more nations out there in the world.

I am also speaking as a concerned resident of Hawaii, out of my love for this aloha paradise. While I'm observing what is unfolding to pointing to the future destiny of this beautiful tropical island of Hawaii. We are partaking in a very unique, exciting moment that where we partake in a moment that we could all shape with our consciousness and belief and faith of the destiny of this beautiful land and the peoples that live on this land. And this land is so unique as the center of the Pacific that rises out of the immense ocean of the Pacific.

Like as those days which is 200 something years ago, when America rise as a nation above the oppression of the British colonial spirit of the economic domination and ringing the Liberty Bell as a nation in their victory to acclaim their own independence,

which in that history it has replayed in today's time. Hawaii is walking the same path that I believe in this arising as a nation from against a colonial oppressive spirit of economic domination, to be ringing the Liberty Bell of independence as a people of nation in the center of this Pacific Ocean in a small island of this Hawaii.

I am speaking today in support of the ultimate path to that ultimate independence of the status of the full nations of independence of a small group in numbers, of people in this Pacific Ocean away miles from this Nation that occupy immense territory in this mainland. I am speaking in support of a path and open door to that ultimate goal and destiny which if the Akaka bill were and meant to be intended with a genuine intentions and genuine doorway toward that destiny, that will be as a process, as a doorway toward that, that will be what I would support.

However, if that is not meant to be delivered and fulfilled, it would not be meant what I would like to support. A nation within a nation is not the ultimate path and destiny of the people at large meant to be delivered. A nation as independent nation is what it meant to be, that I have heard from many more that has been spoken.

I am not also going to be talking about this on historical reasons or based on judicial legal reasons. I would like to speak on the different perceptions on the reason for that ultimate destiny.

I believe Hawaii has a special mission on this new world. Being geographically in a very sacred center space, in the center of the Pacific, where it is touching the Pacific Rim and sharing in connections to the continents of all the world, you have on the east Asia and connect with Europe and Africa. You have all the west, North American and connect with South America. You have in the south a connection with Australia and New Zealand. And I believe Hawaii is a new world in itself with this convergence point.

Hawaii has a karmic pattern that has already set and its declarations have been made. I believe its karmic commitment has been committed 100 something years ago by the declarations of the Queen herself that had declared and pledged to Congress and to United States for the restorations of their own government.

That mutual ground has been accepted and the commitment for that acceptance and restoration has also been declared by the President at that time. Speaking from the karmic law, which is the universal truth itself, a karmic promise and commitment that happened 100 something years ago, it will and shall be fulfilled, regardless what's going to be happening.

Hawaii has demonstrated themselves as a nation of peace and love in their persistence. If the nations of America have so risen themselves to acclaim independence and liberty with a 7-year battle against British colonial spirit, I would say Hawaii nations has so fight their battle with love and peace for 109 years, and that would be enough to ground a global democracy as the nation of the new world into the new millennium.

My belief and strong convictions knowing America has a miraculous and strong honest grounding from its constitutions. I believe America will and meant to be, shall be step up themselves and will demonstrate himself as the big brother, as the honorable righteous world leader in times to come. But yet we must recognize who is

the government today. The head of the government is what it represents the conscious awareness of this body of a nation as a whole. What made up America as government is what made up of the consciousness of this body of nation of America, and let's look at who are they. I would say just like the conscious awareness and the representations of the State of Hawaii government itself, which are dominant and made up of the corrupted element of the corporate America structure that handed down with the same colonial spirit—

Mr. ABERCROMBIE. Ms. Lam, can you address the bill, please, so that we can move on. Address the bill, please.

Ms. LAM. My ultimate support is for the path for independence of the nations, and should the bill is meant to support and as a doorway and step, a stepping stone, that would not be something I would actively object. But it is not, I would object to that.

Thank you.

[Prepared statement of Ms. Lam appears in appendix.]

Mr. ABERCROMBIE. Thank you very much.

Mr. KOKO.

STATEMENT OF KANOHOWAILUKU KOKO

Mr. KOKO. As oxymoron is, everybody might seem we are, perhaps you want to think about it.

As I say, as oxymoron is, people may think we are, that's what we're not. So it's time for us to get our act together and make sure that the panel here understands exactly what it is, why we're here today. Before I came in this afternoon, I made my mind up to ask Ms. Mink, Patsy Mink, for an apology for not being here on time, as we were all here, and she just walked in maybe about 10, 15 minutes after.

Mr. ABERCROMBIE. Mr. Koko, if you will address the bill, please.

Mr. KOKO. I beg your pardon?

Mr. ABERCROMBIE. Would you address the bill, please?

Mr. KOKO. Yes; I will. But as my introduction to who I am.

You perhaps read my statement already. Okay, this is my testimony from the desk of Kanohowailuku, advocate for justice and the truth, where truth bears no fear, where knowledge is power, and when its foundation is based on the truth and the facts. Only then through education will justice prevail. And I want you to understand exactly what it is.

Before I continue, may I offer my congratulations to Senator Inouye for being the recipient of the Medal of Honor, and it is an opportunity that I had to thank him, back in 1962, when I went into the Army, and they were sending me all over the place. Finally I had to go to him so they could get me to the school that I chose. It was choice not chance.

Because of that, I have traveled all over the world as an electronic person, in communication, microwave, troposcatter, under-seas communications cable, even up to satellite and being in the Philippines to help with the ComSat. Today I still do that. It's been since 1962 and I'm still in communications. Thank you, Mr. Inouye.

In addressing the bill, myself and my family is against the bill. One of the reasons is its injustice to all Kanaka Maoli. The other reason is the continuance of the fraud. It still goes on and on.

And I'm quite sure, unknowingly to the panel, that this bill has a flavor of a seditious conspiracy. And if you want me to cover that, I'd be glad to.

May I continue with my testimony. Aloha. My name is Kanohowailuku Koko. My first question to you, what is it that you do not understand of the word reinstate? Queen Lilioukalani's protest letter is part of Public Law 103-150, whereas clause number 9 that states in part:

Now to avoid any collision of armed forces and perhaps 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.

In studying and understanding Public Law 103-150, so-called Apology Bill, I ask you, how remorseful are you? Within the 37 whereas clauses lay the most heinous acts ever committed to a friendly and peaceful nation and its people, especially by a nation built on laws. And you must know by now that P.L. 103- 150 is an absolute confession which contains all the facts as presented for which is requested for the reinstatement of the lawful Hawaiian government. Therefore, I ask you, what is it that you don't understand about the word reinstate?

In learning and understanding the perspective of the laws that govern sovereignty and laws vested in authority to indigenous aboriginal Kanaka Maoli through the usage of the laws of nations, the reinstatement of the lawful Hawaiian government became a reality on March 13, 1999.

As Mr. Akaka continues to enlighten us and continues to emphasize that the United States is a great country can only lead me to believe that the atrocities done to the Kanaka Maoli is okay by him.

Mr. ABERCROMBIE. Excuse me, Mr. Koko. I beg your pardon. The recording equipment is having a malfunction and I don't want to miss your statement, because it may contain some words and observations in addition to what you're writing.

So if we could take a recess for a couple of minutes until we can get it working, we'll come right back to you.

[Recess.]

Mr. ABERCROMBIE. Mr. Koko, we'll be ready in just 1 moment.

Thank you, ladies and gentlemen. We're ready to get started again.

[Interruption from audience.]

Mr. ABERCROMBIE. I request the audience to give Mr. Koko an opportunity to speak, please.

Mr. Koko, are we ready? Mr. Koko, if you could resume, please. I'm sorry for the interruption.

Mr. KOKO. Well, Mr. Abercrombie, I understand you have to interrupt, but you know, at the time when I was speaking about having Ms. Mink to apologize for being late, you cut me off completely. And I didn't get that recognition as to why she was late. And now we have Senator Akaka—

Mr. ABERCROMBIE. Mr. Koko, this is a hearing of the two committees. If you can address the issue, we'd be appreciative. I can assure you that all the members of the committees are here and lis-

tening, reading the material. If we have to leave momentarily it has to do with calls of nature or something of that nature.

Mr. KOKO. Okay, let me go back to my last sentence.

Mr. ABERCROMBIE. Can we have conversations in the hall cease or be taken outside? I assure you——

[Interruption from audience.]

Mr. ABERCROMBIE. Sir, I assure you, if you keep this up, you're going to be removed. I can assure you the rules of the committee do not allow witnesses to be interrupted.

Now, Mr. Koko, if you would resume, please.

Mr. KOKO. Okay, let me go back to that last sentence that I read. As Mr. Akaka continues enlightening us, and continues to emphasize that the United States is a great country, it can only lead me to believe that the atrocities done to the Kanaka Maoli is okay by him. Mr. Abercrombie mentioned what a great document the U.S. Constitution is. Then why breach it and go against the law of nations? article I, section 8, clause 10.

But the truth is, which cannot be disputed, even by the highest court of your land, no matter how you may want to twist it to fit your desires, is this. The Constitution of the United States of America was never, ever created for the indigenous, aboriginal Kanaka Maoli. Knowing this being the truth, the Supreme Court have overstepped their jurisdiction in presiding over the *Rice v. Cayetano* case, 98–818, caressing amendments 14 and 15 in favor of *Rice*. Because Public Law 103–150 assures us of our rights.

S. 2899 and H.R. 4904 is also contradicting Public Law 103–150, which cannot be superseded from what was already given to us, in that it is the right of the Kanaka Maoli to pursue the endeavors without the help from this Task Force. This Task Force goes against the moral standards of every nation. Many individuals on this force are not Kanaka Maoli. And many have taken the oath of allegiance to uphold the Constitution of the United States, and the State of Hawaii.

Why should we let citizens of another nation build a nation of our own choosing, as it was said in session laws of the State of Hawaii, acts 359, 200, and 140.

It is easy to understand why all this is happening to us, like the American Native Indians, of the fork tongue language by our congressional delegates, who upon presenting resolution 19 to the Senate for passage, said the bill was not for us Kanaka Maoli to seek independence. The bill forcing us on a roll call can only lead to a referendum. You are led to believe that the unique status we bear as Native Hawaiians of being distinct aboriginal indigenous people. So are the Alaskans and those 556 native governments.

But the real unique status that we, the Kanaka Maoli, bear to the State of Hawaii and the United States is the status of *de jure*. No other nation government within the confines of the United States and its laws bears that unique status of *de jure*.

That's the end of my testimony. However, I have a couple more things I'd like to add about self-determination. Self-determination went out the window when we became a State. And the United Nations article 73 tells us that. Because the United States had to report to them, and they told them that we became a State. Therefore, self-determination was given to us as well as self-government.

So you folks are looking at this bill and saying self-determination is going to happen. 'Aole, it will not happen..

Mahalo nui loa.

[Prepared statement of Mr. Koko appears in appendix.]

Mr. ABERCROMBIE. Mr. Kinney.

**STATEMENT OF RICHARD POMAIIKAIOKALANI KINNEY, SOV-
EREIGN HAWAIIAN POLITICAL ACTION COUNCIL OF HAWAII**

Mr. KINNEY. [Greeting in native tongue.] Senator Inouye, Senator Akaka, Representative Abercrombie, the Delegate from Samoa, Patsy Mink, favorite daughter of Hawaii, aloha. Aloha nui, aloha nui kakao.

Thank all of you for being here. I wish all of you could come up here and sit at this seat and experience the vibration of seeing all of you out there. Mahalo nui.

I'm very happy to see that the police force of the State of Hawaii is here, so that you can be witness to the truth why we—

[Interruption from audience.]

Mr. KINNEY. Representative Ben Nighthorse Campbell, chairman, Committee on Indian Affairs, and committee members, U.S. Congress, I'm very disappointed that the Representative, for whatever reasons unknown yet is not here.

Aloha kakou. My name is Richard Pomaikaiokalani Kinney. I am of Hawaiian, Portuguese, Irish, Scotch, English, and Tahitian ancestries.

On January 17, 1893, it was my Hawaiian ancestry country that was overthrown. It was not my Portuguese, Irish, Scotch, England, Tahitian countries that was wrongfully overthrown by the military and diplomatic forces of the United States of America, President Grover Cleveland. I am an indigenous descendant of the Hawaiian kingdom, the nation that President Clinton and the members of Congress of the United States recognized in Public Law 103-150. On behalf of my ancestors who signed the [phrase in native tongue] anti-petition of 1898, both sides of my parents, and of my family today, I ask that this committee would hold this bill from any type of consideration of approval.

Through the joint resolution of annexation, the national lands of the Hawaiian kingdom were unlawfully ceded to the United States as a special trust. The United States accepting ownership of all public, government and crown lands, but provided that the existing laws of the United States relating to public lands would not apply, and that the Congress, "shall enact special laws for the management and disposition."

These provisions collectively were held at the time by the Attorney General of the United States as creating a special trust of the ceded lands, the Federal Government of the United States holding only a naked title to these lands. In other words, the United States did not gain these lands in fee simple, nor did they pay them off, because our Queen refused to accept compensation for the sacred lands of the Hawaiian kingdom.

It was [inaudible] who compensated the Queen and paid them off so that they could own these lands and Yankee fee simple ownership. But the Queen said, it's not my duty to sell the birthright of the children of Hawaii not yet born. The Organic Act of 1900, the

Hawaiian Homes Commission Act of 1920, and the Admissions Act of 1959 were all acts of Congress recognizing the special trust of its management of the national lands of the Hawaiian kingdom. Today, the indigenous people of the Hawaiian kingdom are the only recognized indigenous beneficiary to any State's admissions act and the constitution.

On the annexation of Hawaii by the United States in 1898, 1,800,000 acres of land made up the public lands. Since statehood in 1959, 1,700,000 acres of the trust lands have been transferred to the State of Hawaii to administer under the trust provisions of its Admissions Act.

Understand this, very important, because this is the intent of this bill. The intent of this bill is to unlawfully relinquish both the Federal Government and the State governments from its trust management of the national lands of the Hawaiian kingdom. The State government and the Federal Government of the United States owe the native Hawaiian from the purest of the blood to the least of the blood billions and billions of dollars. They owe every single native Hawaiian as far as I'm concerned, defined as the Homestead Act and the State Admissions Act a homestead paid in full with a letter of apology.

Today, more Hawaiians, although these lands have been administered by the Democrat Party for over 41 years, today more Hawaiians, native Hawaiians who qualify as a special trust beneficiary die on the waiting list. Today, more non-native Hawaiians occupy homestead lands, lands that were set aside by Congress to be occupied by the native people in accordance to their law.

The Hawaiian Homes Commission Act will be terminated in its entirety with the passage of this Akaka bill. The Admissions Act will also be unlawfully amended and relinquishing the State from its special trust management of the provision of its act, allowing the State of Hawaii to privatize its managements of our aloha aina lands. They want to break the trust obligations of administering these lands and turn everything, not only Hainomo Bay, Diamond Head, and Waikiki Beach and every square inch to private lands, so that they can prostitute these lands to foreigners.

If we allow this bill to become law, native Hawaiians will once more be wards of the Federal Government where the Secretary of the Department of the Interior will be the warden of our people. And plus, the Hawaiians will be landless. There's no lands mentioned in this act. It's all just *deja vu*, diverge and fall, we're going to be protecting your rights. We need protection like another December 7 from the Federal Government.

When Queen Lilioukalani yielded her authority to the superior forces of the United States on January 17, 1893, she had high hopes that after facts presented to Congress, the United States would undo the actions of its representatives. This bill perpetuates the wrong of the overthrow of my country, the Hawaiian kingdom. It further relinquishes and all breach of trust committed by the Federal Governments and the State government and its management of the national lands of the Hawaiian kingdom and its special trust.

As mentioned in Public Law 103-150, the Supreme Court ruling in *Rice v. Cayetano* case, and in the language of this Akaka bill,

the United States signed three treaties with the Hawaiian kingdom. Article VI of the U.S. Constitution very clearly states, recognizing these treaties as a supreme law of their land, and of their constitution, that the judges, get this people, that the judges in every State, including the State of Hawaii, shall be bound therefrom. These treaties.

And we, the sovereigns, like [name in native tongue] and other people here who go before the court and tel the court, you have no jurisdiction, this is what we're talking about, these three treaties are binding. In my research, article VI of the U.S. Constitution has been in the U.S. Constitution from day one. And it is because this was the American way to trick the American Indians, sign this treaty, knowing that the American Indians would hold this treaty very sacred, while the agents of the American government broke the treaties.

It is your duty, members of Congress, to inform your other members of Congress to recognize the international relationship that the United States signed with the Hawaiian kingdom in 1826, 1842, 1849, 1875, and 1887. I have copies of these treaties.

In those copies, the treaties are perpetual. In those treaties, our ali'i, King Kalakawa, did not sign or cede any territory, including Pearl Harbor, to the United States in any form or any degree of sovereignty.

This is why the Akaka bill wants to address us to the American Indian treaties, not the Hawaiian treaties. Sadly, when the American Indians signed these treaties with the United States, it was at the mercy, because they were finishing up with wars, they signed the treaties with the United States, at mercy to save their children and women from further annihilation off the map of the Earth.

When the United States signed the treaties with our country, the kingdom, our country was at peace with the United States. Our king, our ali'i, never signed treaties with the United States as a defeated nation.

Unlike the treaties of American Indians, who were forced to sign with the United States as defeated nations, the Hawaiian kingdom was a nation at peace with the United States. Equal to the United States in standing, as a free, sovereign and independent nation, with treaties signed to many nations of the free world of the nations. And people, we have received word that some of the nations around the world still recognize those treaties that they signed with the Hawaiian kingdom.

You cannot terminate a treaty unless both countries agree to terminate the treaty. And for the information of the delegate from Samoa, I have a copy here where the kingdom of Samoa signed a treaty with the Hawaiian kingdom.

Federal recognition as Native Americans will require that I and my family to relinquish our inherent sovereignty to the national lands of the Hawaiian kingdom. Every one of the 560 Federal recognized American Indian tribes, nations and villages, all had to relinquish their inherent sovereignty to their tribal lands and turn it over to the Federal Government under the Department of the Interior, as a special trust. They are not telling us this is what are the conditions that we will have to do.

I and my family who are here today will never turn our backs on Queen Lilioukalani, our ancestors who signed this [phrase in native tongue] petition, [phrase in native tongue] petition and relinquish our inherent sovereignty to Hawaii as a defeated nation to the United States. Never, never happen.

Hawaii is our ancestral homeland and country. Hawaii Pono I is our national anthem. Ua Mau Ke Ea O Ka Aina I Ka Pono speaks about Hawaiian sovereignty over Hawaii, not American sovereignty.

A few years ago, 10, 12, 15, years ago, some of you were here when I did a march in Waikiki to bring to the attention of the tourists about this. And I was the one who flew the flag upside down, and it was Hawaiian policemen who wanted to arrest me, because I was flying the "State of Hawaii" flag upside down. Well, I told the brothers, you better go check the international law, that the international law recognizes the flying of one's nation's flag upside down as a sign of distress.

But as you see me with this cap and flag, that's the national flag of the Hawaiian kingdom.

Also, very important, the British Union Jack in our national flag could not have been placed in our national flag, Congress members, also, without the support and okay with the British Empire. The whole Hawaiian monarchy was not set up according to American laws, it was set up according to British laws.

I've been told by English people when I worked in the industry, and they confirmed this, that your king would have to have had the permission from our king to display our national flag in your national flag. And they have told me, because you Hawaiians have not removed the British Union Jack from your flag, that special relationship that the kingdom of Hawaii had with the British Empire still exists.

This bill will force those Hawaiians, like us who oppose, but many Hawaiians will grab onto it, while in the prison at Iolani Palace, Kalana Na Pua was written. The song, Kalana Na Pua that prophesied that some day a greeting message would come from Washington, DC that would ask our people to sign a document of extortion. And in that song, telling our people, eat the stones of the land, do not accept the greedy sums of money of the government.

Now, this bill is here. Kalana Na Pua is here. And boy am I happy to see, we, the Kanaka Maoli people of the Hawaiian kingdom, remember too well what is happening.

For the first hundred years, from 1900 to 1959, the territory of Hawaii was under republic control. All of the present entitlements that this bill hopes to protect was instigated by Republican administrations. The Organic Act was passed by a Republican President, the Hawaiian Homestead Act was instigated by a Republican, Delegate Prince Kuhio, and made into law by a Republican President. The State of Hawaii became a State, President Eisenhower, a Republican, under conditions that the State of Hawaii would accept the administration of the Hawaiian Homes as a special trust.

In fact, if I remember right, even that stopped the bombing of [phrase in native tongue] was signed by a Republican President. What have the Democrats done home here in administering this?

Why the rush of this bill to cover up the wrongful actions of your party home here?

I have seen no greater violation of the trust of the people of the State of Hawaii under the Constitution under Governor Cayetano. Is this the intent of this bill, I ask you, the members, the drafters of this bill, to cover up a terrible mismanagement by your party home here, and you don't want the members of Congress to hear the truth?

Mr. ABERCROMBIE. Mr. Kinney, so you have the facts correct, we are sitting here today under the auspices of the Committee on Indian Affairs in the Senate and the Committee on Resources in the House, both of which are chaired by Republican chairs. We are under the full sanction of both committees. This is neither a Republican nor a Democratic bill. But a bill to be decided by all committees before it moves to the President, whether he or she is a Republican or a Democrat.

Mr. KINNEY. Well, please let the chairman of this committee know that one Hawaiian testified here and I'm greatly disappointed that one Republican of your committee was not here to hear the truth.

Mr. ABERCROMBIE. If you can continue to address the bill, please, so we can move on to the other 25 people.

Mr. KINNEY. In ending, [phrase in native tongue] Senator Akaka, do you have any questions of me?

[Prepared statement of Mr. Kinney appears in appendix.]

Senator AKAKA. Brother Kinney, we have heard you for a long time now about what you believe has happened. Our thrust here is to the future of Hawaii, to the future. As you know, Richard, the world is changing. What's going to happen to our Hawaiian children as the world changes? Are we going to leave them where they are, or are we going to try to help them so they can help themselves?

This is the thrust. We're setting up a process with this bill to look into the future of self-determination. This bill is not to determine what we're going to do. This sets up a process for us to do it. That's what it does.

The hard work is yet to come. And what's going to happen to what's best for the Hawaiians? I've got to tell you now, I don't think I'll be alive. That's how long it's going to take.

But to kill it now, you kill the hopes——

[Interruption from audience.]

Mr. KINNEY. I thank you very much for your response.

AUDIENCE SPEAKER. May I may a comment about our children?

Mr. ABERCROMBIE. Madam, I assure you, if you do not sit——

AUDIENCE SPEAKER. Our children are suffering——

Mr. ABERCROMBIE [continuing]. You will be removed. We have been very generous with the rules of both the Senate and the House.

AUDIENCE SPEAKER. Our children are suffering under CPSTHS and they are being sold. And that is my complaint.

Mr. ABERCROMBIE. We are recessed. Madam, you will sit down immediately or you will be removed.

AUDIENCE SPEAKER. I refuse to talk to you until I consult with my counsel. And that is kakua above you, I already warned you,

you told me you were here to protect me. Now, do not tell me that our people are being looked after——

Mr. ABERCROMBIE. Madam, you are violating the rules, and preventing other people from talking.

AUDIENCE SPEAKER [continuing]. When I was arrested for kidnapping my children from your government.

[Interruption from audience.]

Mr. ABERCROMBIE. We are now in recess.

[Recess.]

[Whereupon, at 5 p.m., the committees were recessed, to reconvene at 8:35 a.m. the following day, Thursday, August 31, 2000.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

TELEPHONE TESTIMONY ON S. 2899 AND H.R. 4904, WEDNESDAY, AUGUST 30, 2000

The following testimony on the subject of S. 2899 and H.R. 4904 was taken by telephone on Wednesday, August 30, 2000.

STATEMENT OF UNIDENTIFIED MALE SPEAKER

MALE SPEAKER. Hilo, Hawaii, 96720. I am calling in support of the bill that Senator Akaka and Senator Inouye is proposing before Congress to provide a proper foundation recognizing the rights of Native Hawaiians as part of the Federal program.

For my concern, I want to be sure that the language of the bill recognizes the rights of Native Hawaiians not as a race, but as a nation, in order to avoid any future potential undermining of such legislation by those who may contest the legislation as being racially discriminatory. I believe that if the legislation provides proper foundation for the Hawaiian nation, within even, even as a nation within the United States, it will help alleviate any potential conflict in undermining, should there be a challenge against such legislation, based on race, being racially discriminatory.

Therefore, my big concern is to ensure that the legislation proposed be one for recognizing the wrongs committed to the Hawaiian kingdom as a nation, and recognizing that the Hawaiian kingdom as a nation has more than just Hawaiians as a race, but also other ethnic groups, and that the foundation for the interim, [inaudible] that the interim government as recognized by the legislation should be based upon the existing constitution of the Hawaiian kingdom, or the existing traditional laws of the Hawaiian kingdom, subject to some kind of constitutional convention.

I believe this type of legislation will help resolve the conflict between the Native Hawaiians [inaudible] Hawaiian nation, or Hawaiian nationals, I should say, and the wrong that was thrust upon them over the last century.

Thank you.

STATEMENT OF MR. KALALI

Mr. KALALI. My name is Clarence Kalali [inaudible].

STATEMENT OF EVAMANE KALAWAKI, MOLOKAI

Ms. KALAWAKI. My name is Evamane Kalawaki. I'm calling from the island of Molokai. My post office box address is 1410 Konokai, 96743 (?). I am testifying on behalf of my ohana, and I would like to express my gratefulness to Akaka, Honorable Senator Akaka, Honorable Senator Dan Inouye, and Honorable Representative Abercrombie.

I have read the documents on the reconciliation, and I believe this Senate bill has been brought about because of the reconciliation process, gone to many of the is-

lands. I halfheartedly agree, but then as to what I have read and based on all the other testimony I have heard, I must support this bill, because I believe this is the only bill that at this time and point can sustain our Native Hawaiian people.

Therefore, I agree in supporting this Senate bill. Mahalo. Again, my name is Evamane Kalawaki, from the island of Molokai. And my home number is 558-8265. Thank you.

STATEMENT OF ANAKU MELAMI, HAWAIIAN KINGDOM

Ms. MELAMI. My name is Anaku Melami, P.O. Box 1508 KL, Hawaiian Kingdom, 96749. And please add this in addition to my other testimony, three page testimony that was already accepted.

On December 18, 1893, President Grover Cleveland acknowledged by these acts of war our Hawaiian sovereign government was overthrown, and said a substantial wrong has thus been done, which a due regard for a national character as well as the rights of the injured people require that we should endeavor to repair.

On November 23, 1993, President William Clinton signed Public Law 103-150, Apology Law, in recognition for a sovereign government being overthrown. And now for today's reconciliation efforts, we native Hawaiians were told either by phone or newspaper that the hearings that were to be held on various upper islands during the week of August 28 through September 2, 2000 would have to be held on Oahu.

The national character of the United States by its political representatives once again causes more injury to our Hawaiian people who it is supposed to be reconciling, instead perpetuates the oppressed feelings that had befallen our Native people as a result of the illegal overthrow. Your insensitive lack of concern for us native Hawaiians by creating financial hardships because of these hearings change of venue to Oahu.

We are an oral people, and though written testimonies have been written, we are oral, especially as a result of the fallout from the overthrow. We need to exercise that aspects of us. And now that way has been taken away from us.

The record shows that we native Hawaiians, 39,000 signatures, who signed petitions against the 1898 annexation, those petitions were ignored. That annexation never happened, as we were led to believe, as the Treaty of 1849 still exists today, are continually being ignored, especially where the attention of our voices to speak up regarding our own self-determination of our own government is concerned. Just like these hearings, actions speak louder than words. These actions speak of conspiracy to stop us Native Hawaiians from being able to be heard, not as you representatives being suitable, making less controversy available to you, it appears.

Don't even address to us that it was a doctor's determination, good reason, poor excuse. We native Hawaiians could have waited until Mr. Akaka could travel. There's never any reason to rush matters of major importance. In fact, it's better not to, especially when it comes to our native Hawaiian governance.

What's the reason for your rush? It's an act of conspiracy to me. We've been waiting 107 years. What's another month or so?

As a beneficiary of the Hawaiian Homes Commission Act, the Admission Act and its responsibilities of its adoption of the HHCA were followed by the State of Hawaii, there would be less problems for us Native Hawaiians and much more benefits toward our betterment as the intent was for rehabilitation betterment of native Hawaiians. It appears that there are so many breaches of trust that have been happening for ever so long regarding the public trust [inaudible] lands.

I even addressed my concerns to Mr. John Barry, Assistant Secretary of the U.S. Department of the Interior in my letter dated January 14, 2000, which I received a response from him February 15, 2000, stating we are currently looking into your claims of misuse of trust lands, Governor and the University of Hawaii regarding [inaudible]. As of this date, I'm still waiting for his findings.

So with the Hawaiian Homes Commission Act already in place, I see no need to expand upon that program by the current bill, H.R. 4904, S. 2899. I see that if Hawaiian Homes Commission Act were adhered to, that is what we need. Besides, the HHCA is more for us native Hawaiians if followed as it is.

The bill that Mr. Akaka and Mr. Inouye is attempting to say is for us Hawaiians is really for the U.S. governmental alliance and their control. It's not for us Hawaiians as we're led to believe.

I, Anaku Melami, was given the means to fly to Oahu, I'd see the writing on the wall all over again. As long as it is being done in accordance with how it's being done now, it's all [phrase in native tongue], talk on the Government's part, as it has been in the past. So why waste expenses on a round trip plane ticket for the eventual outcome? Usually it's for the non-betterment of us Native Hawaiians.

True listening is taking what is given in oral and written words and doing something constructive with it, as the native Hawaiians want, not as you dictate. So this additional written testimony, I request, be added to my prior submitted testimony of 3 pages, postmarked August 23, 2000.

I read the bill, and as a native Hawaiian beneficiary say, get the State of Hawaii to follow the HHCA provisions on their part, instead of their trying to change it to conform to their needs. That's what I see this bill is doing the same, trying to have us native Hawaiians conform to their control.

If the State of Hawaii can't follow provisions of the HHCA and many other acts, no need talk. This is all given and done with the spirit of aloha as my ancestors and all other concerned ancestors, as well as those of our native Hawaiians who couldn't make it there because of lack of funds. We're all crying out for justice and reparations toward the wrongs committed upon us Native Hawaiians, beginning with the 1893 overthrow, which has perpetuated the continuity of injustices done illegally upon us [inaudible] done legally upon us native Hawaiians actually, by the State of Hawaii and county not following the provisions already set forth in the HHCA for us native Hawaiians.

So that is my testimony. And if you could please add it to the 3 pages, I'd appreciate it. Anaku Melani, 808-965-0931, P.O. Box 1509, KL, Hawaiian Kingdom, 96749. Mahalo nui loa na akooa.

STATEMENT OF KAITINI AKANA, HONOLULU, HI

Mr. AKANA. Hi, my name is Kaitini Akana. I live at 1350 Alamorna Boulevard, No. 2706, Honolulu, 96814.

I really am calling to submit or fax a copy of my testimony. I won't be able to make the hearing, but I would like this testimony entered into the record.

I am writing to support S. 2899 and H.R. 4904, which expresses a relationship that the U.S. Government shall have with native Hawaiians. For many years now, Native Hawaiians as individuals or an organization of two or more people have fought to be recognized as an indigenous people, hoping to be given sovereignty to decide their future for themselves.

The effort has been riddled with in-house fights, and its character has been more manic depressive-schizoid rather than unifying. Many different kinds of Hawaiians live within this movement, each having a different perspective, yet wanting the authority to decide their future for themselves. In their zeal to achieve their perspective, I believe they lose sight of the greater picture that sovereignty can only be given to the whole, not to the individual. And that part of the struggle is to come together as a whole race with one perspective, not as a race of multiple perspectives.

Truly, why would anyone give such a precious gift as sovereignty to people who continually demonstrate their inability to care for it? My personal belief is that native Hawaiians must overcome their differences. One of the obstacles in the struggle for independence has been the internal differences that belie the race. They've been enough to keep us apart, not only from each other, but also from our goal.

[inaudible] ourselves opportunities are handed to us that help to move us toward recognition and independence.

S. 2899 or H.R. 4904 is an opportunity [inaudible] some kind of representation within the Federal bureaucracy to help to work for the entitlements that Hawaiians have and to work some [inaudible] on issues within the Federal executive branch. Self-determination can be made easier when we are able to approach it from inside and outside the bureaucracy. It is a rich opportunity for us to have a legislative vehicle and also support two Federal departments.

I urge all Hawaiians to come together in support of this legislation. Otherwise, we will miss a huge opportunity to help ourselves.

Aloha.

STATEMENT OF LOUISE MOLULANI BUSH, HO'OMAHOA, HI

Ms. BUSH. Aloha kokoa. My name is Louise Molulani Bush. My mailing address is P.O. Box 121, Ho'omahoa, Hawaii, 96729.

I am a resident of Hawaiian homestead lands, Lot No. 44B2 Pu'uuka [inaudible] Avenue, Ho'omahoa, Molokai. And I feel a need to testify and let you know how I feel about bill S. 2899 and H.R. 4904, the Native Hawaiian Recognition Bill.

As a Hawaiian, I know that it is important for us to be recognized by the United States as indigenous peoples of Hawaii. I support this bill for that purpose and desire that you take heed to the concerns that I have regarding this bill. As a very active individual in my community, I desire that our people, [phrase in native

tongue], have the opportunity to lead themselves and make decisions for our lives, present and future. I have come to understand that I cannot change the past, but I can make the best of it by protecting my rights for Hawaii and being sure that these rights are protected for the generations to come.

In section 26(A) and section 7(a)(1)(A) is a list of some documents that will be used to verify the native peoples of Hawaii. I support the documents that will be used as evidence of lineal descendants of the aboriginal indigenous native people of Hawaii, and recommend that no change is made to this list. Because of the high cost for vital statistics records, for example, birth, death, and marriage certificates, in Hawaii, it is extremely important that other documents be allowed to verify a native Hawaiian.

In section 7(3), incorporation of the native Hawaiian governing body, one charter of incorporation, I recommend that the language be changed from may to shall in the sentence following. Upon petition of the native Hawaiian governing body, the Secretary shall, instead of may, issue a charter of incorporation to the native Hawaiian governing body.

I know that we are a peculiar people because of our traditions. Many do not understand the unconditional love, aloha, that we live. It has been a part of our lives, and I pray that it will continue in the future. However, many other cultures have come to our lands and have abused our aloha. This is evident as you look throughout our islands.

As a Hawaiian homestead lessee, I wanted to be sure that you protect my existing rights with the Hawaiian Homes Commission Act, and that you recognize the [phrase in native tongue] responsibility of Congress in regards to that act.

I feel very strong that we have been forgotten about, and that until we are squeaky wheels is any attention given to us. This act is a Federal trust and not a State trust, but the [phrase in native tongue] was passed on to the State to administer. I just want to be sure that we all know who is ultimately accountable for the Hawaiian Homes Commission Act.

I would also like to be sure that section 10 disclaimer does not get removed from this bill and that this bill does not remove our right to pursue any international recognition from the United Nations as well as the Geneva Convention.

I do not see any timeframe for actual implementation of this bill. I ask that implementation take place immediately upon approval.

I pray that these words will be considered with one heart and one mind for the betterment of us [phrase in native tongue] Hawaii.

Mahalo for your time, efforts and support. Sincerely, Louise Molulani Bush. Mahalo.

STATEMENT OF JANE LEE, MOLOKAI

Ms. LEE. Good afternoon. My name is Jane Lee. I am a resident of Molokai.

I'm calling to testify in favor of Senate Bill 2899. I believe in the intent of this bill, is to protect the resources held in trust for Native Hawaiian people.

I would like to see some control given, more control given to native Hawaiians in determining what their destiny. I would like to see a government to government with equal terms between the United States and the Hawaiian people.

Thank you very much for receiving my testimony. I will submit a written one as well. Thank you.

STATEMENT OF SUSAN KAYE WEISS, HONOLULU

Ms. WEISS. Aloha. My name is Susan Kaye Weiss. I'm calling from 2415 Alaway Boulevard, Apartment 1803, Honolulu, HI, 96815, and from telephone number 808-922-2810.

I'm calling to recommend and hopefully to influence passage of the Akaka bill, S. 2899 and H.R. 4904, that these are some of the wealthiest Native American people on earth still being held in abject poverty.

Hawaiian history is laden with indigenous rights denied. Since the overthrow and annexation, Hawaiians have lost their autonomy, their right to sovereignty, their royalty and their property rights. Their language was forbidden and their culture was banned by missionaries. And blood quantum restrictions never placed on other indigenous people were put in Hawaiians, reportedly to restrict their voting rights, going way back in history.

In 1998, a current law prohibits use of Hawaiian first names, reportedly. Also, the Hawaiian lei stands at the airport are displaced far from the gates. Tourists and

others who fly in have to go well out of their way to buy a Hawaiian lei from Hawaiians in an area displaced pretty far from the gates.

And then regarding education, even the abundant wealth of some of the Hawaiian trusts are still denying benefits and beneficiary status, specifically Kamehameha Schools, according to newspaper reports, Kamehameha Schools educational elite, so blessed, number 4,402, on campus, or 8 percent of Hawaiians in attendance, Hawaiian children there in attendance in the school, while 47,274 Hawaiian keiki, or 92 percent of all Hawaiian children, are excluded and are in the public school system.

Hawaiians on the islands have long since been the silent majority, without real legal representation or voice in the media. They and their parents, these children and their parents, have always been discriminated against, and their story has never been told. It's heart-wrenching that generations of Hawaiians have been so denied and deprived.

Some of the wealthiest native people on Earth, still being held in abject poverty.

Specifically regarding the land, we could use for an example Kamehameha Schools holding by themselves, they're holding approximately 367,000 acres of land. And the Hawaiian people have in no way benefited from the massive land holdings, either inside the trust or outside the trust. They have no right to our knowledge to live on or work on or to use these lands for agricultural or even cultural purposes. The Hawaiian people, these lands are being retained in perpetuity for whom?

The truth is that the Hawaiian race is perhaps even the wealthiest indigenous race of people perhaps in the whole world. Yet to this day, are still being held in abject poverty. These beautiful people respond wide-eyed and in disbelief when they are told that they are really a wealthy race, as a great majority of the Hawaiian people have never had the right or the privilege to benefit in any way from the amassed wealth.

It's always been the status quo in Hawaii to help only a few thousand. The Hawaiian Homelands Act of 1920, the waiting list, the land is still just being held in perpetuity. And so many have never even received an acre. But the point of talking about land is to say that there's really plenty of land, there's no shortage of land. In Kamehameha Schools alone, they have more acres of land than there perhaps are Hawaiians in the whole world. If every Hawaiian in the world got an acre in Hawaii, there would still be plenty of land.

I believe that it is primarily the children of the rich and the wealthy and the most prominent members of our community whose children have managed to be accepted into these wealthy trusts, while many, although they do have many poor children, there are so many that are turned away that it's a shame. It's a terrible shame to even those residents here that are not Hawaiian.

Most of these decisions were based on historical deprivation and discrimination. And we believe that the Hawaiians deserve a cultural participation and for their lands to be restored and for every good thing that could come to them, because they really are the treasure of the islands.

We appeal to the, we're thankful that there is a branch of Government that can be appealed to, and we know that the Indian Affairs Committee is that specific branch, although we do wish to make the case that these beautiful people are not Indians, per se. They're indigenous and aboriginal and a most unique and special people unto themselves, worthy of recognition of the Federal Government.

We urge the House and the Senate to consider full passage of Akaka's bill to protect all of the programs and to give Federal recognition, so that these Hawaiian people can secure their birthrights and be legally acknowledged by Uncle Sam. The Hawaiian people and Hawaii's residents continue to wait in faith that justice is alive in America and with us here also in these beautiful islands.

It's heart breaking for many of the residents of Hawaii to see these people living in poverty when actually, at the height of their trust and at the wealth of the State, their land is not being distributed and is being kept from them. Even the education, not to say that public education is sub-par, it certainly is not, but there is enough wealth in the trust of Hawaii to include what is approximately 51,000 Hawaiian children within the State. And yet even the trusts are hesitant to encompass and acknowledge all that they are capable of.

I thank you so much for this opportunity and we do encourage passage of this bill. We applaud the courage of all the parties involved, especially the legislators, and God bless you all, each and every one. Mahalo nui loa, [phrase in native tongue].

STATEMENT OF SUSAN KAYE WEISS, HONOLULU [SUPPLEMENTAL]

Ms. WEISS. Aloha. This is Susan Weiss calling back from 922-2810. That's Susan K. Weiss at 2415 Alaway Boulevard, Apartment 1803, Honolulu, HI, 96815.

I had just previously left an oral testimony on this telephone number, 541-2545. And I did, this one sentence and thereafter should follow a second thought. And I would like to include that second thought that was omitted the first time. The sentence that I'm referring to within the middle of my testimony said that these beautiful Hawaiian people are not Indians per se, but rather indigenous and aboriginal people and a most unique and special people, unto themselves, worthy of Federal recognition and recognition by Uncle Sam.

Thereafter should have followed the sentence that, we pray that this bill does not seek to place the Hawaiian people onto a reservation by themselves, or else there would likely be a revolution and not just amongst the Hawaiian people. I don't think that it is anybody's intent, least of all the Honorable Senator Akaka and Honorable Senator Inouye to seclude these people or place them on a reservation.

And so we just want to clarify our position on this, that we certainly do support the bill, and we would want Uncle Sam to know that this is not with the intent to place these beautiful Hawaiian people onto a reservation unto themselves, else there would probably be a revolution in the islands that included not only the Hawaiian people but many other residents as well.

So I would ask you to please insert this last sentence about the reservation into the middle of the testimony, and not as the last sentence to go up to Washington, DC. Because I would not care to end my testimony on that note. It should have followed right after the sentence stating that they're not Indians, but indigenous and aboriginal.

So thank you so much. That was my main concern, that this bill, even though we have no other venue, the testimony has stopped, this is just personal now, that we have no other venue to apply for sovereignty, except through the Indian Affairs Claims Committee. And so, nevertheless, we know that these are a special people, and they're not Indians, per se. And we would certainly not be in favor of this bill if it implies that Uncle Sam was inclined to shuffle them off on some reservation within the Hawaiian Islands, to be excluded and away from the rest of their beautiful lands.

So thank you again. I certainly do applaud highly the courage and all that it has taken for our courageous legislators to have tried to reach this middle of the road position that hopefully would please many. And I thank you so much for their having done so, and we just straight ahead pray that this bill passes with flying colors. We know it's high time that Hawaiians be recognized. We pray that it passes wholeheartedly and that we have a different status with the Federal Government than we've ever had before, that really clarifies these unique people.

So thank you so much. And God bless you all, each and every one. Bye-bye now.

STATEMENT OF UNIDENTIFIED MALE SPEAKER

MALE SPEAKER. Yes; aloha, this is Executive Minister—

STATEMENT OF HENRY HORTON, HOHOA, HI

Mr. HORTON. Aloha. My name is Henry Horton, P.O. Box 1802, Hohoia, 96778.

I was scheduled to testify in Hilo. And I must tell you, I have been very upset about this whole shift of venue. I know of no one here in the Big Island that I've talked to, and I've talked to a number of people who are not upset by this. I attend hearings of this nature in order to learn as much as more probably than to say my piece. And that I'm not going to get, I couldn't get if I were speaking directly to the committee on the floor. I can't see, I can't be seen.

You know, Caesar's wife must be above suspicion and reproach. And more and more, it looks as though the powers that be, the people who get themselves elected, the people who get themselves into powerful bureaucratic positions, on and on and on, don't give a tinker's damn—you should pardon the expression—about us little people. I have gone to Committee meetings, I've gone to Commission meetings and council meetings here on the island, and have seen how people, the common people are treated like dirt. We are told that we don't count in so many words, and I think it's happening again.

There is no way that this is going to be seen as fair hearing, as fair input. Personally, I think, I am not Kanaka Maoli, but I think that anyone who would want to put themselves into the position of the inhabitants of Pine Ridge, the poorest county

in the contiguous U.S., the whole United States, apparently, would be out of their minds.

And it seems to me that you're nailing the lid on the coffin, that this is all based on the original crime, and that the U.S. Government has apologized, confessed, and they have not done anything beyond saying, let's be reconciled. Well, reconciliation should come from the victim, after restitution, reparation and retribution. Then you get the reconciliation. And I believe it's up to the victims to propose that, not the conqueror.

The whole thing just smells to high heaven. And this last business, I mean, Akaka could have been put on a phone. With today's technology, he could have been sitting in Honolulu watching everything on TV, he could have been interacting, asking questions. I for one am angry about it, and I don't know anyone who's happy. This nonsense you read in the paper about everybody's OK with this on the outer islands, well, we know different.

And I'm real suspicious of the fact that it occurred after we were asked to send in our material, or testimony. You guys got a good look at what was going to happen out here, and the country people are just wild, and they don't take for this city stuff. I hope to God that the people have enough of this sooner or later, and we get an honest to God revolution in this country and this stuff stops. You people get up there and you act like you're God's gift. You're not. You're supposed to be public servants.

So I guess I've had my say. But I'm still angry. Thank you.

STATEMENT OF JOHN H. TOMOSO, MAUI

Mr. TOMOSO. This is John H. Tomoso. My address is 51 Ku'una Street, Kahui, Maui, Hawaii, 96732-2906.

This is my testimony. [phrase in native tongue]. My name is John [name in native tongue] Tomoso, and I'm a member of the Native Hawaiian Education Island Council for the Islands of Maui and Lanai. We know that the bill that has been introduced is historic. That we Hawaiians in this present day and generation are seeking political recognition as a people is historic in itself.

We on the Native Hawaiian Education Island Council of Maui and Lanai are speaking in favor of this bill. We want to preserve all that we are as a people, as a culture, as a veritable nature of Polynesians with a proud past and abundant present and promising future. However, all that we are as Hawaiians is in jeopardy because of all that we have lost as a people, as a culture, as a nation.

We are quite sure that political recognition would help us tremendously as we strive to preserve and even put back what has been lost. In this striving, we know that the spirits of our ancestors are with us.

Since the overthrow of our beloved Queen of happy memory, Her Majesty Lilioukalani, we Hawaiians have asked ourselves many questions. Together we have found many answers. The question for us today is, what else do we need to do to ensure that we nurture ourselves, that we grow and thrive as a people, in the middle of the vast Pacific Ocean, in this our place, Hawaii Ne? Political recognition, that framework which will help define our relationship with the Federal Government, is a part of the answer. It will help clarify that which has been unclear for ourselves and for others for all these many years, since the overthrow of our beloved Queen.

For us on this council, the ideas and practices of native Hawaiian education are a constant reminder and opportunity for us to define who we are as a people and what we want to pass on to our children and their children. A real part of this reminder and opportunity is what we see around us, those political, economic, social and cultural realities that make up present day Hawaii.

We recognize in this multicultural, multiethnic milieu that we Hawaiians need to not only be recognized by others for who we are, but that such recognition must be widely disseminated and understood, even by generations yet to be born. We earnestly believe that formal recognition by the Federal Government will help others to recognize us as people and then help to disseminate and share this understanding throughout Hawaii, both now and in the future.

Finally, we would like to continue in the forward movement which is replete with political, economic, social and cultural opportunities that are allowing us Hawaiians to understand ourselves more and more. Native Hawaiian education is an important part of this forward movement.

Wouldn't it be wonderful for us to say and share with native Hawaiian students that the United States of America recognizes Hawaiians as a people of a great value and of a great past, present and future? Wouldn't it be wonderful for us to say and

share with Native Hawaiian students that despite past mistakes and political realities, the United States of America recognizes not only its responsibilities to each and every citizen, but also recognizes its relationship of understanding and trust with people, with Hawaiians who [inaudible] the very existence of the United States.

We have a chance to add Hawaiians to this list, to the list of these recognized people. Aloha.

STATEMENT OF DANIEL KEKOAVA, HONOLULU

Mr. KEKOAVA. My name is Daniel Kekoava. My address is P.O. Box 235519, Honolulu, HI, 96823-3508.

All I have to say is that I support Congressman Akaka's bill. I think it's a good step in the right direction. I am a native Hawaiian. I do have 67 percent of Hawaiian blood in me. And I think he's doing a terrific job. And I think the bill actually creates a foundation for Hawaiians to build.

And I think I'd like to relay a message to Senator Akaka, that you're doing the right thing, and regardless of this small, minute, and that's exactly what they are, they're a small percentage of the Hawaiian population, who oppose this bill, and they don't certainly represent the majority of Hawaiian people, or the Hawaiian community. I spoke to many friends who also [phrase in native tongue]. I myself live in the Makiki district. But I spoke to a number of Native Hawaiians who support and like the idea that Daniel Akaka is presenting to Congress. And we support that.

I come from a family of eight who also support Daniel Akaka's initiative with this proposal to the U.S. Congress. So we support you folks, and that's all I have to say.

Thanks.

STATEMENT OF UNIDENTIFIED FEMALE SPEAKER

FEMALE SPEAKER. Aloha [phrase in native tongue]. I'm against the vote for Akaka bill and the other one, also. And I'm going to the place [inaudible] to say my, to be there, and hopefully I can speak. And I didn't send in a written testimony, but if you use kalana napua, that's fine for me.

Thank you, aloha, mahalo.

STATEMENT OF LANNY SINKIN, HILO

Mr. SINKIN. Aloha, my name is Lanny Sinkin. My address is P.O. Box 944, Hilo, HI, 96721.

I was registered to speak at the hearing originally planned for Hilo on August 31. I am limiting my testimony to the inappropriateness of canceling that hearing.

While I understand that Senator Akaka is recovering from surgery and cannot travel, there was a very simple way to still permit the hearings on our island to be held, as well as on other islands other than Oahu. The hearing rooms on the outer islands could have been connected by telephone to Senator Akaka in Honolulu. With the Senator on a speaker telephone in the hearing room, the Senator could respond to testimony or ask any questions that he might have.

I live on the island containing the largest population of people characterized by the Akaka bill as native Hawaiians. These are the people most directly affected by the Akaka bill. The effects of this bill may be felt for generations.

The cancellation of the hearings scheduled on our island denied these people and the rest of our community the opportunity to hear testimony being given. Whether or not people here intended to testify, they should have been provided the opportunity to hear the views of their relatives, friends and neighbors.

Given the simple alternative of an open line from a hearing on our island to the Senator, there was no reason to deny our community this opportunity. The cancellation of the hearing also meant that people on our island had to travel to Oahu or call a recording device to give their testimony. The people Senator Akaka characterizes as Native Hawaiians are the most oppressed economic group in the islands. A \$100 round trip ticket to Oahu is an extraordinary expense and a highly burdensome obstacle to place in the path of people for whom testifying should be made as easy as possible.

To ask such people to talk into a telephone to a recording device means you are asking them to share their mana'o, their heart-felt concerns and thoughts, with

some machine at a remote location. Such a procedure is antithetical to the Hawaiian tradition of communications.

Given that the alternative of an open telephone line was so easy to implement, we are left with the impression that our testimony was not really desired, and that the response of our island to the bill is not considered important. I urge Senator Akaka to reschedule hearings in the neighbor islands, using the telephone to be present, if he cannot travel to be with us, and to re-open the registration for those wishing to speak at such a hearing.

Rather than provide my testimony by means of the inadequate alternatives provided, I will communicate directly with the members of the relevant committees in the Congress.

Aloha.

STATEMENT OF DINA PEANUT, HAWAII

Ms. PEANUT. My name is Dina Peanut. My address is P.O. Box 181, [inaudible], Hawaii, 96778, my telephone number is 808-965-8183. I was registered to give testimony at Hilo today on the Hawaiian Recognition Act.

The tactics employed in setting up our outer island meetings with very little public notice to residents about the necessity of registering for the privilege, were questionable enough. Cancellation of the hearings because Senator Akaka could not travel is totally unacceptable. The Senator could have graced us with his presence with a telephone conference setup, and citizens would have been able to hear the testimony and to testify before the committee. This mishandling of public testimony, barring input from the traditional rural Hawaiians will not be tolerated. You cannot treat Hawaiians in this manner.

The manner in which this hearing cancellation was handled was so sleazy, it only shows the true value of the legislation you are desperately trying to push on the people, this Hawaii Recognition Act. Shame on all of you, shame, shame, shame.

I will be submitting testimony directly to the congressional committees involved. Mahalo.

STATEMENT OF KALIKO CHUN, KILUAKUNA

Ms. CHUN. This is Kaliko Chun, at P.O. Box 1506, Kiluakuna, HI, 96745. I was not able to finish my testimony, and I just have a couple more minutes, so I would like to do that on this tape.

At the time I testified, I was speaking to the delegation, and I had mentioned to Senator Inouye that, how much time he had given over the last 20 years. And I would like to address this to both Senator Inouye and Senator Akaka, that having done that, we're aware of your encouraging us. And we have organized, as you have asked us to, and we have met, many groups, we've developed so many more groups since then.

We keep being asked to just come up with one voice, or to one answer. And that is, I feel, with all due respect, a very one-dimensional kind of response. And we are not a one-dimensional people.

So we have many answers and many responses. And that should be good. Anyone else in the Nation of America can have many opinions. And yet Hawaiians keep being asked to come up with one. And that is not going to happen, and I think it's totally unfair to expect it.

What we do need, because we do have groups that have worked very hard and have developed along self-determination lines quite sophisticatedly information and funds to proceed. In the beginning, Ms. Agtuka and Mr. Anderson gave information and the groups here, Senator Akaka even set up the task force, but at no time were we able to access the information that these people have. It would have been much more beneficial to have a workshop with representatives from Tribal Justice and Interior, such as Mr. Anderson and Ms. Agtuka, and members of the Select Committee on Indian Affairs, come here to Honolulu and have a workshop with us for a week. And if we could have that, and funds to appropriate so that we can have people from all the islands attend, or have the group go to the neighbor islands, then we would have been able to proceed with this week's hearings in a much better fashion and with a much better hearing.

And the other thing I would like to say is, Ms. Agtuka said that our Queen Lilioukalani abdicated. She did not. She did abdicate. She was not overthrown. She yielded to the powers of the United States in person to the President. She appealed to him and his envoy. The Marines landed in an act of war.

And so we would like the record to be corrected and not have to go through that all the time in hearings.

Most of all, we need information and funds. And if this act is passed as a reconciliation act, appropriating funds and allowing representatives from the Government to come here on a regular basis, or for us to go there, is [inaudible] proceed. Thank you very much.

STATEMENT OF ELIZABETH D. PORTEUS, HONOLULU

Ms. PORTEUS. I am Elizabeth D. Porteus, a fourth generation inhabitant of Hawaii. I live at 1350 Alamawana Boulevard, Honolulu, 96814.

I would like to testify that the United States has no reason to consider itself responsible for the overthrow of Queen Lilioukalani. President Clinton offered his apology because he had been told that President Cleveland had considered the United States responsible, and had tried to give the Queen back her throne. President Cleveland thought so, because he had sent a Mr. Blount out to Hawaii to make an unbiased report of the situation.

Mr. Blount's report said that the overthrow would never have been successful if the United States [inaudible] to Hawaii Mr. Stevens had not sent in Marines. Unfortunately, it is a historical fact that Blount's report was far from unbiased. Blount went after information in Hawaii like a lawyer taking a deposition. He hobnobbed with the Royalists, he refused invitations from the leaders of the overthrow and never even talked to them. He asked leading questions and stopped people from offering information of their own. He held no hearings. He made absolutely no attempt to get the other side of the story.

When President Cleveland asked the Hawaiian provisional government to restore the throne to the Queen, it was with the proviso that she forgive the revolutionists. This she refused to do. She wanted five of them beheaded and their belongings confiscated.

It took a long time then for letters to get back and forth from Hawaii and Washington, but the Queen stuck to her position. President Cleveland sent the matters to Congress to investigate on December 18, 1893. In Congress, the Foreign Relations Committee under Senator John P. Morgan, investigated whether any irregularities had occurred in the diplomatic or other intercourse between the United States and Hawaii and race relations and the political revolution in Hawaii. This time, many hearings were held, and many witnesses examined, including Blount.

The committee's report, which came out on February 18, 1894, completely repudiated Blount's, and said that Blount may have done the best he could, but he had not gotten the facts, and concluded that the citizens were justified in the revolution and establishment of the provisional government. There was ample grounds for landing troops at the time of the revolution, and Captain Rokeby and Mr. Stevens were there and justified in doing so. There was no conspiracy on the part of Captain Rokeby or Mr. Stevens, and the committee of safety or anyone else, and that the overthrow of the Queen was not due to the presence of American troops.

President Cleveland did what he thought was right, but he had been wrong in trying to restore the Queen. The report did censure Stevens for hoisting the American flag and also censured those who gave Blount misleading statements.

I wonder if Senator Akaka or Senator Inouye told President Cleveland about the second report.

Respectfully submitted, with a hope to be helpful, Elizabeth D. Porteus.

STATEMENT OF JERRY NEELEM

Mr. NEELEM. This is my testimony time, and my 5 minutes I'm going to use it wisely.

Mahalo plenty. My name is Jerry Neelem, I live in Hawaii [inaudible]. I don't want to repeat the laws and nations of laws, United Nations, anything to do with, you guys all know that already.

I'd just like to let you know that I oppose this bill, and when I look at the board members that we have to deal with, those people are the wrong people. They've been in there too long. Because when they die, they're going to their homeland. When I die, I go to my homeland. Everybody play in their own backyard, we didn't have this problem.

Again, I oppose that bill. I think the people there is wrong. Rice had no right, these agreements that we had was way before we became a statehood. And by the way, I was made an American, I was not born an American. I'm a Kanaka Maoli.

But these laws of *Rice* and *Cayetano* is just another way to get rid of the Hawaiians. And that's not even a Hawaiian doing that. That's wrong. I don't want to sound prejudiced, but come on. Only the lawful people can obtain the land. And the Hawaiians, Kanaka Maoli, are the original people. We're not Indians.

You guys made plenty mistakes. Don't make any more. And give us back what we, our agreements and treaties was with the United Nations. It's unfair, America goes all around the world helping everybody to get back on their feet. And yet they cutoff ours. [inaudible] money for us speak among ourselves.

Please take my testimony seriously. I don't want to offend nobody. But I believe that the wrong people are up there to make decisions for the Kanaka Maoli.

Mahalo plenty.

STATEMENT OF ANTHONY AKO HAO ANJO, KAPA'AU

Mr. ANJO. Yes, my name is Anthony Ako Hao Anjo. My address is P.O. Box 310, Kapa'au, HI, 96755.

I'm giving testimony in regard to the Akaka bill. And I did give 20 copies of written testimony, approximately two or three pages. I could not make the hearing, but on behalf of my family, and all other Hawaiians that could not participate, there are good aspects of the Akaka bill in which it will recognize that Hawaiians are a separate entity and are not to be governed by Federal laws or State laws. That's right. Hawaiians have their own separate laws, a kingdom or a government within a government.

In fact, I shouldn't even push it that far. Many of us in the Hawaiian community do not even recognize the Federal Government because of the illegal overthrow of our kingdom and the people who are running our kingdom, namely the last Queen, Lilioukalani. Many of the Federal laws and State laws have usurped the kingdom of Hawaii laws. And the Federal Government and the State government try to use their laws to justify the stealing of Hawaiian lands, such as airports, military bases, et cetera, in which they do not pay revenue which is due to the Hawaiian people, at least rent.

So in regard to the Akaka bill, Akaka bill not only needs to address Hawaiians as a separate people, it also needs to address all of these injustices toward Hawaiians, in which Hawaiians will be set up to run their own government and have complete control of their own destiny, whatever moneys, et cetera, is coming to them from the rental of all these lands, which is not even being paid. And the lands still do belong to the Hawaiian kingdom.

If anything, they way it has been put to me from many Hawaiian people in the community is that the United States is illegally occupying a foreign country, the Hawaiian Islands.

I hope that in the end, the Akaka bill does address all of these issues, of giving Hawaiians autonomy to control their own destiny, and not be, how do you say, subjected to the injustices of Federal and State laws. We do not want to be treated like Indians, put on reservations, given only lip service, and in the end, we still wind up with an empty bag.

I would like to get more information on the Akaka bill, because it has been very sketchy at best. I left my address previously.

To conclude all of this, the first step is for the Akaka bill to move forward in Congress. And from there, it needs to be further, I don't know what the word is, further built up, discussed, reviewed, whatever, where it can encompass all of these issues that are threatening Hawaiians as a people, as a culture and as a, I don't know, the rest of the words can't come to my mind at this time.

So in concluding, it would be in the best interests of Hawaiian first and foremost, not the Federal Government, or the State government, to correct all of these injustices. Otherwise, we can't move to the second phase.

So again, I would like to definitely be an active part of all of this, and I would like to leave my last statement that these very issues we're discussing I discuss with Kahu Abraham Akaka before he died. And I understand what he meant now completely, because Kahu Akaka is Daniel Akaka's brother. He told me to always seek the truth, to get to the truth, and I see what he means.

The truth is that the Hawaiians have been subjected to so many injustices, more than the Indians. It is time, way overdue time, to correct all of these injustices, and give the Hawaiian people not only their land back, but also their dignity and anything else that is due them.

Thank you. My number is also 808-889-5309. You can fax on that line, too. Thank you for giving me the opportunity to speak for myself and my quite extended family.

[Conclusion of telephone testimony.]

**TESTIMONY OF THE OFFICE OF HAWAIIAN AFFAIRS ON S. 2899
SUBMITTED AUGUST 23, 2000**

Chairman and members of the Senate Committee on Indian Affairs. My name is Clayton Hee, Chairman of the Board of Directors of the Office of Hawaiian Affairs, and I am here to testify on behalf of OHA in support of Senate Bill 2899, relating to federal recognition for Native Hawaiians.

Let me start by thanking our Congressional delegation for their hard work over the years in securing programs for the benefit of Native Hawaiians and for their leadership and support of the Hawaiian community at this critical time.

The pursuit of justice for Hawaiians has been a long and arduous journey. For the overwhelming majority of Hawaiians, justice means political status and federal recognition, the restoration of our inherent sovereignty and redress from the United States for the illegal overthrow of the Kingdom of Hawaii in 1893.

Our struggles have intensified in the last 40 years in pursuit of justice for Hawaiians, but we have reached a crossroad in that journey where recent events have shown us all too clearly that we must act now – we must take a monumental step forward in our efforts to find justice for Hawaiians or risk the loss of essential programs and benefits gained for our people.

By recent events I am referring, of course, to the “Freddy Rice case” and its fallout – at least the fallout to date. Earlier this year, in Rice v. Cayetano, the U.S. Supreme Court ruled that Hawai‘i’s denial of Rice’s right to vote in OHA trustee elections violated the Fifteenth Amendment. As a result, all registered voters in Hawai‘i have the right to cast ballots in the election of trustees to the Office of Hawaiian Affairs regardless of ancestry.

Another lawsuit has been filed recently to eliminate the Hawaiians-only restriction on candidates for election to the office of OHA trustee. One of the plaintiffs in this matter has succeeded in obtaining a preliminary injunction from the federal district court allowing him, as a non-Hawaiian, to file nomination papers to run for OHA trustee. The plaintiffs have made no secret of their desire to bring about the demise of OHA.

The Rice decision will continue to breed similar lawsuits. It will continue to be utilized to erect roadblocks along the path to justice for Hawaiians. As I have said, it is not only our future progress that is at risk, but erosion of the many advances Hawaiians have gained in health, education and housing benefits with the dedication and support of our Congressional delegation. Both state and federal policy makers have acted on the premise that programs provided for the benefit of Native Hawaiians have been legal, constitutional and morally right. The Rice decision opens the door to challenge the entire framework of federal and state laws put in place to benefit Native Hawaiians until our status as a native people has been settled.

So we are at a critical moment in our history as a people. The Rice and Conklin cases directly impact OHA, but if we fail to act now, these challenges to our rights as a native people will have far reaching and more devastating impacts on Hawaiians and non-Hawaiians who benefit from programs that are available to Hawaiians.

All of these concerns and the urgency felt in the community have given rise to the legislation before us. We are fortunate that Senators Akaka and Inouye have undertaken leadership in this matter and have sought, and continue to seek, the mana'o of the community, both Hawaiian and non-Hawaiian, to move us forward toward justice for Hawaiians by seeking formal recognition of our political status as a native people.

Today, more than 550 indigenous peoples have already attained such recognition from the federal government. Federally recognized indigenous peoples have the right under U.S. law to special benefits in the areas of health, education, housing, social services and economic development. They have the authority to govern themselves, to elect their own leaders, to determine their own membership and to have their own land base. The Navajo Indians have over 14 million acres of land in several states. The Alaska Natives have over 44 million acres of land. Although there are more Hawaiians than Navajos, Alaska Natives or any other native peoples in the United States, Hawaiians have remained without recognition of our right to self-govern and a settlement that would provide us with a land base which is crucial to our economic and spiritual well-being. The best case scenario is for Congress to formalize the political status and federal recognition of Hawaiians and this bill expedites constituting a representative political entity.

Senate Bill 2899 provides us with the opportunity not only to protect current programs for Hawaiians, but to meaningfully address this lingering injustice. As such, it is the first step, but an essential step, on the journey for Hawaiians towards reconciliation. The President and Congress have committed themselves to the process of reconciliation with Hawaiians through the Apology Bill. Senate Bill 2899 promotes such reconciliation by acknowledging as a matter of policy that:

- Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship;
- The United States has a special trust relationship to promote the betterment of Native Hawaiians;
- Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised that authority;
- Native Hawaiians have an inherent right to (i) autonomy in their internal affairs; (ii) self-determination and self-governance, and (iii) reorganization

- of a Native Hawaiian governing body; and that
- The United States shall continue to engage in the process of reconciliation and political relations with the Native Hawaiian people.

To that end, the bill provides for:

- A process by which Native Hawaiians can organize themselves for the purpose of self-governance. Significantly, the process is inclusive. There is no pre-determination as to the form that governing body will take.
- Establishment of an Office of Special Trustee for Native Hawaiian Affairs. The Office is not the federalization of OHA, but as new office within the Department of Interior to, among other things, effectuate the special trust relationship between the Native Hawaiian people and the U.S., to assist the Native Hawaiian people in facilitating the process for self-determination, and to be responsible for continuing the process of reconciliation with the Native Hawaiian governing body.
- Designation of a representative in the Department of Justice to assist the Office in implementation and protection of the rights of Native Hawaiians, the Native Hawaiian governing body and its political and legal relationship to the U.S.
- Establishment of an interagency task force to coordinate federal policy concerning Native Hawaiians.
- Notwithstanding any other provision of law, notwithstanding the decision in Rice, federal recognition of the governing body organized by Native Hawaiians as the representative governing body of the Native Hawaiian people.

We are pleased that many of the foregoing initiatives were recommended by OHA in its reconciliation testimony to representatives of the Departments of Interior and Justice in hearings held this past January. We are also gratified that there has been tremendous support in the community to include a process for self-determination in the bill -- a position which the Board of Trustees has consistently supported.

In conclusion, we would like to acknowledge our Congressional delegation once again for their leadership. While we recognize there remains a difference of opinion in the Hawaiian community regarding the methods of achieving the goal of self-determination, we believe Senate

Bill 2899 provides us with a constructive process and a timely opportunity to achieve our ultimate goal of self-governance and, with a truly representative governing body, the achievement of a settlement with Native Hawaiians for the unlawful taking of our kingdom and lands. It rightfully leaves potentially divisive issues, such as blood quantum, for Hawaiians to decide as a self-governing people.

The timing of this bill is absolutely critical, in terms of the threats to Hawaiian rights that have only begun to surface in the wake of Rice and as a matter of policy if we are to achieve any kind of meaningful reconciliation with the United States. For Hawaiians, the time is now and the opportunity is ours to seize to move forward together on our common journey for justice.

Thank you for the opportunity to testify on this measure.

For Hawaiians, the time is now

The Akaka legislation offers the chance for native people to continue to receive benefits and achieve redress.

ISLAND VOICES

CLAYTON HEE

Clayton Hee is chairman of the Office of Hawaiian Affairs.

The "Freddy Rice case" is far from over.

You remember that the U.S. Supreme Court ruled earlier this year that all registered voters are able to cast ballots in the Office of Hawaiian Affairs trustee elections, regardless of ethnicity.

Another lawsuit has been filed to eliminate the requirement that only Hawaiians may be candidates for OHA trustee. This new case and the Rice case demonstrate that we are at the crossroads on Hawaiian issues, and the day has come to find other means of moving our community — Hawaiians and non-Hawaiians — forward in the effort to find justice for Hawaiians.

We are fortunate because the opportunity is here now — the opportunity is the Akaka legislation to have formal federal recognition of the political status of Hawaiians as a native people. Today, more than 550 indigenous peoples have already attained the same official recognition from the federal government. The Navajo Indians have over 14 million acres of land in several states. The Alaska natives have over 44 million acres of land. Yet there are more Hawaiians than Navajos or Eskimos or any native peoples in the United States, but Hawai'i and her people have remained the islands of neglect by the federal government.

The Indian commerce clause of the U.S. Constitution permits Con-

gress to recognize the political status of a specific group of indigenous peoples. Federally recognized indigenous peoples have the constitutional right to special benefits in the areas of health, education, housing, social services and economic development. They have the authority to govern themselves, to elect their own leaders, to determine their own membership and to have their own land base.

It is self-determination at work.

While political status is not the panacea to all problems that some native peoples continue to endure, it has its advantages. For example, many Hawaiian programs funded by Congress can continue without challenge. Programs like the Hawaiian Home Lands Department, a congressional initiative in 1920, and Alu Like, a federal, state and OHA-funded economic development agency for Hawaiians, can continue. Papa Ola Lōkahi, a health organization, goes on uninterrupted. Education programs like the University of Hawai'i masters program in Hawaiian language and the gifted-children program can continue.

Unfortunately, there is a misconception that only Hawaiians benefit

from these programs. We forget that nearly every one of us, non-Hawaiian and Hawaiian, is connected. Many Hawaiian homesteaders today are married to non-Hawaiians who reside with them on their land. Many Hawaiian children at The Kamehameha Schools have one parent who is not Hawaiian.

Everyone benefits when a Hawaiian is trained by Alu Like in starting a business. When that Hawaiian business is successful, it has economic impact on our larger community, creating jobs, moving people off welfare rolls and increasing state income and tax receipts.

The United States has a history of acknowledging past injustices. Congress appropriated \$20,000 in reparations per Japanese person improperly interned in detention camps — more commonly known as jails — during World War II.

The real question is whether one believes Hawaiians are entitled to any special benefits at all. The answer to that question is whether one believes that the United States is obligated to Hawaiians for the unlawful taking of their kingdom and lands. Congress and the president of the United States believe so. All one needs to do is read the Apology Resolution passed by Congress and signed into law by President Clinton in 1993.

As our beloved Queen Lili'uokalani once said, "I could not turn back the hands of time for political change, but there is still time to save our heritage. You must remember never to cease to act because you fear you may fail."

The time is now.



The Senate
State of Hawaii

STATE CAPITOL
HONOLULU HAWAII 96813

August 23, 2000

Dear Members of the U.S. Senate Committee on Indian Affairs and
Members of the U.S. House Committee on Resources:

Thank you for the opportunity to write in support of S. 2899 "To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes."

In the wake of the aftermath of Rice v. Cayetano, the State Legislature enacted SB No. 2477 "Relating to the Trustees of the Office of Hawaiian Affairs." Governor Cayetano signed this Bill into law on April 26, 2000 (Act 59). The intent of this measure was to reaffirm that the Trustees of OHA must be Native Hawaiian as defined by Article XII Section 5 of the Constitution of the State of Hawaii. With the July 25th filing of Arakaki v. State, Civil No. 00-00514 HG in the United States District Court for the District of Hawaii, the requirement that the Trustees of OHA be Native Hawaiian has now been challenged.

When the United States Supreme Court in Rice v. Cayetano stated:

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

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dispute, for instance, whether Congress may treat the native
 Hawaiians as it does the Indian tribes. We can stay far off
that difficult terrain, however.

120 S.Ct. at 1057-58, it set forth the basis upon which the challengers have emerged.

S. 2899 is the only way to stop the onslaught of challenges like Arakaki v. State.

This testimony is in strong support of the Findings set forth in Section 1 of the Bill. It is critical to recognize "Native Hawaiians" as the "indigenous, native people" and an "aboriginal, native people of a once sovereign nation with whom the United States has a political and legal relationship." It is the position of the Plaintiffs in the Arakaki case that "Hawaiians" are not a "distinct" people, nor are they "aboriginal" or "indigenous."

The Plaintiffs also state that the Native Hawaiians, "[c]ulturally, socially, economically and in every other material respect, . . . manifests none of the elements of common culture, tradition, language, institutions or beliefs which could distinguish them as a group from the rest of Hawaii's people. To the contrary, this racial group is fully integrated with the people of the State of Hawaii." S. 2899 makes a finding that "Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants, herbs and food sources;" and "Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs." These findings are critical to establish in law a recognition that is argued as lacking at this point in time. The Plaintiffs and those who share their beliefs are truly mistaken in their conclusions.

S. 2899 also clearly establishes that the United States recognizes that the "Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands." There is an admission of a special trust relationship that will arise out of the Native Hawaiians status as "aboriginal, indigenous, native people of the United States."

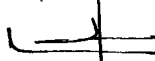
The mechanism by which the Native Hawaiian governing body is created should properly be discussed with the Native Hawaiians. I support what is presently in the Bill with the caveat that it is truly an issue for the Native Hawaiians to discuss with this Committee.

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As an elected official in the State Legislature, I appreciate the reference found in Section 9 to the reaffirmation of the delegation of federal authority to the State under the Admissions Act. However, I believe this still leaves the issue of the definition of the beneficiary class to be addressed in future legislation. Subsection (b) empowers the State of Hawaii to negotiate with the United States and the Native Hawaiian governing body regarding the "transfer of lands, resources, and assets dedicated to Native Hawaiian use under existing law as in effect on the date of enactment of this Act to the Native Hawaiian governing body." As a member of the State Legislature, I believe this directs us as to what is to become of the lands, resources and assets entrusted to the State by the United States for the benefit of the Native Hawaiians.

In summary, this Bill is the necessary for the health, welfare and benefit of the Native Hawaiians and the first steps in their journey for self-determination.

Sincerely,

A handwritten signature in black ink, appearing to read 'COLLEEN HANABUSA', with a vertical line extending upwards from the end of the signature.

COLLEEN HANABUSA
Senator, 21st District
Chair, Senate Committee on Water Land and
Hawaiian Affairs

**Testimony of
Raynard C. Soon, Chairman, Hawaiian Homes Commission
On S. 2899 and H.R. 4904**

**Bills To Express the Policy of the United States Regarding the United States'
Relationship with Native Hawaiians, and for Other Purposes**

August 23, 2000

I. INTRODUCTION

The Honorable Daniel K. Akaka and Daniel K. Inouye, United States Senators,
The Honorable Neil Abercrombie and Patsy T. Mink, United States Representatives:

Aloha Kakou!

I am Raynard Soon, Chairman of the Hawaiian Homes Commission. On behalf of the Hawaiian Homes Commission and the Department of Hawaiian Home Lands, I am pleased to present written testimony to the U. S. Senate Committee on Indian Affairs and the U. S. House Committee on Resources in support of S. 2899 and H.R. 4904, bills to express the policy of the United States regarding the United States' relationship with Native Hawaiians, and other purposes.

The Hawaiian Homes Commission is the specific entity obligated to implement the fiduciary duty under the Hawaiian Homes Commission Act, 1920, as amended, on behalf of eligible native Hawaiians. It is a responsibility that has been upheld by the Courts, and a duty the Commission takes very seriously. In *Ahuna v. Department of Hawaiian Home Lands*, the Hawaii Supreme Court held that the Hawaiian Homes Commission has a duty to administer the Hawaiian home lands' trust solely in the interest of its beneficiaries, that is the native Hawaiian population. This principal has guided the Hawaiian Homes Commission in its support of S. 2899 and H.R. 4904.

We support this bill for primarily two reasons:

1. The benefits we see accruing to the beneficiaries we serve outweigh any risks associated with this bill; and
2. We believe this bill formalizes a relationship that already exists between Native Hawaiians and the United States.

Time and time again, Congress has acknowledged this trust relationship to Native Hawaiians through the enactment of the Hawaiian Homes Commission Act, 1920, as amended, and dozens of other statutes relating to Native Hawaiians. This bill simply makes plain the United States recognition of this special relationship.

Those provisions of the bill that assist the Native Hawaiian community in establishing a governing body are just as important as the Federal Recognition provided for in the bill. These provisions present the Native Hawaiian community with an opportunity to achieve self-determination and control over its lands and resources at a quicker pace.

II. NATIVE HAWAIIANS WILL BENEFIT FROM FEDERAL RECOGNITION

Federal recognition under S. 2289 and H.R. 4904 would provide multiple benefits to the Native Hawaiian beneficiaries of the Hawaiian Home Lands Trust.

A. Representative Voice

By law, the nine members of the Hawaiian Homes Commission ("HHC") are currently appointed by the Governor of the State of Hawai'i, with approval by the State Senate. The Governor also appoints the Chairman of the Commission from among the nine members. All members must have been residents of the State for at least three years and four must be at least twenty-five percent Native Hawaiian.¹

During most of the Territorial period, at least three of five Hawaiian Homes Commissioners were required to be at least fifty percent Native Hawaiian.² In 1952, the total number of commissioners increased to seven, including representatives from each of the four counties (Kaua'i, Maui, Hawai'i, and the City and County of Honolulu).³ A majority of these commissioners were required to be at least twenty-five percent Native Hawaiian. In 1977 and 1989, respectively, the HHCA was amended to provide for representation from the island of Moloka'i and another commissioner from Hawai'i island.⁴ In recent years, beneficiaries of the Hawaiian homelands trust have expressed their desire to elect their own commissioners rather than have them appointed by the Governor.⁵

This bill would create a body elected by Native Hawaiians, providing them with a direct voice in the governance of resources that have been or may be set aside for their benefit.⁶

¹ HHCA § 202 provides that all "members shall have been residents of the State at least three years prior to their appointment and at least four of the members shall be descendants of not less than one-fourth part of the blood of the races inhabiting the Hawaiians Islands previous to 1778". *Id*

² HHCA, § 202, 42 Stat. 108 (1921).

³ See 66 Stat. 515 (1952).

⁴ See 1977 Sess. L. Haw., Act 174, § 1; 1986 Sess. L. Haw., Act 249, § 1; Joint Resolution to Consent to an Amendment Enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 99-557, 100 Stat. 3143 (1986) (consenting, *inter alia*, to these amendments).

⁵ SMS Research, *Beneficiary Needs Study* (1995).

⁶ Although Native Hawaiians previously elected trustees to the Office of Hawaiian Affairs, the United States Supreme Court's decision in *Rice v. Cayetano*, 120 S. Ct. 1044 (2000), has diluted what was formerly an exercise of

B. Trust Assets

This bill has the potential to expand and increase the value of Native Hawaiian trust assets by combining with other resources (*e.g.*, ceded lands & revenues generated thereupon) dedicated to the interests of its beneficiaries. The bill permits "transfer of lands, resources, and assets dedicated to Native Hawaiian use under existing law" to the Native Hawaiian governing body, but does not require such action. Accordingly, nothing in this bill adversely affects the interests of HHCA beneficiaries.

C. Self-Governance

The HHCA is part of the State Constitution, and therefore subject to State Legislation and Congressional consent. Arguably, changes could be made to the HHCA without any native Hawaiian participation in the decision (*e.g.*, if there are no native Hawaiians in the Legislature or Congress) other than providing testimony. This bill instead provides a process whereby trust beneficiaries can create a self-governing body for Native Hawaiians, which would then hold and manage their own assets.⁷

D. Options Maintained

This bill does not modify the HHCA trust document, native Hawaiian beneficiary definition, or trust assets. Rather, the bill provides a mechanism for Hawaiians to create a governing body and process. If Native Hawaiians decide to combine the HHCA into the Native Hawaiian governing body, this entity could nevertheless negotiate the establishment of a priority for "native Hawaiians" (*i.e.*, serve those who are at least fifty percent Native Hawaiian first, before lower blood quantum levels).

E. Membership Expanded

HHCA beneficiaries include native Hawaiians and their designated homestead lease successors, who may be one-quarter Hawaiian.⁸ This bill defines members to include native Hawaiians, their successors, and all other Hawaiians. This proposal is consistent with recent HHCA amendments, SCHAA resolutions,⁹ input received,¹⁰ and our culture. It is also consistent with the provisions of the Indian Reorganization Act, 25 U.S.C. § 479. In other words,

self-determination and self-governance, by requiring that non-Hawaiian voters be allowed to vote as well.

⁷ See, *e.g.*, S. 2899, sec. 7(e)(2)

⁸ HHC successorship expanded to one-quarter Hawaiian spouse, child, or grandchild. Joint Resolution to Consent to an Amendment Enacted by the Legislature of the State of Hawaii to the Hawaii Homes Commission Act, 1920, Pub. L. No. 99-557, 100 Stat. 3143 (1986).

⁹ 1987 SCHHA Resolution: by 2001, revise native Hawaiian to one-quarter Hawaiian.

¹⁰ SMS Research, *Beneficiary Needs Survey* (1995).

the lower blood quantum provided in this bill is consistent with both the desires of Native Hawaiian beneficiaries themselves and the intent of Congress (as reflected in numerous statutes enacted since 1974).¹¹

F. Protection of the Trust

In the wake of the United States Supreme Court's recent decision in *Rice v. Cayetano*, HHCA law, trust assets, and services are in jeopardy. Challenges to the constitutionality of Native Hawaiian "preferences" under the equal protection doctrine are already underway. A recent lawsuit filed in the United States District Court for the District of Hawai'i, *Arakaki, et al. v State of Hawai'i*,¹² is likely to be the first of potentially many challenges to programs benefitting Native Hawaiians.

Clarifying federal policy and establishing a governing body formally recognized by the United States will finally carry out the long-standing special relationship which the United States has with Native Hawaiians. It is not just a viable solution to the problems created by the *Rice* decision's failure to address the political status of Hawaiians, but the essential foundation of a "political relationship". Without greater Congressional clarity about the rights of Native Hawaiians to a formal self-governing entity, like those enjoyed by over 500 other indigenous groups in the United States, the very status of Native Hawaiians and the HHCA is at risk.

III. HISTORICAL STANDARDS FOR FEDERAL RECOGNITION OF NATIVE INDIGENOUS PEOPLE

A. Evolution of Federal Indian Policy

The United States' relationship and policies toward the native and indigenous peoples within the country's geographic boundaries changed dramatically over the past 225 years as experience and new perceptions evolved.¹³ The early treaty making era gave way to assimilationist pressures which in turn gave rise to the reorganization period, the tribal termination period, and, since 1970, the self determination period. As the perceived failures of

¹¹ See discussion *infra* section IV F

¹² Civ. No. 00-00514 HG (D. Haw. filed July 25, 2000). In *Arakaki*, the Plaintiffs have asserted that Native Hawaiians are "fully integrated with the people of the State of Hawai'i". Plaintiffs' Separate Concise Statement of Facts in Opposition to Defendants' Motion for Summary Judgment, at 2, *Arakaki v State*, Civ. No. 00-0514 HG (D. Haw. Aug. 9, 2000), at 2. In other words, opponents of programs benefitting Native Hawaiians are seeking to use the *Rice* decision in an apparent attempt to breathe life into the discredited assimilation policies of United States history. But see discussion *infra* at Section III.A.4 (commenting on the 1928 *Meriam Report*, which documented the failures of allotment and assimilation policies from 1871 through 1928), Brief of Amici Curiae State Council of Hawaiian Homestead Associations, Hui Kako'o 'Aina Ho'opulapula, Kalama'ula Homestead Association and Hawaiian Homes Commission in Support of Respondent at 21-29, *Rice v Cayetano*, 120 S. Ct. 1044 (2000) (No. 98-818) (documenting characteristics of the unique Hawaiian culture that continue to this day).

¹³ See Felix S. Cohen, *Handbook of Federal Indian Law* 47-207 (1982 Edition) ("Cohen 1982").

one era gave way to the reform policies of the next era, goals and standards changed too. Thus, it would be a mistake to presume that all recognized Indian tribes fit into a uniform standard. The tests for recognition changed over time, and not every "tribe" met all the criteria.

The evolution of tribal governments themselves is complex and historically specific.¹⁴ There were bands, confederations of hunting bands, extended family clans, tribes, pueblos (Pueblo Indians of New Mexico), civil councils (Cheyenne), theocracies (Hopi), nations based on written constitutions (Cherokee), a five-nation alliance (Iroquois), and even republics (Choctaw).¹⁵ Few conformed to western style governments with separate executive, legislative and judicial units. With common language, heritage, and lands, the problems of governance are different than those posed by a multi-cultural democracy. The idea that there is a single model to which all Indian life and Indian governing bodies conform is simply inaccurate. The power of a group to define itself, determine its own form of government, and define its membership is in fact the first characteristic of sovereignty.¹⁶ Hawaiians are like other indigenous people in this regard.

1. Pre-Revolutionary Era (1532-1789). During the Pre-Revolutionary era, the policies developed along lines established by colonists including the first exposition of the respective rights of the aboriginal inhabitants by Francisco de Victoria in 1532.¹⁷ Victoria, commissioned by the Emperor of Spain to advise on Spanish rights in the Western Hemisphere, set forth the important legal principle that Indian tribes must consent before Europeans could legally obtain land or political control over the tribes.¹⁸ Absent a just war, the governments of Indian tribes were to be honored and title to the Indians' lands by right of possession to be respected. Victoria's views were widely accepted from the 1500's through the 1700's and became the basis for federal court decisions interpreting American Indian law.¹⁹

2. Formative Years (1789-1871). During the Formative Years, Congress dealt with Indian tribes through both treaties (as with a foreign nation) and statutes. In recognition that many "treaties" were obtained by less than honorable means, the courts invoked special canons of construction to construe the treaties most favorably to the Indians and to disfavor subsequent abrogation absent an express and specific showing that the abrogation was intended. Repeatedly during the Nineteenth Century (1826, 1849, 1875, and 1884), the United

¹⁴ Vine Deloria, Jr. and Clifford M. Lytle, *American Indians, American Justice*, 80 - 110 (1983) ("Deloria")

¹⁵ Felix S. Cohen, *Handbook of Federal Indian Law* 126-133 (original 1942 Department of Interior Edition) ("Cohen 1942")

¹⁶ *Id.*, Deloria, *supra*, at n 2

¹⁷ See Felix S. Cohen, *The Spanish Origins of Indian Rights in the Law of the United States*, 31 Geo. L. J. 1 (1942).

¹⁸ *Id.*

¹⁹ See Cohen 1982, *supra*, at 47-57

States entered into formal treaties with the Nation of Hawaii.²⁰ However, in 1871, Congress, by statute, stopped making treaties with Indian tribes altogether.²¹ Thus, after 1871, and once Hawaii was a part of the United States, the earlier federal policy of recognizing "tribes" through treaties was no longer practiced and not available as a means of formal recognition. Other procedural means, statutory and judicial were employed.²²

3. **Allotment and Assimilation Period (1871 - 1928).** During the Allotment and Assimilation Period, Congress and the Executive Branch sought to exercise greater control over Indian affairs and over Indian lands by integrating Indians into western practices, including, in 1887, the allotment of land in fee simple private parcels that could be alienated on the market.²³ During this period, American Marines aided in the overthrow of the legitimate Hawaiian Government (1893), the United States "annexed" Hawaii (1898), and Congress passed an Organic Act establishing a Territorial government in Hawaii (1900). Twenty years later, faced with the rapid decline of the Hawaiian people due to diseases and the loss of their traditional lands, Congress adopted the Hawaiian Homes Commission Act of 1921 to provide a homesteading program analogous to that on Indian reservations.²⁴ Secretary of Interior Lane concluded both that Hawaiians suffered severe health problems and were dying like the "Indians in the United States", and that Hawaiians were, in the language of the time, like "wards" for which the United States was a guardian and that the United States must provide similar remedies.²⁵

During this transition, the efforts to convert Indians into farmers on the American model failed. Gradually, allotments were allowed to be leased as income producing properties to

²⁰ When Congress enacted the Joint Resolution (the "Apology Resolution") acknowledging the hundredth anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, Congress specifically referred to three Nineteenth Century treaties between the United States and the Kingdom on Hawaii: Act of Nov. 23, 1893, Pub. L. 103-150, 107 Stat. 1510. During this same period, nations throughout the world recognized and entered into treaties with the nation of Hawaii: *Ralph S. Kuykendall, the Hawaiian Kingdom Vol. I, II, and III.*

²¹ Act of March 3, 1871, ch. 120, § 1, 16 Stat. 544 (codified at 25 U.S.C. § 71) ("No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe or power with whom the United States may contract by treaty, but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.")

Thus, after 1871, the United States could *not* have entered into a treaty with the Hawaiian people or government *unless* they were a foreign nation. And, conversely, once Hawaii was annexed as a part of the United States in 1898, Congress could *not* have made a new treaty with a Hawaiian self-governing body because the 1871 Act prohibited any treaty with any "Indian nation or tribe within the territory of the United States".

²² *Cohen 1982, supra*, at 128.

²³ *The General Allotment (Dawes) Act*, Chap. 119, 24 Stat. 388 (codified at 25 U.S.C. §§ 331-334, 339, 341, 342, 348, 349, 254, 381).

²⁴ 42 Stat. 108 (1921).

²⁵ H.R. Rep. No. 839, 66th Cong., 2d Sess. 5 (Statement of Secretary of Interior Lane).

non-Indians for farming and mining purposes. In 1919, Congress curtailed Executive Branch authority further by ending the practice of establishing reservations by executive order which had begun in 1855.²⁶ In seeking to assimilate Indians into mainstream American life, sometimes coercive efforts were made to *end* tribal heritage as separate political and cultural units.²⁷ The Citizenship Act of 1924 made all Indians citizens who were born within the territorial limits of the United States,²⁸ although citizenship did not alter the individual Indian's status as a ward or tribal member.²⁹ Education was to be the great "civilizing" influence and boarding schools were established. The plight of the Indian peoples grew worse.

4. **Indian Reorganization Period (1928 - 1942).** During the Indian Reorganization Period, the failures of the assimilationist policies were documented in the 1928 *Meriam Report*.³⁰ In 1933, John Collier, Commissioner of Indian Affairs under President Roosevelt, proposed policies to reverse the prior practices. These reforms became part of the Indian Reorganization Act of 1934 ("IRA") which sought to provide Indian tribes with a measure of self-determination, economic development, cultural autonomy, and revived tribal life.³¹ Through the IRA, tribes, could act as governmental units, organize as modern business corporations, adopt a constitution, and interact with the outside society.³² As enacted in 1934, the IRA did *not* apply to Territories.³³ The IRA was amended in 1936 to include Alaska and Oklahoma, but *the Act was never extended to Hawaii — even until today*.³⁴ Thus, the very procedures and mechanism established by Congress to address the recognition of indigenous peoples within the United States, did not apply to Hawaii. Eventually, the same assimilationist forces criticized the IRA as separatist and business interests criticized the IRA in order to acquire the use of Indian lands and natural resources.

²⁶ 41 Stat. 3, 34 (1919) (now codified at 43 U.S.C. § 150) Modification of existing reservation boundaries by executive order was prohibited in 1927 44 Stat. 1347 (now codified in 25 U.S.C. § 398d)

²⁷ Vine Deloria, Jr. and Clifford M. Lytle, *American Indians, American Justice*, 8-12 (1983); Cohen, *supra*, at 139-143.

²⁸ Ch. 233, 43 Stat. 253 (codified at 8 U.S.C. § 1401(b))

²⁹ *United States v. Nice*, 241 U.S. 591 (1916).

³⁰ *Institute for Government Research, the Problem of Indian Administration* (L. Meriam ed.) (Baltimore, Johns Hopkins Press, 1928) in Cohen, 1982, *supra*. 144-147.

³¹ Ch. 576, 48 Stat. 984 (codified as 25 U.S.C. 461, 462, 463, 464, 465, 466-470, 471-473, 474, 475, 476-478, 479).

³² See 25 U.S.C. § 476.

³³ 25 U.S.C. § 473.

³⁴ 25 U.S.C. §§ 473a, 501-509.

5. **Termination Period (1943-61).** During the Termination Period, Congress sought to terminate federal trust responsibilities over Indians, end some tribes independent status, and return to the assimilationist policies of the past where Indian lands could be leased or sold and federal services reduced. Public Law No. 280 (1953) transferred civil and criminal jurisdiction over Indian lands from federal to state courts for many subjects even without the tribes' consent.³⁵ The United States tried to end its trust responsibilities to native peoples, ironically at the very time when Hawaii was admitted as a state into the Union subject to "special trust" responsibilities (deriving from annexation) for both the Hawaiian Homestead lands and the public lands.³⁶

6. **Self Determination Period (1961-present).** Finally, during the Self Determination Period, the policy of rapid and forced termination ceased. Indian reorganization was revived. The transfer of Indian lands to non-Indians was curtailed. On July 8, 1970 President Nixon formally announced the federal policy of self determination which had been gaining momentum since the early 1960's.³⁷ The Menominee Restoration Act in 1973 repealed earlier legislation terminating the tribe and reinstated all rights of the tribe or its members under prior treaty, statute "or otherwise". Some Indian lands have been restored.³⁸ Congress adopted the Alaska Native Claims Settlement Act.³⁹ Many federal agencies other than the Bureau of Indian Affairs ("BIA") began to administer health, education, culture, labor, economic development, and other services to Indian tribes.⁴⁰

This history is important because even as the federal role towards indigenous people or Indians changed from decade to decade, Hawaii and Hawaiians developed along their own parallel lines derived from their experience as an independent Pacific island Nation. However, once the United States aided in the overthrow of the Hawaiian government, annexed the islands and made them a Territory, the Hawaiian people found themselves forced into new roles but deprived of remedies like the IRA to protect their status as native people.

³⁵ Act of August 15, 1953, ch. 505, 67 Stat. 588 (codified at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360).

³⁶ Hawaii Admission Act, 73 Stat. 4 (1959).

³⁷ See *Cohen 1982, supra*, at 180-204.

³⁸ See *Cohen 1982, supra*, at 196-200.

³⁹ Pub. L. No. 92-203, 85 Stat. 688 (codified at 43 U.S.C. §§ 1601-1628).

⁴⁰ See *Cohen 1982, supra*, at 188-196.

B. Federal Recognition of Native Hawaiian

Congress's power to enact legislation regarding Indians derives principally from the Indian Commerce Clause,⁴¹ but also from the Treaty Clause,⁴² the Property Clause,⁴³ the Supremacy clause,⁴⁴ the Necessary and Proper Clause,⁴⁵ and the authority of Congress to admit new states and prescribe the terms of admission.⁴⁶ This Constitutional authority is not limited by the particular manner in which native people organize themselves, nor is it restricted by their ethnological origin.⁴⁷

Congress's recognition of the diverse native people in Alaska, many of whom are not anthropologically "Indians," is perhaps the best example.⁴⁸ The Aleuts and the Eskimos live mostly in "native villages", rather than "reservations." No treaties were negotiated with them. Appropriations were sparse. Yet they have long been regarded as having the same legal status as Indians, namely the "guardianship - ward" relationship — in the now archaic language of the past. The Alaska's Statehood Act⁴⁹ acknowledged and, in 1971, the Alaska Native Claims Settlement Act⁵⁰ finally addressed native claims.

Historically, "federal recognition" depends in the first instance upon the determination that a "tribe" exists. But the term "tribe" has no universal legal definition.⁵¹ Prior to 1871, federal recognition of an "Indian tribe" was fairly straight forward because it was the practice of the United States to enter into treaties with Indian groups of whatever size. After 1871 and in the absence of a treaty, one could examine federal statutes, executive orders, or the

⁴¹ U.S. Const. art. I, § 8, cl. 3. Congress is authorized to "regulate Commerce with foreign Nations, and among the several states, and with Indian Tribes".

⁴² U.S. Const. art. II, § 2, cl. 2

⁴³ U.S. Const. art. IV, § 3, cl. 2. Congress has the power to dispose of and regulate "the Territory or other Property belonging to the United States".

⁴⁴ U.S. Const. art. VI, cl. 2.

⁴⁵ U.S. Const. art. I, § 8, cl. 18.

⁴⁶ U.S. Const. art. IV, § 3, cl. 1.

⁴⁷ *United States v. Kagama*, 118 U.S. 375 (1886), *Delaware Tribal Bus. Comm. v. Weeks*, 430 U.S. 73 (1973); *Pence v. Kleppe*, 529 F.2d 135, 138-39 n. 5 (9th Cir. 1976).

⁴⁸ See *Cohen 1982, supra*, at 739-770.

⁴⁹ Act of July 7, 1958, Pub. L. 85-508. § 4, 72 Stat. 339.

⁵⁰ Pub. L. 92-203, 85 Stat. 688 (now codified at 43 U.S.C. §§ 1601-1628).

⁵¹ See *Cohen 1982, supra*, at 3-19.

agreement in question. Moreover, when Congress or the Executive found that a "tribe" exists, the determination was given great deference by the Court.⁵²

With the adoption of the 1934 IRA, there was also the alternative means of filing a petition for recognized status under section 16 of the Act.⁵³ But because the United States stopped making treaties with Indians after 1871 and the IRA never applied to Hawaii, there has never been a specific mechanism to formalize the recognition — even though Congress has enacted more than 160 Federal laws addressing, benefitting, providing revenues to, though in every case "recognizing," native Hawaiians. By any conventional standard short of "arbitrariness",⁵⁴ native Hawaiians (a) are a group, indeed a former nation state with international treaty recognition (something few Indian tribes ever achieved), whose ancestors (beginning circa. 100-400 A.D.) lived in what is now the United States before "discovery" by Europeans (e.g. the British Captain Cook in 1778) ; and (b) the group is a "people distinct from others"⁵⁵ (e.g. 1300 years of relative isolated existence on the most geographically remote land on the earth following three Polynesian voyages of discovery from the Marquesas (100-400 A.D.) and later Tahiti after which Hawaiians developed their own society, culture, traditions, and land tenure system⁵⁶).

The Department of Interior has identified considerations, both singly or jointly, which have been relied upon in determining whether a group constitutes a tribe. The comparison with the native Hawaiian experience is instructive.

1. Treaty Relations with the United States or the Equivalent Congressional or Executive Action

As discussed earlier, the United States entered into Treaties with the Hawaiian Nation during the Nineteenth Century and Hawaii entered into multiple international treaties with other foreign nations during the same period. Ironically, issues surrounding the Reciprocity Treaty with the United States were in large part responsible for the events that led to the overthrow of the Hawaiian government in 1893. But after 1871, the United States stopped making treaties with Indian tribes so the possibility of later treaties with native Hawaiians post-annexation were simply not possible. Nonetheless, Congressional adoption of major legislation establishing the very foundation of government in Hawaii are actions equivalent in the domestic realm to any treaty or the IRA: (a) the Joint Resolution of Annexation (1898)

⁵² *United States v. Holliday*, 70 U.S. 407 (1866); *United States v. John*, 437 U.S. 634, 650 (1978) (Congress's authority over Choctaw retained even though only a remnant of earlier group remained); see *Cohen 1982, supra*, at 5, n.13.

⁵³ 25 U.S.C. § 476, 479; see *Cohen 1982, supra*, at 13-16.

⁵⁴ See *United States v. Sandoval*, 231 U.S. 28, 46 (1913); *Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, 83-84 (1977).

⁵⁵ *The Kansas Indians*, 72 U.S. 737, 755 (1867).

⁵⁶ Ben Finney, *Voyages of Rediscovery: A Cultural Odyssey Through Polynesia* (1995).

recognizing a "special trust" over Hawaii's public lands; (b) the Organic Act (1900) (§§ 73 (q) and 91) continuing that trust duty over Hawaii's public lands; and (c) the Hawaiian Homes Commission Act (1921) establishing "homelands" from the then existing public lands; and (d) Hawaii's Admission Act (1959) (§§ 4 and 5(f)) continuing and transferring in part the trust duties over both Hawaiian Home Lands and Hawaii's returned public lands (as further amended by the Revised Conveyances Procedure Act, Pub. L. 88-233). Like Alaska, the earlier Acts (1898 and 1900) preserve native land claims while the later Acts (1921, 1959, 1963) specifically address native Hawaiian issues.

2. Native Hawaiians Have Continuing Collective Rights in Native Lands

The Joint Resolution of Annexation recognized and preserved the residual duty to use the public lands and the revenues from those lands for the inhabitants of Hawaii. This duty carried forward in the Organic Act, §§ 73(q) and 91. The Hawaiian Homes Commission Act itself was adopted in part to rectify the failed distribution to the Hawaiian people of public lands retained at the Mahele in 1848.⁵⁷ More than 203,500 acres of retained "public lands" were set aside for homesteading. These homesteads were intact communities equivalent to villages with their own associations which continue today. These obligations were made explicit as to all the returned ceded public lands upon Hawaii's admission as a State in the Union in the Hawaii Admission Act, § 5(f). Moreover, given the preexisting custom and common law of Hawaii,⁵⁸ the land and water rights of the Hawaiian people had become and were the governing laws through out the islands and were left undisturbed in the Joint Resolution of Annexation. Thus, the practices of the native Hawaiians continue and are recognized in the land tenure system today.

3. Native Hawaiians Have Continued to Practice Their Culture and Govern Themselves Through the Hawaiian Homes Commission, Associations, Councils, and 'Ohana Even When Western Forums Have Been Unavailable

Faced with the overthrow of their internationally recognized and constitutionally established government in 1893 and the devastating loss of population and lands, native Hawaiians required time to recover and reorganize. Relying upon the traditional extended 'ohana or families, Hawaiians continued their customary practices in the rural areas. Native Hawaiian cultural organizations continued to provide social solidarity and preserve collective identity.

Despite all of the burdens imposed upon them over the past two centuries, Hawaiians continue to practice the unique traditions of their ancestors.⁵⁹ Native Hawaiians

⁵⁷ See discussion *infra*

⁵⁸ Haw. Rev. Stat. § 1-1.

⁵⁹ See generally Jay Hartwell, *Na Mamo Hawaiian People Today* (1996) (profiles of contemporary individuals who practice Hawaiians traditions and customs, including farming, music, *hula*, Hawaiian language, canoeing,

continued to develop forms of self governance within the historical constraints imposed on them, even though the United States: (a) terminated treaty making powers with Indian tribes after 1871, (b) excluded Hawaii from the IRA reorganization processes since 1934; and (c) carried out policies of Assimilation and later Tribal Termination in the early and mid -Twentieth Century.

Hawaiians governed themselves and their natural resources through a variety of means:

Hawaiian Homes Commission. The Hawaiian Homes Commission Act removed the HHCA lands from the public lands and vested control in the HHC. Neither the Governor nor the Territorial and later State Lands Department had any jurisdiction over the HHCA lands. A majority of the HHC Commissioners have been native Hawaiian.

Hawaiian Homestead Associations There are 29 homestead communities on 6 islands throughout the State. The State Council of Hawaiian Homestead Associations represents 22 Hawaiian Homestead Associations which in turn represent beneficiaries who in turn hold over 6,800 leases

Civic Association – Prior to Annexation, Native Hawaiians were active participants in the political life of the Islands. Political associations were organized to protest against the Bayonet Constitution of 1887 and subsequent annexation efforts.⁶⁰ Hawaiian Civic Clubs were established at the turn of century to campaign against the destitute and unsanitary living conditions of Hawaiians in the city of Honolulu and its outskirts.⁶¹ These associations still exist, and count among their membership many of Hawai'i's most distinguished native leaders. In addition, Hawaiians living on Hawaiian Home Lands have, from the program's beginning in 1921, established homestead associations. The oldest of these associations is the Kalama'ula Homestead Association.

Aloha 'Aina (Love of the Land) – Native Hawaiians honored their bond with the land (*aloha 'aina*) by instituting one of the most sophisticated environmental regulatory systems on earth, the *kapu* system. For Hawaiians, the life of the land depended on the righteousness of the people.⁶² This concept motivated three decades of effort by Hawaiian leaders to regain

surfing, *kapa* (bark cloth) making, *la'au lapa'au* (Hawaiian healing), *pono* (justice), and religion). Excerpts of the book are available at <http://www.lava.net/namamo>

⁶⁰ *Hui Kalai'aina*, a Hawaiian political organization, lobbied for the replacement of the 1887 Bayonet Constitution, and led mass, peaceful protests that stalled negotiations for a new Treaty of Reciprocity, *Kuykendall, supra*, vol. III, at 448, Noenoe K. Silva, *Kanaka Maoli Resistance to Annexation*, 1 'Oiwai: A Native Hawaiian Journal 45 (1998)

⁶¹ Davianna Pomaika'i McGregor, *'Aina Ho'opulapula: Hawaiian Homesteading*, 24 The Hawaiian Journal of History 1, 4-5 (1990).

⁶² The State's motto reflects this concept: "Ua mau ke ea o ka 'aina i ka pono." (The life of the land is perpetuated in righteousness.) Haw Const. Art XV, § 5 (1978)

Kaho'olawe, an island with deep spiritual significance. Once a military bombing practice target, Kaho'olawe is now listed in the National Historic Register, and is the subject of a massive federal clean-up project.⁶³

Subsistence – Ancient Hawaiians supplemented the produce of their farms and fishponds by fishing, hunting and gathering plants. These subsistence activities became increasingly more difficult to pursue as changing land ownership patterns barred access to natural resources. Nonetheless, in predominantly Hawaiian rural areas such as Hana, Puna, and the island of Moloka'i, native Hawaiians continue to feed their families as their ancestors did before them.⁶⁴ Hawai'i law has always guaranteed subsistence gathering rights to the people so they may practice native customs and traditions⁶⁵

Kalo (Taro Cultivation) – In Hawaiian legend, the staple crop of *kalo* (taro) was revered as the older brother of the Hawaiian people.⁶⁶ Taro cultivation was not only a means of sustenance, but also a sacred duty of care to an older sibling.

As land tenure changed, however, the ancient, stream-irrigated taro paddies (*lo'i*) were lost to newer crops, encroaching development, and the diversion of rivers and streams.⁶⁷ In

⁶³ *Kaho'olawe Island Restoring a Cultural Treasure Final Report of the Kaho'olawe Island Conveyance Commission to the Congress of the United States* 2 (March 31, 1993) ("This report calls upon the United States government to return to the people of Hawai'i an important part of their history and culture, the island of Kaho'olawe. The island is a special place, a sanctuary, with a unique history and culture contained in its land, surrounding waters, ancient burial places, fishing shrines, and religious monuments") Title X of the Fiscal Year 1994 Department of Defense Appropriations Act, Pub. L. No. 103-139, 107 Stat. 1418 (1994) was enacted on November 11, 1993. Section 10001(a) of Title X states that the island of Kaho'olawe is among Hawai'i's historic lands and has a long, documented history of cultural and natural significance to the people of Hawai'i. It authorized \$400,000,000 to be spent for the clean-up of military ordnance from portions of the island. *Id.* See Haw. Rev. Stat. Chap. 6K (1993). The state Kaho'olawe Island Reserve Commission holds the resources and waters of the island of Kaho'olawe in trust until such time as the State of Hawai'i and the federal government recognize a sovereign Hawaiian entity. *Id.* at § 6K-9.

⁶⁴ See Davianna McGregor, et al., *Contemporary Subsistence Fishing Practices Around Kaho'olawe Study Conducted for the NOAA National Marine Sanctuaries Program* (May 1997). See also Jon K. Matsuoka, et al., *Governor's Moloka'i Subsistence Task Force Report* (1993), Andrew Lind, *An Island Community Ecological Succession in Hawai'i* 102-03 (1968 ed.). (observing, in 1938, that traditional and customary practices survived in rural "havens where the economy of life to which they are best adapted can survive") Hawaiian homestead tracts provide such rural havens.

⁶⁵ Haw. Const. Art. XII, § 7 (1978) Hawaiian usage supersedes other sources of common law in Hawai'i. Haw. Rev. Stat. § 1-1 (1993); *Branca v. Makua Kane*, 13 Haw. 499, 505 (1901) ("The common law was not formally adopted until 1893 and then subject to precedents and Hawaiian national usage"). See also Haw. Rev. Stat. § 7-1 (1993); *Kalipi v. Hawaiian Trust Co.*, 656 P.2d 745 (Haw. 1982).

⁶⁶ Lilikalā Kame'elehewa, *Native Land and Foreign Desires: Pehea Lā E Pono Ai?* 23-33 (1992), 6 A. Fornander, *Collection of Hawaiian Antiquities and Folklore* 360 (1920); David Malo, *Hawaiian Antiquities* 244 (1951).

⁶⁷ See, e.g., *Reppun v. Board of Water Supply*, 656 P.2d 57 (Haw. 1982) (in this case, taro growers prevailed against water diversions that would have adversely affected their crops), *cert. denied*, 471 U.S. 1040 (1985).

recent years, Hawaiians reclaimed and restored ancient taro fields, and formed a statewide association of native planters, '*Onipa'a Na Hui Kalo*.

'*Ohana* (Extended Family) – In the earliest era of Hawaiian settlement, governance was a function of the family.⁶⁸ For Hawaiians, family included blood relatives, beloved friends (*hoaloha*) and informally adopted children (*hanai*).⁶⁹ Family genealogies were sacred, and passed down in the form of oral chants only to specially chosen children – when those children were barred from learning their language, many of these ancient genealogies were lost. Nevertheless, family traditions of respect for elders, mutual support for kin and the adoption of related children have continued over the past two centuries:

The '*ohana* beliefs, customs, and practices predated the *ali'i*; co-existed under the rule of the *ali'i*; and have continued to be practiced, honored and transmitted to the present. The '*ohana* continued to honor their '*aumakua* (ancestral deities). Traditional *kahuna la'au lapa'au* (herbal healers) continued their healing practices using native Hawaiian plants and spiritual healing arts. Family burial caves and lava tubes continued to be cared for. The hula and chants continued to be taught, in distinctly private ways, through '*ohana* lines.⁷⁰

Today, there is an extensive and growing network of reclaimed family genealogies, one of which is formally maintained by OHA (Operation '*Ohana*). Huge Hawaiian family reunions are routinely held throughout the islands, in every week of the year. In honor of a cultural tradition that reveres the taro root as the older brother of the Hawaiian race, these modern activities are called "*ho'i kou i ka mole*," or "return to the tap-root".

'*Iwi* (Bones) – In Hawaiian culture, the bones of the deceased carried the *mana* (spiritual power) of the decedent. These bones were treated with great reverence, and fearful consequences were sure to befall any who desecrated them. The protection of the bones of their ancestors remains a solemn responsibility for modern day Hawaiians. The State of Hawai'i has recognized the importance of protecting Hawaiian burial sites, and established a Hawaiian Burial Council to ensure the '*iwi* of Hawaiian ancestors are treated with proper respect.⁷¹

⁶⁸ See generally E.S. Craighill Handy and Mary Kawena Pukui, *The Polynesian Family System in Ka'u* (1952); 1 Mary Kawena Pukui, E.W. Haertig & Catherine A. Lee, *Nana I Ke Kumu* 49-50 (6th pag. 1983) (explaining Hawaiian concepts of adoption and fostering)

⁶⁹ '*Ohana* is a concept that has long been recognized by Hawai'i courts. See, e.g., *Leong v Takasaki*, 520 P.2d 758, 766 (Haw. 1976); *Estate of Emanuel S Cunha*, 414 P.2d 925, 928-129 (Haw 1966); *Estate of Farrington*, 42 Haw. 640, 650-651 (1958); *O'Brien v. Walker*, 35 Haw. 104, 117-36 (1939), *aff'd*, 115 F.2d 956 (9th Cir. 1940), *cert denied*, 312 U.S. 707 (1941); *Estate of Kamaooha*, 26 Haw. 439, 448 (1922); *In re Estate of Nakuapa*, 3 Haw. 342, 342-43 (1872).

⁷⁰ McGregor, *supra*, at 9.

⁷¹ Haw. Rev. Stat. § 6E-43.5 (1993). This provision requires consultation with appropriate Hawaiian organizations, like *Hui Malama I Na Kupuna O Hawai'i Nei*. See <http://www.pixi.com/~huimalam>.

Wahi Kapu (Sacred Places) – Ancient Hawaiians also recognized certain places as sacred, and took extraordinary measures to prevent their desecration. A modern day example of this concept is found at *Mauna 'Ala* on the island of O'ahu, where the remains of Hawai'i's *ali'i* (monarchs) are interred. This royal mausoleum is cared for by a *kahu*(guardian), who is the lineal descendant of the family charged since antiquity with protecting the bones of this line of chiefs.

'Olelo Hawai'i (Hawaiian Language) – "*I ka 'olelo no ke ola, i ka 'olelo no ka make*. With language rests life, with language rests death".⁷² The Hawaiian language was banned from the schools in 1896.⁷³

During the Republic and Territory, Hawaiian was strictly forbidden anywhere within schoolyards or buildings, and physical punishment for using it could be harsh. Teachers who were native speakers of Hawaiian (many were in the first three decades of the Territory) were threatened with dismissal for using Hawaiian in school. Some were even a bit leery of using *Hawaiian place names* in class. Teachers were sent to Hawaiian-speaking homes to reprimand parents for speaking Hawaiian to their children.⁷⁴ The language was kept alive in rural Hawaiian families and in the *mele* and *oli* (songs and chants) of native speakers.⁷⁵ In 1978, the Hawai'i State Constitution was finally amended to make Hawaiian one of the two official languages of the state.⁷⁶ In the two decades since, Hawaiian language has become a required offering in the state Department of Education curriculum, and private non-profit Hawaiian language schools

⁷² Ka'u: University of Hawai'i Hawaiian Studies Task Force Report, 23 (Dec 1986). These anti-Hawaiian language efforts, were falsely cast in terms of assimilation and societal unity. Nevertheless, the core issues of sovereignty and self-determination remained – for, "to destroy the language of a group is to destroy its culture." Adeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 66 Notre Dame L. Rev. 1219, 1270 (1991)

⁷³ 1 Revised Laws of Hawai'i § 2, at 156 (1905). As a direct result of this law, the number of schools conducted in Hawaiian dropped from 150 in 1880 to zero in 1902. Albert J. Schütz, *The Voices of Eden: A History of Hawaiian Language Studies* 352 (1994) [hereinafter *Schutz*]. Hawaiian language newspapers, which were the primary medium for communication in Hawai'i at that time, declined from a total of twelve (nine secular and three religious) in 1910 to one religious newspaper in 1948. *Id.* at 362-63.

⁷⁴ Larry K. Kimura and William Wilson, 1 *Native Hawaiians Study Commission Minority Report*, 196 (U.S. Dept. of Interior 1983). See also Davianna McGregor-Alegado, *Hawaiians: Organizing in the 1970s* 7 *Amerasia Journal* 29, 33 (1980) ("Through a systematic process of assimilation in the schools, especially restricting the use of the native language, Hawaiians were taught to be ashamed of their cultural heritage and feel inferior to the *haole* American elite in Hawai'i.")

⁷⁵ "[T]he renewal of interest in the Hawaiian language and culture in the 1970s did not relight an extinguished flame, but fanned and fed the embers()" *Schutz, supra*, at 361

⁷⁶ Haw. Const. Art. XV, sec. 4 (1978). See also Haw. Const. Art. X, sec. 4 (1978) (requiring the State to "promote the study of Hawaiian culture, history and language . . . [through] a Hawaiian education program . . . in the public schools.") Restrictions on the use of Hawaiian language in public schools were not actually lifted until 1986. See Haw. Rev. Stat. § 298-2(b) (1993).

have been established in all major islands, with the assistance of federal funds.⁷⁷ In 1997-1998, 1,351 students were enrolled in fourteen Hawaiian language immersion programs throughout the State, from pre-school through high school.⁷⁸ Hawaiian remains the first language of the native community located on the isolated island of Ni'ihau, which was spared the effects of the 1896 ban.⁷⁹

Ho'oponopono (Conflict Resolution)⁸⁰ – This ancient Hawaiian tradition of problem solving resembles the Western practice of mediation, but with the addition of a deeply spiritual component. It was and is traditionally practiced within families, and used to resolve disputes, cure illnesses, and reestablish connections between family members and their *akua* (gods). Today, trained practitioners are formally teaching the *ho'oponopono* methods, and there has been a resurgence of its use. The state courts have implemented a formal *ho'oponopono* program that is designed to help families to resolve their problems outside the courtroom. *La'au Lapa'au* (Hawaiian Healing) – Quietly practiced over the past two centuries following European contact, Hawaiian medicine has always been an important alternative to Western medical care. Today, it is credible form of treatment for many.⁸¹ Practitioners use Hawaiian medicinal plants (*la'au*), massage (*lomilomi*), and spiritual counseling to heal. Hawaiian health centers, established with federal financial support⁸² now incorporate traditional Hawaiian healing methods into their regiments of care.

Halau Hula (Hula Academies) – Once banned by missionaries as sacrilege, the ancient art of *hula*⁸³ accompanied by chanting in the native tongue, flourishes today. *Halau* exist

⁷⁷ Native Hawaiian Education Act, Pub. L. No. 103-382, § 101, 108 Stat. 3518 (Oct. 20, 1994).

⁷⁸ Office of Hawaiian Affairs, *Native Hawaiian Data Book* 244-45 (1998) (Table/Figure 4.22). Projected enrollment for the 2005-2006 school year is 3,397. *Id.* Dramatic increases in the enrollment of Hawaiians at the University of Hawai'i took place shortly after adoption of the 1978 Constitutional Amendments and again after statutory restrictions were lifted in 1986 on use of the Hawaiian language in schools. *Id.* at 216-17 (Table/Figure 4.7). According to the 1990 Census, Hawaiian is spoken in 8,872 households. *Id.* at 240-41 (Table/Figure 4.20).

⁷⁹ Karen Silva, *Hawaiian Chant: Dynamic Cultural Link or Atrophied Relic?*, 98 *Journal of the Polynesian Society* 85, 86-87 (1989), cited in Schutz, *supra*, at 357.

⁸⁰ See generally Victoria Shook, *Ho'oponopono, Contemporary Uses of a Hawaiian Problem-Solving Process* (1985).

⁸¹ Isabella Aiona Abbott, *La'au Hawai'i: Traditional Uses of Hawaiian Plants* 135 (1992); Nanette L. Kapulani Mossman Judd, *La'au Lapa'au: herbal healing among contemporary Hawaiian healers*, 5 *Pacific Health Dialog Journal of Community Mental Health and Clinical Medicine for the Pacific: The Health of Native Hawaiians* 239-45 (1998).

⁸² These traditional methods of healing are recognized and financed through appropriations under the Native Hawaiian Healthcare Act of 1988, Pub. L. No. 100-579, 102 Stat. 2916 (now codified at 42 U.S.C. §§ 11701, et seq.).

⁸³ "[A] few chanters, dancers, and teachers among the *po'e hula* [hula people] kept alive the more traditional forms, and with the flowering of the "Hawaiian Renaissance" in the 1970's their knowledge and dedication became

throughout the islands, and hula and chants are now regularly incorporated into public ceremonies.

Voyaging/Celestial Navigation – Ancient Hawaiians were skilled navigators, finding their way thousands of miles across the open Pacific using only the stars and the currents as guides. In the 1970's, a group of Hawaiians formed the Polynesian Voyaging Society. The Society researched Polynesian canoe-making and navigating traditions, and commissioned and construction of an historically authentic double-hulled voyaging canoe, the *Hokule'a* ("Star of Gladness"). A Native Hawaiian crew was trained to sail the canoe, and a Native Hawaiian navigator was chosen to learn the art of celestial navigation from one of its few remaining Polynesian practitioners. The canoe's first voyage to Tahiti in 1976 was tremendously successful. It confirmed the sophisticated navigational skills of ancient Polynesians and also instilled a sense of pride in Hawaiian culture.⁸⁴ Other canoes have been built, and more voyages made since (the *Hokule'a* is currently sailing to the tiny island of *Rapa Nui* – Easter Island).⁸⁵ The art of voyaging is alive and well in modern Hawai'i, a testament to the skill and courage of the ancient navigators who first settled these islands.

Hawaiians today live in a markedly different world from the one that shaped their ancient practices. Yet they maintain a culture passed down to them through two millennia and retain a form of self governance that is unique to these islands.

IV. FORMAL RECOGNITION BY CONGRESS OF NATIVE HAWAIIANS IS A NATURAL PROGRESSION ARISING OUT OF LONG-STANDING FEDERAL RECOGNITION DATING FROM THE NINETEENTH CENTURY

A. Native Hawaiians meet all the Elements Required for Federal Recognition

The relationship between the United States and its indigenous populations has historically been a tumultuous one. Nevertheless, the history and experience of the Native peoples of the United States is fundamentally unique that the United States acknowledges its special responsibility for the welfare of the Native peoples of the United States, including Native Hawaiians. *See generally*, Amicus Brief for the United States, *Rice v. Cayetano* (2000).

The diversity of the indigenous populations within this country makes it difficult to establish one standard or one criteria to define a Native people to which this special

a foundation for revitalizing older forms." Dorothy B. Barrère, Mary Kawena Pukui & Marion Kelly, *Hula Historical Perspectives* 1-2 (1980). *Hula* was recently designated the state dance. Act 83, Relating To Hula (June 22, 1999) (to be codified at Haw. Rev. Stat. Chapter 5).

⁸⁴ Ben Finney, *Voyage of Rediscovery: A Cultural Odyssey through Polynesia* (1995). In 1995, the *Hokule'a* and *Hawai'iloa* sailed to the Marquesas Islands. PBS recently broadcast an hour-long documentary of this voyage entitled *Wayfinders – A Pacific Odyssey*. See <http://pbs.org/wayfinders>.

⁸⁵ *Hokule'a* left Hawai'i on June 15, 1999 for *Rapa Nui*. See <http://www.leahi.kcc.hawaii.edu/org/pvs> for reports on the voyage's progress and educational programs and materials.

responsibility applies. Despite this difficulty, there exists certain core characteristics that taken together would describe a population as being an indigenous one subject to this special responsibility. The experience and characteristics of the Native Hawaiian population, although unique, is analogous to that of the American Indians and Alaska Natives. Congress has time and time again acknowledged this similarity by expressly including Native Hawaiians in legislation concerning Native American Indians and Native Alaskans.

In similar fashion, the United States, through Congressional actions, legislative history, and amicus brief arguments has acknowledged a trust responsibility to Native Hawaiians. While this bill seeks to provide Native Hawaiians with formal Federal Recognition, Federal Recognition is a by product, a formal acknowledgment of the relationship that currently exists between the United States' and the Native Hawaiian community. Logically, the relationship must exist before it can be formally recognized.

Core Characteristics – Native Hawaiians share a "cultural, historic and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands...". (ibid amicus brief p. 11).⁸⁶ The experience of those Native Hawaiians residing on Hawaiian home lands, in particular, emulate the characteristics that are seen in other Native populations.

Land Base – The HHCA sets aside 203,500 acres of land, more or less for the benefit of the native Hawaiian population. This is similar to other native American Indian groups that have substantial lands set aside for their benefit.

Distinct Communities – Within the 203,500 acres of land set aside for native Hawaiians, distinct native Hawaiian communities, analogous to villages, have developed. Within these communities, native Hawaiian cultural practices are promoted and conveyed from one generation to the next, strong attachment to the land is observed, (a Native Hawaiian cultural characteristic), and the language is nurtured. Hawaiian immersion programs and several Hawaiian organizations with roots to the Hawaiian Monarchy are located on Hawaiian home lands or are actively seeking partnerships with the DHHL to locate on Hawaiian home lands.

Membership – The HHCA defines as to who the beneficiaries of the Hawaiian home lands trust. However, in order to participate in the Hawaiian home lands program, an individual must apply and document his eligibility. Since 1972, DHHL has kept a waiting list of applicants interested in receiving a lease on Hawaiian home lands. Since a roll serves as a means of identifying members of a "Tribe" by name, arguably, the applicant waiting list serves as a kind of "roll" identifying members of a "Tribe" by name, arguably, the applicant waiting list as well as the list of lessees serves as a kind of "roll" identifying those members of the native Hawaiian community eligible to benefit from Hawaiian home lands. The definition that currently exists in the law is fairly restrictive and was imposed upon the Native Hawaiian population. As indicated

⁸⁶ Brief of the United States as Amicus Curiae Supporting Respondent, at 11, *Rice v. Cayetano*, 120 S. Ct. 1044 (2000).

earlier, the intention of the current beneficiary population is to expand this definition to allow for greater participation by Native Hawaiians.

B. This Bill Simply Formalizes a Relationship Between Native Hawaiians and the United States That Congress Has Long Acknowledged

Congress has enacted more than 150 statutes and other measures relating to Native Hawaiians during the past century. Beginning in 1910 and for every year through 1930, Congress authorized appropriations to the Smithsonian Institute for ethnological research relating to Native Hawaiians (and American Indians).⁸⁷ In 1921, Congress created a homestead program to provide for the rehabilitation of native Hawaiians under the Hawaiian Homes Commission Act (HHCA).⁸⁸

1. Congress acknowledged its responsibility to rehabilitate Native Hawaiians in enacting the HHCA

Congress enacted the HHCA: (1) to "rehabilitate" the dying Hawaiian people by returning them to the land, and (2) to redress an historically inequitable distribution of land that left the overwhelming majority of the Hawaiian population without title to the very land on which they lived. Senator John H. Wise, a member of the Legislative Commission of the Territory of Hawai'i, testified before the United States House of Representatives about the first purpose:

The idea in trying to get the lands back to some of the Hawaiians is to rehabilitate them. I believe that we should get them on lands and let them own their own homes ... The Hawaiian people are a farming people and fishermen, out of door people, and when they were frozen out of their lands and driven into the cities they had to live in the cheapest places, tenements. That is one of the reasons why the Hawaiian people are dying. Now, the only way to save them, I contend, is to take them back to the

⁸⁷ Act of June 21, 1910, Pub. L. No. 61-266, 36 Stat. 703, 718 (1910); Act of Mar. 4, 1911, Pub. L. No. 62-525, 36 Stat. 1363, 1395 (1911); Act of Aug. 24, 1912, Pub. L. No. 63-302, 37 Stat. 417, 436 (1912); Act of June 23, 1913, Pub. L. No. 63-3, 38 Stat. 4, 26 (1913); Act of Aug. 1, 1914, Pub. L. No. 63-161, 38 Stat. 609, 625 (1914); Act of Mar. 3, 1915, Pub. L. No. 63-263, 38 Stat. 822, 838 (1915); Act of July 1, 1916, Pub. L. No. 64-132, 39 Stat. 262, 279 (1916); Act of June 12, 1917, Pub. L. No. 65-21, 40 Stat. 105, 122 (1917); Act of July 1, 1918, Pub. L. No. 65-181, 40 Stat. 634, 651 (1918); Act of July 19, 1919, Pub. L. No. 66-21, 41 Stat. 163, 181 (1919); Act of June 5, 1920, Pub. L. No. 66-246, 41 Stat. 874, 891 (1920); Act of Mar. 4, 1921, Pub. L. No. 66-388, 41 Stat. 1367, 1383 (1921); Act of June 12, 1922, Pub. L. No. 67-240, 42 Stat. 635, 643 (1922); Act of Feb. 13, 1923, Pub. L. No. 67-409, 42 Stat. 1227, 1235 (1923); Act of June 7, 1924, Pub. L. No. 68-214, 43 Stat. 521, 528 (1924); Act of Mar. 3, 1925, Pub. L. No. 68-586, 43 Stat. 1198, 1206 (1925); Act of Apr. 22, 1926, Pub. L. No. 69-141, 44 Stat. 305, 315 (1926); Act of Feb. 11, 1927, Pub. L. No. 69-600, 44 Stat. 1069, 1079 (1927); Act of May 16, 1928, Pub. L. No. 70-400, 45 Stat. 573, 583 (1928); Act of Feb. 20, 1929, Pub. L. No. 70-778, 45 Stat. 1230, 1241 (1929); Act of Apr. 19, 1930, Pub. L. No. 71-158, 46 Stat. 229, 241 (1930).

⁸⁸ Act of July 9, 1921, Pub. L. No. 66-34, 42 Stat. 108 (1921).

lands and give them the mode of living that their ancestors were accustomed to and in that way rehabilitate them.⁸⁹

Secretary of the Interior Franklin D. Lane ("Secretary Lane") echoed Senator Wise's recommendation, calling Native Hawaiians are "our wards ... for whom in a sense we are trustees", and observing that they "are falling off rapidly in numbers" and "many of them are in poverty".⁹⁰

The House Committee on Territories reported that "the number of full-blooded Hawaiians in the Territory has decreased since the estimate of 1826 from 142,650 to 22,500", and that there would be none left in a few years.⁹¹ Prince Jonah Kuhio Kalaniana'ole ("Prince Kuhio"), the Territory's sole delegate to Congress, testified before the full U.S. House of Representatives: "The Hawaiian race is passing. And if conditions continue to exist as they do to-day, this splendid race of people, my people, will pass from the face of the earth".⁹² Secretary Lane specifically attributed the declining population to health problems like those faced by the "Indian in the United States" and concluded the Nation must provide similar remedies.⁹³ According to Lane, the HHCA was justified by the history of the Islands and the "moral obligation" of the United States to care for "people whose islands have come to us".⁹⁴

2. Congress has long recognized historic Hawaiian claims relating to the public lands

The House Committee on the Territories expressly recognized Hawaiian's historic claims to a one-third interest in the public lands:

The second great factor demanding passage of this bill lies in the ineffectiveness of all previous systems of land distribution, ... [H]aving been recognized as owners of a third interest in the lands of the kingdom, the common people, believing that in the future means were to be adopted to place them in full possession of these lands, assumed that the residue was being held in trust by the Crown for their benefit. However, the lands were never conveyed to the common people and, after a successful

⁸⁹ H R. REP. NO 209, 67TH CONG , 1ST SESS 3-4 (1921); *see also* H.R. REP. NO. 839, 66TH CONG , 2D SESS 4 (1920).

⁹⁰ H R. REP. NO 839, 66TH CONG , 2D SESS. 4 (1920) (statement of Secretary of Interior Lane)

⁹¹ *Id* at 2.

⁹² 59 CONG. REC. 7453 (1920) (statement of Prince Jonah Kuhio Kalaniana'ole).

⁹³ H R. REP. NO 839, 66TH CONG , 2D SESS 5 (1920) (statement of Secretary Lane)

⁹⁴ *Id* at 129-30

revolution, were arbitrarily seized, and by an article in the Hawaiian constitution became the public lands of the Republic of Hawaii.⁹⁵

Prince Kuhio reconfirmed that Hawaiians had an equitable interest in the unregistered lands, which reverted to the Crown before being taken by the Provisional Government and, subsequently, the Territorial Government:

My one desire is to point out how these lands, which we are now asking to be set aside for the rehabilitation of the Hawaiian race, in which a one-third interest of the common people had been recognized, but ignored in the division, and which had reverted to the Crown, presumably in trust for the people, were taken over by the Republic of Hawaii.... By annexation these lands became a part of the public lands of the United States, and by the provisions of the organic act are under the custody and control of the Territory of Hawaii.... We are not asking that what you are to do be in the nature of a largesse or as a grant, but as a matter of justice – belated justice.... It is a subject in comparison to which all others sink into insignificance, for our first and great duty is that of self-preservation....⁹⁶

Representative Charles F. Curry, Chairman of the Committee on the Territories for the House of Representatives ("Chairman Curry") agreed. He noted, "the Hawaiians were deprived of their lands without any say on their part, either under the kingdom, under the republic, or under the United States Government."⁹⁷ Chairman Curry added that "these crown lands never really vested in the Federal Government except in trust for the common people.... That they were placed in trust for the common people when in possession of the king, and just as we have provided land for the Indians, we may use these lands to provide for the Hawaiian lands".⁹⁸

⁹⁵ *Id.* at 5; see generally *id.* at 2-7.

⁹⁶ 59 CONG. REC. 7452-7453 (1920) (statement of Prince Kuhio). See also James Blount, Letter to W.Q. Gresham, U.S. Secretary of State, dated July 17, 1893, Report of the Commissioner to the Hawaiians Islands (Government Printing Office, 1893) ("The landless condition of the native population grows out of the original distribution and not from shiftlessness. To them homesteads should be offered rather than to strangers."); Prince J. K. Kalaniana'ole, *The Story of the Hawaiians*, The Mid-Pacific Magazine, Vol. XXI, No. 2, February 1921, at 126, col. 2.

⁹⁷ *Proposed Amendments To The Organic Act of the Territory of Hawaii Hearings before the Committee on the Territories for the House of Representatives*, 66th Cong., 2d Sess. 170 (1920) [hereinafter *1920 House Hearings*]. Contemporary observers were convinced that if there had been a popular vote, it would have been overwhelmingly against annexation. J. Res. 55, 55th Cong., 2d. Sess., 30 State. 750 (1898); 2 *Native Hawaiians Study Commission Report On The Culture, Needs and Concerns of Native Hawaiians Pursuant to Pub. L. No. 96-565, Title III* 168 n.9 (Dept. of Interior June 23, 1983); 42 U.S.C. § 11701(11) (1995). Nevertheless, Congress refused to allow adult males in Hawai'i to vote for or against annexation. 31 CONG. REC. 5982 (1898).

⁹⁸ *Id.* at 88.

Curry explained that the HHCA was consistent with the historical fact that "Indians received lands to the exclusion of other citizens".⁹⁹ The absence of and government, tribe or organization to deal with did not significantly distinguish Native Hawaiians from Indians, according to Curry, because "[w]e have the law of the land on Hawaii from ancient times right down to the present where the preferences were given to certain classes of people".¹⁰⁰ Thus, the legislative report accompanying the HHCA concluded: "In the opinion of your committee there is no constitutional difficulty whatever involved in setting aside and developing lands of the Territory for native Hawaiians only".¹⁰¹ The report's conclusion was based, in part, on "numerous congressional precedents for such legislation in previous enactments granting Indians and soldiers and sailors special privileges in obtaining and using the public lands".¹⁰²

3. The HHCA represented only a partial solution to the historical plight of Native Hawaiians

Political compromises nevertheless hindered the effectiveness of the HHCA, as enacted. As originally introduced, the bill would have provided farm sites to all Native Hawaiians without regard to blood quantum. Senator Reed Smoot of Utah, who sponsored the legislation, explained that "[t]he beneficiaries under the bill are not only Hawaiians but ... all who have Hawaiian blood in their veins.... [W]hat we are trying to do is ... to say that these lands that were the King's lands ought to have originally gone to these people ... that were the subjects of, that King".¹⁰³ Hawai'i plantation owners, on the other hand, took the position that only "Hawaiians of pure blood" should receive land, so as to make more public land available to the plantation owners for lease.¹⁰⁴ An earlier version of the HHCA imposed only a 1/32 blood quantum requirement.¹⁰⁵ In its final form, however, beneficiaries under the HHCA were limited to those of at least fifty percent Hawaiian blood.¹⁰⁶

⁹⁹ *Id.* at 169.

¹⁰⁰ *Id.* at 170.

¹⁰¹ H.R. REP. NO. 839, 66TH CONG., 2D. SESS. 11 (1920).

¹⁰² *Id.*

¹⁰³ *Id.* at 16-17.

¹⁰⁴ *Id.* at 15, 27-29.

¹⁰⁵ NHRH, *supra*, at 47-48.

¹⁰⁶ HHCA, § 201. In 1986, Congress authorized Hawaiians with at least twenty-five percent Hawaiian blood to succeed to the leases of their parents and spouses. Joint Resolution to Consent to an Amendment Enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 99-557, 100 Stat. 3143 (1986). Congress amended the HHCA on many other occasions. See Act of Feb. 3, 1923, Pub. L. No. 67-403, 42 Stat. 1221 (1923) (increasing dollar limits for residential loans and other provisions); Act of Mar. 7, 1928, Pub. L. No. 70-105, 45 Stat. 246 (1928) (requiring an annual area disposal limit and increasing the dollar amount within the Hawaiian Home Loan fund); Act of July 26, 1935, Pub. L. No. 74-223, 49 Stat. 504 (1935) (requiring three of five Hawaiian Homes Commission members to be at least one-quarter Native Hawaiian); Act of July 10, 1937, Pub.

Congress also excluded from the HHCA all public lands then under cultivation, as well as other arable land.¹⁰⁷ Consequently, the vast majority of homestead lots are arid and lack proximate sources of irrigation water. Others are covered with lava or have poor soil.¹⁰⁸ In other words, the HHCA clearly was not attended as the only solution to the plight of Native Hawaiians.

4. Congress continued to legislate for the benefit of Native Hawaiians, and required the State of Hawaii upon Admission to adopt the HHCA as part of the State constitution

Congress continued to pass legislation providing special benefits to Native Hawaiians during the remainder of the Territorial period. In 1938, Congress authorized native Hawaiians to lease land in the Hawaii National Park and granted exclusive fishing rights to Hawaiians.¹⁰⁹ Upon Admission of Hawai'i as a State in the Union (1959), Congress required Hawai'i to adopt the HHCA as part of its state constitution:

§ 4. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, as amended, shall be adopted as a provision of the

L. No. 75-200, 50 Stat. 497, 503 (1937) (establishing an age minimum for lessees and adding more lands under the Act); Act of Nov. 26, 1941, Pub. L. No. 77-325, § 3, 52 Stat. 782, 782 (1941) (creating a Home Development fund and allowing investing of loan fund); Act of May 31, 1944, Pub. L. No. 78-320, 58 Stat. 260, 264 (1944) (returning lands under the Commission's jurisdiction to the Territory of Hawaii); Act of June 14, 1948, Pub. L. No. 80-638, 62 Stat. 390 (1948) (authorizing churches, hospitals, schools, theaters, and the Federal government to use the land); Act of July 9, 1952, Pub. L. No. 82-481, 66 Stat. 511, 514 (1952) (adding lands to the Commission's jurisdiction); Act of July 9, 1952, Pub. L. No. 82-482, 66 Stat. 514 (1952) (increasing dollar amounts in the Hawaiian Homes Land Fund and the Hawaiian Homes Development Fund); Act of June 18, 1954, Pub. L. No. 83-417, 68 Stat. 263 (1954) (authorizing leases for irrigated pastoral lands); Joint Resolution to consent to certain amendments enacted By the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 102-398, 106 Stat. 1953 (1992) (agreeing to the adoption of amendments enacted by the State of Hawaii to the Hawaiian Homes Commission Act of 1920); Hawaiian Home Lands Recovery Act, Pub. L. No. 104-42, §§ 201-06, 109 Stat. 353, 357 (1995) (settling Department of Hawaiian Home Lands claims against the Federal government for the value of the lost use of lands by Native Hawaiians); Joint Resolution to consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 105-21, 111 Stat. 235 (1997) (agreeing to the adoption of amendments enacted by the State of Hawaii to the Hawaiian Homes Commission Act of 1920).

¹⁰⁷ HHCA, § 204

¹⁰⁸ NHRH, *supra*, at 51 & 56-60. See also LEGISLATIVE REFERENCE BUREAU, REPORT NO. 1B. LAND ASPECTS OF THE HAWAIIAN HOMES PROGRAM 6, 19-20 (1964).

¹⁰⁹ Act of June 20, 1938, ch. 530, § 3(a), 52 Stat. 784 (1938). See also 20 U.S.C. § 7902(9) (acknowledging "the unique status of the Hawaiian people" by providing for leases of certain federal lands for use and fishing "only by native Hawaiian residents ... and visitors under their guidance")

Constitution of said State, ... subject to amendment or repeal only with the consent of the United States, and in no other manner....¹¹⁰

Congress also placed an additional 1.2 million acres of lands acquired through annexation into a trust to be managed by the State for one or more of five specified purposes, including "the betterment of the conditions of native Hawaiians":

§ 5(f). The lands granted to the State of Hawaii ... together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust ... for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended.... Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States....¹¹¹

Hawai'i is the only state required by Congress as a condition of statehood to assume a trust responsibility for its native people.

5. Although native populations each have their own unique history and experiences, Native Hawaiians are analogous to Native American Indians for constitutional purposes

The transfer of responsibility from the federal to state government under the Hawai'i Admission Act can be explained, in part, by the fact that the federal government was

¹¹⁰ Hawai'i Admission Act, Act of Mar. 18, 1959, Pub. L. No. 86-3, § 4, 73 Stat. 4, 6 (1959). Through § 1 of the Admission Act, Congress also accepted, ratified and confirmed a Constitutional provision that stated "[a]ny trust provisions which the Congress shall impose, upon the admission of this State, in respect of the lands patented to the State by the United States or the proceeds and income therefrom, shall be complied with by appropriate legislation." Haw. Const. Art. XVI, sec. 7, s. 1 (1978) (formerly art. XIV, sec. 7 (1950)). The 1978 State Constitutional Amendments regarding trust responsibilities to Native Hawaiians amounted to a direct exercise of decision-making power by the people of Hawaii, as opposed to the indirect vehicle provided through the legislative process required by Congress.

¹¹¹ *Id.* § 5(f). The trust responsibility acknowledged in the Admissions Act appears to be rooted in the United States' acquisition of the public lands of Hawai'i. See 22 Op. Att'y Gen. 574 (1899) (interpreting the Joint Resolution as creating a "special trust" with "naked title being held by the Federal Government for the benefit of the people of Hawaii"); Joint Resolution of Annexation of 1898, 30 Stat. 750 (1898) (providing that "all revenues from or proceeds of the [public lands] except [that used or occupied by the United States or assigned to the local government] shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes"). See also Hawaii Organic Act, ch. 339, §§ 73(e) & 91, 31 Stat. 141 (1900). In more recent statutes, Congress has expressly recognized a "special" "trust" relationship between the United States and Native Hawaiians. 42 U.S.C. §§ 11701(15), (16), (18) & (20); 20 U.S.C. §§ 7902(8), (10), (11), (13) & (14).

pursuing a policy of "termination" of Indian tribes at the time.¹¹² From 1945 through 1961, Congress sought to dissolve tribes, curtail entitlement programs and services, and rapidly assimilate Native Americans into the "mainstream".¹¹³ In many instances, responsibility for native peoples shifted from the federal government to the states.¹¹⁴

Although President Richard M. Nixon (and, later, President Ronald M. Reagan) acknowledged the rights of native peoples to self-determination and self-governance,¹¹⁵ the federal government has yet to formally reestablish a government-to-government relationship with Native Hawaiians.¹¹⁶ In other words, the absence of formal recognition stems from both the United States' involvement in the illegal overthrow and now-discredited termination policies in place at the time of annexation and statehood.

After statehood, Congress continued to reaffirm the special trust status of lands held by the United States. Legislation adopted in 1963 protected the corpus of the public lands trust by revising procedures concerning the disposition of surplus lands.¹¹⁷

The bulk of the lands involved, which were ceded at the time of annexation, have always been treated differently than the other public lands of the United States. History clearly indicates that those lands were regarded as having been held in a special trust status by the United States for the benefit of the Hawaiian people.¹¹⁸

¹¹² FELIX S. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 152-80 (2d ed. 1982); Charles F. Wilkinson & Eric R. Biggs, *The Evolution of the Termination Policy*, 5 *AM. INDIAN L. REV.* 139 (1977).

¹¹³ Cohen, 1982, *supra*, at 170-80; H.R. Res. 698, 82d Cong., 2d Sess., 98 Cong. Rec. 8788 (1952) (pursuing the "earliest practicable termination of all federal supervision and control over Indians").

¹¹⁴ See Act of Aug. 15, 1953, ch. 505, Pub. L. No. 280, 67 Stat. 588 (1953).

¹¹⁵ See Cohen 1982, *supra*, at 180-204; President Reagan, Statement on Indian Policy, Pub. Papers of Ronald Reagan 96 (Jan. 24, 1983).

¹¹⁶ A provision of the Appropriations Act of 1871 required that, in the future, no Indian nation or tribe would be recognized as an entity with which the United States could make a treaty. 25 U.S.C. § 71 (1994); see also Cohen, 1982, *supra*, at 105-07.

¹¹⁷ Act of Dec. 23, 1963, Pub. L. No. 88-233, 77 Stat. 472 (1963).

¹¹⁸ Letter from Kermit Gordon, Director, Bureau of the Budget, to Lyndon Johnson, President of the United States, October 28, 1963, S. Rep. No. 675, on Pub. L. No. 88-233, 88th Cong., 1st Sess., reprinted in U.S.C.C.A.N. 1362-1366 (1963) (observing further that in the absence of corrective legislation, residual interests in lands acquired by the federal government without paying compensation would be forever lost).

In 1972, Congress also designated Honokohau as a National Historical Landmark, authorizing preservation of the site and giving employment preference to, as well as providing training for, native Hawaiians.¹¹⁹

6. Congress took another step forward, beginning in the 1970's, by broadly defining Native Hawaiians and expressly including them in legislation concerning Native American Indians and Native Alaskans

Beginning in 1974, Congress specifically included Native Hawaiians in legislation concerning Native Americans, and eschewed prior fifty percent blood quantum requirements and instead defined "Native Hawaiians" as any descendants of the aboriginal people of the Hawaiians Islands. A lengthy list of such measures readily demonstrates Congress's recognition that Native Hawaiians are, at least, similar to Native Americans and Native Alaskans:

1974 - 1979

- Headstart, Economic Opportunity, and Community Partnership Act of 1974, Pub. L. No. 93-644, § 813(3), 88 Stat. 2291, 2327 (1974);
- Native American Programs Act of 1974, Pub. L. No. 93-644, § 801, 88 Stat. 2291, 2324 (1975) (seeking to promote Native Hawaiian, American Indian, and Alaska Native economic and social self-sufficiency through financial assistance to agencies serving Native Hawaiians);
- Departments of Labor and Health, Education, and Welfare Appropriation Act, 1976, Pub. L. No. 94-206, 90 Stat. 3 (1975), (appropriating funds for Native American programs, including Native Hawaiians);
- Act of Oct. 17, 1976, Pub. L. No. 94-518 § 401-405, 90 Stat. 2447, 2447, 2449 (1976) (preserving the Kalaupapa Settlement and authorizing a preference for former patients and Native Hawaiians to manage the site);
- Act of Aug. 5, 1977, Pub. L. No. 95-93, sec. 303(e)(16), § 701(a), 91 Stat. 627, 650 (1977) (amending the Comprehensive Employment Training Act of 1973 to include employment training programs for Native Hawaiians);
- Joint Resolution, American Indian Religious Freedom Act, Pub. L. No. 95-341, 92 Stat. 469 (1978) (recognizing the rights of American Indians, Eskimos, Aleuts, and Native Hawaiians to practice their traditional religions);
- Comprehensive Employment and Training Act Amendments of 1978, Pub. L. No. 95-524, 92 Stat. 1909 (1978);
- The National Parks and Recreation Act of 1978, Pub. L. No. 95-625, § 505(e), 92 Stat. 3467 (1978);
- Act of Nov. 20, 1979, Pub. L. No. 96-123, 93 Stat. 923 (1979) (appropriating funds for Native Hawaiian health and human services programs as allowed under authorizing legislation, including assistance to research institutions with Indian, Alaska Native, Native Hawaiian, Hispanic, and Black students);

¹¹⁹ Act of July 11, 1972, Pub. L. No. 92-346, 86 Stat. 457 (1972).

1980 - 1984

- Education Amendments of 1980, Pub. L. No. 96-374, § 1331, 94 Stat. 1367, 1499 (1980) (creating an Advisory Council on Native Hawaiian Education to study the effectiveness of State and Federal education programs for Native Hawaiians);
- Act of Dec. 22, 1980, Pub. L. No. 96-565, §§ 101-110, 94 Stat. 3321, 3321-23 (1980) (establishing the Kalaupapa National Historic Park, which shall be administered by Hansen's Disease patients and Native Hawaiians);
- Native Hawaiian Study Commission Act, Pub. L. No. 96-565, §§ 301-307, 94 Stat. 3321, 3324-27 (1980) (establishing a Native Hawaiian Study Commission to study the culture, needs, and concerns of Native Hawaiians);
- Urgent Supplemental Appropriations Act, 1982, Pub. L. No. 97-216, 96 Stat. 180 (1982) (appropriating funds for nursing research grants and encouraging that priority be given to Native Hawaiians, other Native Americans, native American Pacific islands, and Hispanics);
- Supplemental Appropriations Act, 1982, Pub. L. No. 97-257, 96 Stat. 818 (1982) (appropriating funds to promote economic and social self-sufficiency of Native Americans, including Native Hawaiians; appropriating funds for Native Hawaiian education and health programs as allowed under authorizing legislation);
- Act of Dec. 21, 1982, Pub. L. No. 97-377, 96 Stat. 1830 (1982) (appropriating funds to address alcohol abuse among Native Hawaiians);
- Act of July 30, 1983, Pub. L. No. 98-63, 97 Stat. 301 (1983) (appropriating funds to address the unique health needs of Native Americans, including Native Hawaiians; urging the National Cancer Institute to give greater attention to the Native Hawaiian population);
- Department of Health and Human Services Appropriation Act, 1984, Pub. L. No. 98-139, 97 Stat. 871 (1983) (appropriating funds to the Administration for Native Americans, which promotes social and economic self-sufficiency for Native Americans, including Native Hawaiians: appropriating funds to combat alcoholism among Native Hawaiians and declaring Native Hawaiian cancer research a priority);
- Department of Labor Appropriation Act, 1984, Pub. L. No. 98-139, 97 Stat. 871 (1983) (appropriating funds for vocational training and other labor services for Native Hawaiians and other Native Americans);
- Department of Education Appropriation Act, 1984, Pub. L. No. 98-139, 97 Stat. 871 (1983) (appropriating funds for Native Hawaiian education programs as allowed under authorizing legislation);
- Act of Aug. 22, 1984, Pub. L. No. 98-396, 99 Stat. 1369 (1984) (appropriating funds for a Native Hawaiian health study and report);
- Act of Oct. 12, 1984, Pub. L. No. 98-473, 99 Stat. 1837 (1984) (appropriating funds for historic preservation of marine resources, including the Hawaiian voyaging canoe Hokulea);
- Department of Health and Human Services Appropriation Act, 1985, Pub. L. No. 98-619, 99 Stat. 3305 (1984) (appropriating funds for Native Hawaiian programs to promote economic and social self-sufficiency; also appropriating funds for parent-child centers and for Native Hawaiian cancer research);

- Department of Education Act, 1985, Pub. L. No. 98-619, 99 Stat. 3305 (1984) (appropriating funds for Native Hawaiian education programs as allowed under authorizing legislation);

1985 - 1989

- Act of Dec. 19, 1985, Pub. L. No. 99-190, 99 Stat. 1185 (1985) (appropriating funds for education assistance to health profession students who will serve geographical concentrations of Native Hawaiians and Indian reservations);
- American Indian, Alaska Native and Native Hawaiian Culture and Art Development Act of 1986, Pub. L. No. 99-498, §§ 1501-1503, 1521-1522, 100 Stat. 1268, 1600, 1610-11 (1986) (authorizing grants to support a program for Native Hawaiian culture and arts development);
- Joint Resolution to Consent to an Amendment Enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 99-557 (1986) (consenting to HHCA amendments adopted by the State of Hawaii between August 21, 1959 and June 30, 1985, with the exception of Act 112 of 1981);
- Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 4134, 100 Stat. 3207, 3207-134 (1986) (authorizing the Health and Human Services Secretary to contract with organizations that provide drug abuse prevention, education, treatment, and rehabilitation services to Native Hawaiians);
- Act of July 11, 1987, Pub. L. No. 100-71, 101 Stat. 391 (1987) (appropriating funds for the Native Hawaiian Culture and Arts Development Program);
- Native American Programs Act Amendments of 1987, Pub. L. No. 100-175, sec. 506, § 803A, 101 Stat. 926, 926-75 (1987) (establishing a Native Hawaiian Revolving loan fund for Native Hawaiian organizations and Native Hawaiians to promote economic development);
- Department of Health and Human Services Appropriations Act, 1988, Pub. L. No. 100-202, 101 Stat. 1329-263 (1987) (appropriating funds for Native Hawaiian health programs under authorizing legislation);
- Housing and Community Development Act, Pub. L. No. 100-242 (1988) (amending the National Housing Act to authorize HUD Single Family Mortgage Insurance on Hawaiian home lands, and permitting Native Hawaiians to transfer FHA-financed property to their children or surviving spouses who do not meet the legal definition of native Hawaiians);
- Jacob K. Javits Gifted and Talented Students Education Act of 1988, Pub. L. No. 100-297, Sec. 1001, §§ 4101-4108, 102 Stat. 130-237 (1988) (authorizing grants or contracts with institutions, including Indian tribes and Native Hawaiian organizations, to carry out programs or projects designed to meet the educational needs of gifted and talented students);
- Drug-Free Schools and Community Act of 1986, Pub. L. No. 100-297, Sec. 1001, §§ 5112, 5134, 102 Stat. 130, 253, 261 (1988) (authorizing education grants, cooperative agreements, or contracts with organizations that primarily serve and represent Native Hawaiians; appropriating funds for drug abuse education and prevention programs for Native Hawaiians);
- Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments Of 1988, Pub. L. No. 100-297, §§ 4001-4009, 102 Stat. 130, 358 (1988)

(recognizing the Federal government's legal responsibility to enforce Hawaii's trust responsibilities to Native Hawaiians and creating new education programs targeting a model curriculum, family based education centers, gifted and talented, and special education programs);

- Veterans' Benefits and Services Act of 1988, Pub. L. No. 100-322, § 413, 102 Stat. 487, 487 (1988) (adding Native Hawaiians to the Advisory Committee on Native Americans Veterans which evaluates programs for Native American veterans);
- Indian Housing Act of 1988, Pub. L. No. 100-358, Sec. 2, § 204, 102 Stat. 676, 679 (1988) (requiring an assessment of the housing and mortgage needs of Native Hawaiians);
- National Service Foundation University Infrastructure Act of 1988, Pub. L. No. 100-418, § 6402, 102 Stat. 1107, 1543 (1988) (reserving a percentage of appropriations for institutions of higher learning that serve Native American, including Native Hawaiians, and specific ethnic groups);
- Department of Health and Human Services Appropriations Act, 1989, Pub. L. No. 100-436, 102 Stat. 1688 (1988) (appropriating funds for Native Hawaiian health programs under authorizing legislation);
- Native Hawaiian Health Care Act of 1988, Pub. L. No. 100-579, 102 Stat. 2916 (1988);
- Pub. L. No. 100-690, § 2301-2312, 102 Stat. 4181, 4223 (1988) (authorizing programs to improve the health status of Native Hawaiians, authorizing grants or contracts with Papa Ola Lokahi to develop comprehensive health care master plan to improve Native Hawaiian health);
- Health Professions Reauthorization Act of 1988, Pub. L. No. 100-607, Sec. 604, § 751, 102 Stat. 3048, 3126 (1988) (providing health professionals with incentives to staff health centers serving Native Hawaiians, Indians, and rural areas);
- Nursing Shortage Reduction and Education Extension Act of 1988, Pub. L. No. 100-607, Sec. 714-715, § 836(h), 102 Stat. 3048, 3161 (1988) (authorizing grants to nursing schools, loan repayment incentives to encourage work with Native Hawaiians, Indians, or in rural areas, and scholarship grants to nursing schools whose students serve two years at an Indian Health Service facility or a Native Hawaiian health center);
- Handicapped Programs Technical Amendments Act of 1988, Pub. L. No. 100-630, Sec. 102, § 616, 102 Stat. 3289, 3296 (1988) (amending the Education of the Handicapped Act which provides handicapped Native Hawaiian, and other native Pacific basin, children with a free appropriate public education);
- Business Opportunity Development Reform Act of 1988, Pub. L. No. 100-656, sec. 207, § 8(a), 102 Stat. 3853, 3861 (1988) (amending the Small Business Act by including economically disadvantaged Native Hawaiian organizations as socially and economically disadvantaged small business concerns);
- Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, Pub. L. No. 100-690, Sec. 2022, § 1912A, 102 Stat. 4181, 4191 (1988) (amending the Public Health Service Act by establishing the formula to fund comprehensive substance abuse and treatment programs for Native Hawaiians);
- Indian Health Care Amendments of 1988, Pub. L. No. 100-713, Sec. 106, § 3381, 102 Stat. 4784, 4787 (1988) (amending the Public Health Service Act by creating a Native Hawaiian Health Professions Scholarship program);

- Department of Health and Human Services Appropriations Act, 1990, Pub. L. No. 101-166, 103 Stat. 1166 (1989) (appropriating funds for Native Hawaiian health programs under authorizing legislation);
- Department of Education Appropriations Act, 1990, Pub. L. No. 101-166, 103 Stat. 1179 (1989) (appropriating funds for Native Hawaiian education programs under authorizing legislation);
- National Museum of the American Indian Act, Pub. L. No. 101-185, 103 Stat. 1336 (1989) (establishing the National Museum of the American Indian which will study Native Americans, collect, preserve, and exhibit Native American objects, providing for a Native American research and study program, and authorizing the return of Smithsonian-held Native American human remains and funerary objects; Native Americans includes Native Hawaiians);
- Department of Housing and Urban Development Reform Act of 1989, Pub. L. No. 101-235, §§ 601-605, 103 Stat. 1987, 2052 (1989) (establishing commission to study and propose solutions to Indian, Alaska Native, and Native Hawaiian housing problems);
- Veterans' Benefits Amendment of 1989, Pub. L. No. 101-237, Sec. 312, § 3102, 103 Stat. 2062 (1989) (authorizing the study of Native Hawaiian veterans' and other Native American veterans' participation in Veterans Affairs' home loan guaranty program);

1990 - 1994

- Dire Emergency Supplemental Appropriation for Disaster Assistance, Food Stamps, Unemployment Compensation Administration, and Other Urgent Needs, and Transfers, and Reducing Funds Budgeted for Military Spending Act of 1990, Pub. L. No. 101-302, 104 Stat. 213, 239 (1990) (authorizing appropriations for the National Commission on American Indian, Alaska Native, and Native Hawaiian housing and providing grant money to Indian and Hawaiian Native youth for the Drug-Free Schools and Communities Act);
- Native American Languages Act, Pub. L. No. 101-477, §§ 101-104, 104 Stat. 1152, 1154 (1990) (adopting the policy to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages; Native Americans include Native Hawaiians);
- Department of Health and Human Services Appropriations Act, 1991, Pub. L. No. 101-517, 104 Stat. 2190 (1990) (authorizing appropriations for the Native Hawaiian Health Care Act of 1988);
- Department of Education Appropriations Act, 1991, Pub. L. No. 101-517, 104 Stat. 2190 (1990) (authorizing appropriations for Native Hawaiian education programs under authorizing legislation);
- Disadvantaged Minority Health Improvement Act of 1990, Pub. L. No. 101-527, Sec. 4, § 782, 104 Stat. 2311, 2321 (1990) (authorizing grants to health professional schools to assist programs of excellence for Native Hawaiians, other Native Americans, and specified ethnic groups);
- Native American and Graves Protection And Repatriation Act, Pub. L. No. 101-601, 104 Stat. 3048 (1990) (providing for the protection of Native American graves and repatriation of funerary objects, human remains, and objects of cultural patrimony; Native Americans include Native Hawaiians);

- Cranston-Gonzales National Affordable Housing Act, Pub. L. No. 101-625, Sec. 917, § 109, 104 Stat. 4079, 4398 (1990) (authorizing appropriations for the Neighborhood Reinvestment Corporation which serves rural communities, Native Americans, Native Hawaiians, and other communities in need);
- Act of Nov. 29, 1990, Pub. L. No. 101-644, Sec. 401, § 338J(a), 104 Stat. 4662, 4668 (1990) (amending the Public Health Service Act by providing scholarship assistance to Native Hawaiian students);
- Act of Nov. 29, 1990, Pub. L. No. 101-644, Sec. 501-502, §§ 1507, 1510, 104 Stat. 4662, 4668 (1990) (amending the American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act by allowing interest and earnings to be used to carry out the Institute's responsibilities);
- National Dropout Prevention Act of 1991, Pub. L. No. 102-103, Sec. 311, § 103(b), 105 Stat. 497, 505 (1991) (amending the Carl D. Perkins Vocational and Applied Technology Education Act by providing stipends to Native Hawaiian vocational students);
- Act of Dec. 11, 1991, Pub. L. No. 102-218, Sec. 1, § 317, 105 Stat. 1671 (1991) (amending title 38, Veterans' Benefits, to designate the Chief Minority Affairs Officer as an adviser on the effect of policies, regulations, and programs on Native Hawaiians, other Native Americans, women, and minority groups);
- Departments of Veterans Affairs and Housing And Urban Development, and Independent Agencies Appropriations Act, 1992, Pub. L. No. 102-139, 105 Stat. 736 (1991) (authorizing appropriations for the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing);
- Department of Health and Human Services Appropriations Act, 1992, Pub. L. No. 102-170, 105 Stat. 1107 (1991) (appropriating funds for Native Hawaiian health programs under authorizing legislation);
- Department of Education Appropriations Act, 1992, Pub. L. No. 102-170, 105 Stat. 1107 (1991) (appropriating funds for Native Hawaiian education programs under authorizing legislation);
- Department of Defense Appropriations Act, 1992, Pub. L. No. 102-172, 105 Stat. 1150 (1991) (amending the National Defense Authorization Act so that a disadvantaged small business concern includes a small business concern owned and controlled by socially and economically disadvantaged individuals, an Indian tribe, a Native Hawaiian organization, or an organization employing the severely disabled);
- Technical Amendments to Various Indian Laws Act, Public Law 102-238 (1991) (authorizing use of Community Development Block Grant programs on Hawaiian Home lands);
- ADAMHA Reorganization Act (Alcohol, Drug Abuse, and Mental Health Administration), Pub. L. No. 102-321, Sec. 203, § 1953, 106 Stat. 323, 409 (1992) (amending the Public Health Services Act by requiring the State of Hawaii to contract with organizations which plan, conduct, and administer comprehensive substance abuse and treatment programs for Native Hawaiians);
- Higher Education Amendments of 1992, Pub. L. No. 102-325, Sec. 305, §§ 357(b)(7), 1406, 106 Stat. 448, 479, 818 (1992) (amending the Higher Education Amendments of 1965 by authorizing Federal repayment of loan for nurses working in a Native Hawaiian Health Center, also in Indian Health Service; giving preference to Teacher Corps

applicants intending to teach on Indian reservations or in Alaska Native villages or in areas with high concentrations of Native Hawaiians; also, authorizing biennial education survey on Native Hawaiians, other Native Americans, and other groups including the disabled, disadvantaged, and minority students);

- Higher Education Facilities Act of 1992, Pub. L. No. 102-325, Sec. 422, § 428J(a), 106 Stat. 448, 541 (1992) (amending the Higher Education Act of 1965 by authorizing grants and fellowships to promote higher education of Indians, Alaska Natives, and Native Hawaiians, along with specific ethnic groups);
- Job Training Reform Amendments of 1992, Pub. L. No. 102-367, Sec. 401, § 401, 106 Stat. 1021, 1074 (1992) (authorizing employment and recruitment preference for Native Hawaiians, Indians, and Alaska Natives for a new office that will administer Native American programs; also creating a Native American Employment and Training Council with membership of Indians, Alaska Natives, and Native Hawaiians that will solicit views on issues program operation and administration);
- Older Americans Act Amendment of 1992, Pub. L. No. 102-375, Sec. 201, § 201(c)(3), 106 Stat. 1195, 1203 (1992) (amending the Older Americans Act Amendment of 1965 by creating an advocate for older Indians, Alaskan Natives, and Native Hawaiians to promote enhanced delivery of services and grants, and authorizing appropriations for these activities);
- Native American Programs Act Amendments Of 1992, Pub. L. No. 102-375, Sec. 811, 822, §§ 803A, 811A, 106 Stat. 1195, 1295, 1296 (1992) (amending Native American Programs Act by requiring the filing of annual report on the social and economic conditions of American Indians, Native Hawaiians, other Native American Pacific Islanders, including American Samoan Natives, and Alaska Natives, and authorizing appropriations for the Native American programs);
- Department of the Interior and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-381, 106 Stat. 1374 (1993) (authorizing appropriations for the Alaska Native Culture and Arts Development Act which also provides funds for Native Hawaiians);
- Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Pub. L. No. 102-389, 106 Stat. 1571 (1992) (providing for appropriations for the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing in carrying out functions under the Department of Housing and Urban Development Reform Act of 1989);
- Department of Health and Human Services Appropriations Act, 1993, Pub. L. No. 102-394, 106 Stat. 1792 (1992) (specifying funding guidelines for the Native Hawaiian Health Care Act of 1988);
- Department of Education Appropriations Act, 1993, Pub. L. No. 102-394, 106 Stat. 1792 (1992) (appropriating funds for Native Hawaiian education programs under authorizing legislation);
- Department of Defense Appropriations Act, 1993, Pub. L. No. 102-396, 106 Stat. 1876 (1993) (amending the Native Hawaiian Health Care Act of 1988 by establishing health goals for Native Hawaiians and scholarships for Native Hawaiian health students);
- A joint resolution to consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920, Pub. L. No. 102-398, 106 Stat.

1953 (1992) (consenting to amendments adopted by the State of Hawai'i Legislature from 1986 through 1990);

- Veterans' Medical Programs Amendments of 1992, Pub. L. No. 102-405, § 123, 106 Stat. 1972, 1982 (1992) (requiring development of a plan to treat veterans' post-traumatic stress disorder, especially the needs of Native Hawaiians, other Native Americans, women, and ethnic minorities);
- Health Professions Education Extension Amendments of 1992, Pub. L. No. 102-408, Sec. 102, § 739, 106 Stat. 1992, 2055 (1992) (amending the Public Health Services Act by authorizing grants to health professions schools to support programs of excellence in health professions education for Native Hawaiians, other Native Americans, and minority individuals);
- Nurse Education and Practice Improvement Amendments of 1992, Pub. L. No. 102-408, Sec. 102, § 846, 106 Stat. 1992, 2031 (1992) (amending the Public Health Service Act by authorizing the repayment of school loans for nurses who work two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a rural health clinic, or in a public or nonprofit private health facility);
- Veterans' Home Loan Program Amendments of 1992, Pub. L. No. 102-547, Sec. 8, §§ 3761-3764, 106 Stat. 3633, 3639 (1992) (amending Title 38 by providing direct housing loans to Native American veterans, including Native Hawaiians, and including the Department of Hawaiian Homelands in the definition of "tribal organization");
- Housing and Community Development Act of 1992, Pub. L. No. 102-550, Sec. 128, § 605, 106 Stat. 3762 (1992) (authorizing appropriations for National Commission on American Indians, Alaska Natives, and Native Hawaiian housing);
- Hawaii Tropical Forest Recovery Act, Pub. L. No. 102-574, § 4, 106 Stat. 4593, 4597 (1992) (establishing the Hawaii Tropical Forest Recovery Task Force which will make recommendations for rejuvenating Hawaii's tropical forests, including the traditional practices, uses, and needs of Native Hawaiians in tropical forests);
- National Historic Preservation Act Amendments of 1992, Pub. L. No. 102-575, Sec. 4002, 4006, §§ 2, 101, 106 Stat. 4600, 4753 (1992) (amending the National Historic Preservation Act to protect Native Hawaiian, Indian, and Alaska Native religious and cultural sites, including authorizing direct grants to Indian tribes and Native Hawaiian organizations to preserve, stabilize, restore, or rehabilitate religious properties);
- Veterans Health Care Act of 1992, Pub. L. No. 102-585, Sec. 602, § 340B, 106 Stat. 4943, 4967 (1992) (authorizing Native Hawaiian Health centers to purchase pharmaceuticals at the Federal government-negotiated price);
- Department of Health and Human Services Appropriations Act of 1994, Pub. L. No. 103-112, Stat. 1082 (1993) (authorizing appropriations for the Native Hawaiian Health Care Act of 1988);
- Department of Education Appropriations Act of 1994, Pub. L. No. 103-112, Stat. 1082 (1993) (authorizing appropriations for Native Hawaiian education programs under authorizing legislation);
- 100th Anniversary of the Overthrow of the Hawaiian Kingdom, Pub. L. No. 103-150, 107 Stat. 1510 (1993) (acknowledging and apologizing for the United States' role in the overthrow of the Kingdom of Hawaii);

- Goals 2000: Educate America Act, Pub. L. No. 103-227, Sec. 2-3, 108 Stat. 125, 129 (1994) (establishing National Education Goals for schools and students from diverse backgrounds, including Indians, Alaska Natives, and Native Hawaiians, the disabled, the limited English-speakers);
- School-to-Work Opportunities Act of 1994, Pub. L. No. 103-239, Sec. 3-4, 108 Stat. 568, 572 (1994) (establishing school-to-work activities to improve the knowledge and skills of youths from various backgrounds and circumstances, including disadvantaged students, students with diverse racial, ethnic, or cultural backgrounds, American Indians, Alaska Natives, Native Hawaiians, students with disabilities, students with limited-English proficiency, migrant children, school dropouts, and academically talented students);
- Alaska Native Culture and Arts Development Act, Pub. L. No. 103-239, Sec. 721, § 1521, 108 Stat. 568, 572 (1994) (amending the Higher Education Act of 1986 by authorizing grants to organizations that primarily serve and represent Native Hawaiians or Alaska Natives to support Native culture and art programs);
- Department of Health and Human Services Appropriations Act, 1995, Pub. L. No. 103-333, 108 Stat. 2539 (1994) (authorizing appropriations for Native Hawaiian health);
- Department of Education Appropriations Act, 1995, Pub. L. No. 103-333, 108 Stat. 2539 (1994) (authorizing appropriations for Native Hawaiian education);
- Department of Defense Appropriations Act, 1995, Pub. L. No. 103-335, 108 Stat. 2599 (1994) (authorizing preference to Native Hawaiian contractors restoring Kahoolawe's environment);
- Safe and Drug-Free Schools and Communities Act of 1994, Pub. L. No. 103-382, Sec. 101, §§ 4004, 4011, 4118, 108 Stat. 3518, 3674, 3674, 3685 (1994) (authorizing grants for Native Hawaiian-serving institutions to plan, conduct, and administer violence and drug prevent programs);
- Native Hawaiian Education Act, Pub. L. No. 103-382, Sec. 101, § 9201-9212, 108 Stat. 3518, 3794 (1994) (recognizing that Native Hawaiians are indigenous people and authorizing, among other things, grants to assist Native Hawaiians in achieving national education goals);
- Jacob K. Javits Gifted and Talented Students Education Act of 1994, Pub. L. No. 103-382, Sec. 101, § 10201, 108 Stat. 3518, 3820 (1994) (authorizing grants and/or contracts to Native Hawaiian organizations and Indian tribes to assist in carrying out programs or projects for gifted/talented students);
- Improving America's Schools Act of 1994, Pub. L. No. 103-382, Sec. 101, § 13102, 108 Stat. 3518, 3878 (1994) (providing support, training, assistance to grant recipients to improve the quality of education for immigrants, migrants, the poor, American Indians, Alaska Natives, and Native Hawaiians);
- Bilingual Education Act, Pub. L. No. 103-382, Sec. 101, §§ 7101, 7104, 7136, 108 Stat. 3518, 3716, 3718, 3732 (1994) (authorizing grants to implement new comprehensive bilingual education programs for Native American and Native Hawaiian languages);
- Improving America's Schools Act of 1994 (Part E), Pub. L. No. 103-382, Sec. 101, § 7501, 108 Stat. 3518, 3745 (1994) (authorizing sub-grants from State and local

governments to implement a bilingual education program for the ancestral languages of American Indians, Alaska Natives, and Native Hawaiians);

- Native American Veterans' Memorial Establishment Act of 1994, Pub. L. No. 103-384, § 2, 108 Stat. 4067, 4067 (1994) (establishing memorial to recognize contributions of Native American Veterans -- American Indians, Native Alaskans, and Native Hawaiians);
- Veterans' Benefits Improvements Act of 1994, Pub. L. No. 103-446, Sec. 510, § 544, 108 Stat. 4645, 4669 (1994) (authorizing creation of a Center for Minority Veterans and Advisory Committee on Minority Veterans to be more responsive to the needs of Native Hawaiian, American Indian, Alaska Native, and ethnic minority veterans);

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- Hawaiian Home Lands Recovery Act, Pub. L. No. 104-42, Title II, §§ 201-09, 109 Stat. 353, 357-65 (1995) (providing for settlement of federal claims, a procedure for approving HHCA amendments, land exchanges, etc.);
- The Balanced Budget Down Payment Act, Pub. L. No. 104-99, § 115, 110 Stat. 26, 29 (1996) (authorizing appropriations to cover termination of Native Hawaiian and Alaska Native Cultural Arts);
- National Defense Authorization Act for FY 1996, Pub. L. No. 104-106, § 524, 110 Stat. 186 (1996) (authorizing upgrading the Distinguished Service Cross to the Medal of Honor for World War II Native American Pacific Islander veterans, including Native Hawaiians);
- Department of Health and Human Services Appropriations Act, 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (authorizing appropriations for the Native Hawaiian Health Care Act of 1988);
- Department of Education Appropriations Act, 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (authorizing appropriations for Native Hawaiian education programs under authorizing legislation);
- Child Care and Development Block Grant Amendment of 1996, Pub. L. No. 104-193, Sec. 614, § 658P, 110 Stat. 2105, 2287 (1996) (amending the Child Care and Development Block Grant Act of 1990 by authorizing Native Hawaiian organizations to apply for grants or enter into contracts with the Health and Human Services Secretary to improve child care, increase the availability of early childhood development, and increase before and after school care services);
- Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. No. 104-204, Sec. 213, 110 Stat. 2874, 2904 (1996) (authorizing the Housing Secretary to waive anti-discrimination provisions of the Cranston-Gonzalez National Affordable Housing Act for lands set aside under the Hawaiian Homes Commission Act, 1920);
- Department of Health and Human Services Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (authorizing appropriations for the Native Hawaiian Health Care Act of 1988 and Older Americans Act of 1965);
- Department of Education Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (authorizing appropriations for Native Hawaiian education programs under authorizing legislation);

- National Museum of the American Indian Act Amendments of 1996, Pub. L. No. 104-278, Sec. 4, § 11A, 110 Stat. 3355, 3356 (1996) (amending National Museum of the American Indian Act by authorizing repatriation of Indian and Native Hawaiian sacred or funerary objects and cultural patrimony objects);
- A joint resolution to consent to certain amendments enacted by the Legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920 Pub. L. No. 105-21, 111 Stat. 235 (1997) (consenting to HHCA amendments adopted by the Hawai'i State Legislature in 1993 and 1994);
- Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-66, 111 Stat. 1425 (1997) (waiving repayment of airport funds that were diverted for the betterment of American Indians, Alaska Natives, and Native Hawaiians);
- Department of Health and Human Services Appropriations Act, 1998, Pub. L. No. 105-78, 111 Stat. 1467 (1997) (authorizing appropriations for the Native Hawaiian Health Care Act and Older Americans Act of 1965);
- Department of Education Appropriations Act, 1998, Pub. L. No. 105-78, 111 Stat. 1467 (1997) (authorizing appropriations for Native Hawaiian education programs under authorizing legislation);
- Museum and Library Services Technical and Conforming Amendments of 1997, Pub. L. No. 105-128, Sec. 6, § 262, 111 Stat. 2548, 2549 (1997) (amending Museum and Library Services Act by authorizing Hawaiian organizations eligible to receive grants -- along with American Indian tribes -- to electronically link libraries with education, social, or information services);
- Workforce Investment Act of 1998, Pub. L. No. 105-220, § 166, 112 Stat. 936, 1021 (1998) (authorizing grants to Indian Tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations, and Native Hawaiian organizations for employment and training activities);
- Rehabilitation Act Amendments of 1998, Pub. L. No. 105-220, Sec. 404, § 101, 112 Stat. 936, 1163 (1998) (amending the Rehabilitation Act of 1973 by requiring State agencies to consult with Indian Tribes, tribal organizations, and Native Hawaiian organizations before adopting any policies for vocational rehabilitation services);
- Higher Education Amendments of 1998, Pub. L. No. 105-244, Sec. 303, § 1001, 112, Stat. 1581, 1638 (1998) (amending the Higher Education Act of 1965 by authorizing grants to improve education institutions' ability to serve Alaska Natives and Native Hawaiians);
- Act of October 14, 1998, Pub. L. No. 105-256, Sec. 12, § 10(b)(1), 112 Stat. 1896, 1899 (1998) (amending the Native Hawaiian Health Care Improvement Act by requiring recipients of the Native Hawaiian Health Scholarship Program to work in the Native Hawaiian Health Care System);
- Department of Health and Human Services Appropriations Act, 1999, Pub. L. No. 105-277, 112 Stat. 2681 (1998) (authorizing appropriations to carry out the Native Hawaiian Health Care Act of 1988 and the Older Americans Act);
- Department of Education Appropriations Act, 1999, Pub. L. No. 105-277, 112 Stat. 2681 (1998) (authorizing appropriations for Native Hawaiian education programs under authorizing legislation);

- Head Start Amendment of 1998, Pub. L. No. 105-285, Sec. 117, § 650, 112 Stat. 2702, 2727 (1998) (amending the Head Start Act by requiring the Secretary of Health and Human Services to prepare and submit a report concerning the condition, location, and ownership of facilities used, or available to be used, by Native Hawaiian Head Start agencies);
- Assets for Independence Act, Pub. L. No. 105-285, §§ 401-416, 112 Stat. 2702, 2759 (1998) (authorizing Native Hawaiian organizations -- and State, local, and tribal governments -- to conduct demonstration projects to evaluate the effects of savings, micro-enterprise, and home ownership on families and the community);
- Carl D. Perkins Vocational and Technical Education Act of 1998, Pub. L. No. 105-332, sec. 1, § 116, 112 Stat. 3076, 3095 (1998) (authorizing grants to plan, conduct, and administer vocational programs for Native Hawaiians and other Native Americans);
- Native American Programs Act Amendments of 1997, Pub. L. No. 105-361, sec. 3, § 803A, 112 Stat. 3278, 3278 (1998) (amending the Native Hawaiian Revolving Loan fund to include a loan guarantee);
- National Park Service Concessions Management Improvement Act of 1998, Pub. L. No. 105-391, § 416, 112 Stat. 3497, 3516 (1998) (promoting the sale of authentic American Indian, Alaska Native, and Native Hawaiian handicrafts and making those revenues exempt from franchise fees);
- Health Professions Education Partnerships Act of 1998, Pub. L. No. 105-392, sec. 101, § 736, 112 Stat. 3524, 3525 (1998) (authorizing grants to assist schools with health professions education programs for Native Hawaiians, American Indians, Alaska Natives, and under-represented minorities);
- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, § 759, Pub. L. No. 106-78 (1999) (authorizing grants to Alaska Native and Native Hawaiian-serving institutions for education, applied research, and related community development programs);
- Dept. of Defense Appropriations Act, 2000, § 8141, Pub. L. No. 106-79 (1999) (authorizing agreements with federally-funded health agencies who provide services to Native Hawaiians, to establish a partnership similar to the Alaska Federal Health Care Partnership; requiring the department to develop a consultation policy with Native Hawaiians to further such goals);
- Higher Education Act Amendments, Pub. L. No. 106-211 (2000) (revising requirements for grant applications and awards under programs for Alaska Native and Native Hawaiian-serving institutions);
- Dept. of Defense Appropriations Act, 2001, § 8110, Pub. L. No. 106-259 (2000) (authorizing agreements with federally-funded health agencies who provide services to Native Hawaiians, to establish a partnership similar to the Alaska Federal Health Care Partnership).

7. Federal recognition is simply the next step in an evolving, but consistently acknowledged, relationship between Native Hawaiians and the United States

As demonstrated in the preceding section, Congress's continuing acceptance of its responsibility for the welfare of Native Hawaiians has been demonstrated through the establishment of special programs in the areas of health care, education, employment, and loans.¹²⁰ Congress has also enacted statutes to preserve Native Hawaiian culture, language, and historical sites.¹²¹ By classifying Native Hawaiians as "Native Americans" under numerous federal statutes, Congress has extended to Native Hawaiians many of "the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities."¹²² These enactments reflect Congress's view that "[t]he 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 ... Hawaii."¹²³

S. 2899 and H.R. 4904 represent a logical next step, building upon a long-standing recognition by Congress that the United States has a special relationship with Native Hawaiians analogous to its relationship with Native Americans. "[I]ndigenous Hawaiians, like numerous tribes in the continental United States, have both historical and current bonds, as well as unrelinquished sovereignty and territorial claims. Also like Tribes in the

¹²⁰ Native Hawaiian Health Care Improvement Act, 42 U.S.C. §§ 11701-11714; Native Hawaiian Education Act, 20 U.S.C. §§ 7901-7912; Workforce Investment Act of 1998, Pub. L. No. 105-220, § 166, 112 Stat. 1021 (to be codified at 29 U.S.C. § 2911 (Supp. IV 1998)); Native American Programs Act of 1974, Pub. L. No. 88-452, Tit. VIII, as added by Pub. L. No. 63-644, § 11, 88 Stat. 2323.

¹²¹ See 16 U.S.C. § 396d(a) (establishing "a center for the preservation, interpretation, and perpetuation of traditional native Hawaiian activities and culture"); 20 U.S.C. § 4441 (providing funding for Native Hawaiian arts and cultural development); Native American Languages Act, 25 U.S.C. §§ 2901-2906 (1994 & Supp. III 1997); National Historic Preservation Act of 1966, 16 U.S.C. § 470a(d)(6).

¹²² 42 U.S.C. §§ 11701(2) & (19). See, e.g., American Indian Religious Freedom Act, 42 U.S.C. §§ 1996, et seq.; Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013; Native American Programs Act of 1974, Pub. L. No. 88-452, Tit. VIII, as added by Pub. L. No. 93-644, § 11, 88 Stat. 2323; National Museum of the American Indian Act, Pub. L. No. 101-185, 103 Stat. 1336; Comprehensive Employment and Training Act, 29 U.S.C. § 872; Drug Abuse Prevention, Treatment, and Rehabilitation Act, 21 U.S.C. § 1177; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, 42 U.S.C. § 4577(c)(4); Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 958, 104 Stat. 4422; National Historic Preservation Act of 1966, 16 U.S.C. §§ 470 et seq.; Older Americans Act of 1965, 42 U.S.C. §§ 3001 et seq.; Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq.; Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, Pub. L. No. 100-146, § 502(a)(2), 101 Stat. 857; Disadvantaged Minority Health Improvement Act of 1990, 42 U.S.C. §§ 201 et seq.; Indian Health Care Amendments of 1988, 25 U.S.C. §§ 1601 et seq.

¹²³ 42 U.S.C. § 11701(17). They are also premised on congressional findings that the conditions of Native Hawaiians in such areas as health and education continue to lag seriously behind those of non-Natives. 42 U.S.C. § 11701(22); 20 U.S.C. § 7902(17).

continental United States, Native Hawaiians, pursuant to Acts of Congress, have substantial lands set aside for their benefit -- 200,000 acres of Homestead Act land ... and a 20% interest in the income generated by 1.2 million acres of public trust lands[.]”¹²⁴ Formal recognition of a Native Hawaiian governing body would provide the necessary vehicle for the exercise of Native Hawaiian self-governance, and is consistent with nearly 100 years of Congressional action.

V. PROPOSED AMENDMENTS TO S. 2289 AND H.R. 4904

The following amendments and comments are offered for the consideration of the Committees:

Page 2 Line 17 and Page 2 Line 21, replace 200,000 with 203,500.

Page 10 Line 3, delete the word "lineal" to be consistent with current practices of tracing genealogy and allow a broader number of persons to participate in the process.

Page 10 Lines 6, add the words "or before" following the word "on" to broaden the category of Native Hawaiians eligible to participate in the process

Page 10 Line 10, add the words "or by presumptions arising from" following the word "by"

Page 10 Lines 15-16, add the words "marriage certificates, divorce records, land court records, archival newspaper accounts, and ship logs" following the word "certificates" to allow for as broad a participation as possible and account for the fact that records from the turn of the century are very difficult to obtain. These documents would help support the presumption.

Page 11 Line 1, delete "adult members of".

Page 11 Lines 1-4, regarding composition of the governing body, we support the inclusion of federations or subgroups in addition to individual members within the governing body.

Page 12 Line 15, add "Within the context of the United States Constitution," preceding "Native".

¹²⁴ Brief of the United States as Amicus Curiae Supporting Respondent, at 20-21, *Rice v. Cayetano*, 120 S. Ct. 1044 (2000)

Page 13 Lines 7, add a new section providing for the appointment of the Special Trustee by the President with consultation from the Hawaiian community.

Page 19 Line 14, add "appointed by the Secretary of the Department of Interior" following the word "members".

Page 19 Line 18-20, Replace the last sentence with "The members of the Commission shall be composed of a majority made up of Native Hawaiian residents and have expertise, which shall include, but not be limited to, genealogy, historical records/archives, Hawaiian history, Hawaiian oral history, government records, vital statistics and land documentation experience".

Page 25 Lines 1-Page 26 Line 5, regarding the process for the general meeting process to establish criteria, nominate, and elect candidates to the Interim Governing Council, we recommend that other processes be considered that allow for apportionment by population and geographic distribution, keeps the number of members manageable, and preserves the concept of one-man, one-vote.

Page 30 Line 8, add language to provide a process for reconsideration should the Secretary not approve the governing document.

VI. APPENDICES

Attached to and submitted with the original testimony only.



OFFICE OF HAWAIIAN AFFAIRS

Testimony of Office of Hawaiian Affairs Trustee Rowena Akana
 Supporting S. 2899/ H R. 4904
 Submitted August 30, 2000

Aloha Chairmen Campbell and Young, members of this joint hearing of the Senate Committee on Indian Affairs and the House Committee on Resources, and our Hawaii delegation: Senators Daniel Inouye and Daniel Akaka, and Representatives Neil Abercrombie and Patsy Mink. My name is Rowena M. N. Akana, and I am a trustee of the Office of Hawaiian Affairs (OHA). Thank you very much for the opportunity to testify today on this important measure. I regret that out-of-state business precludes me from personally being here. However, I am hopeful that you will favorably consider my testimony as it relates to this important measure. I speak today as a concerned Hawaiian, in my individual capacity as an OHA Trustee, and as a member of the State working group that was appointed by the Task Force on Native Hawaiians Issues to review the draft legislation and make recommendations to strengthen the language contained within the measure.

I support Senate Bill 2899 and HR 4904, relating to federal recognition for Native Hawaiians. I am grateful to Hawaii's Congressional Delegation for taking the initiative and introducing legislation that seeks to clarify the political



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relationship between Native Hawaiians and the United States/Federal Government. Clarification of the special relationship between Native Hawaiians and the federal government is important, given the Congress' recognition of Native Hawaiians, as referred to in the Apology Bill (P. L. 103-150), as an indigenous people with a special status similar to that of Native American Indians and Alaska Natives. Further recognition of Native Hawaiians by the federal government is appropriate. Nearly all of the Native Hawaiian community agrees that justice translates to political status and federal recognition, restoration of our inherent sovereignty, and redress from the United States for the illegal overthrow of the Kingdom of Hawaii in 1893.

Earlier this year, the United States Supreme Court in *Rice vs. Cayetano*, ruled that the State of Hawaii's denial of Mr. Harold "Freddy" Rice's right to vote in OHA trustee elections violates the Fifteenth Amendment. As a result, the OHA elections are now opened up to all registered State of Hawaii voters, regardless of ancestry.

This case has opened the door to similar attacks on Hawaiian rights and entitlements. It has put a wrench in the essential programs, services, and benefits afforded our people. This dire situation stands to erode and diminish the many advances Hawaiians have enjoyed in the areas of health, education, and housing at the federal level. We cannot aid the erosion of the progress that



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has been made by our people. The urgency to secure federal recognition has reverberated throughout our islands and has echoed in the Nation's Capitol. It is my hope that this joint hearing will reinforce what the majority of the indigenous people of Hawaii have been waiting for for more than 106 years.

On August 23, 2000, the U.S. Departments of Justice and Interior released a draft recognition report, entitled "From Mauka to Makai: The River of Justice Must Flow Freely. Draft Report on the Reconciliation Process between the Federal Government and Native Hawaiians." One of the report's recommendations was "the Departments [Interior and Justice] believe Congress should 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."

Furthermore, the report states that "the past history of United States-Native Hawaiian relations reveals many instances in which the United States actions were less than honorable. Native Hawaiians continue to suffer the effects of these actions, for which our Nation continues to have moral responsibility. For justice to be served, the report recommends that the past wrongs suffered by the Native Hawaiian people should be addressed...the Departments believe a more productive approach to reconciliation would be through more general efforts to promote the welfare of the Native Hawaiian



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people, respect their rights, and address the wrongs that their community has suffered.”

However, I would offer that the issue of ceded lands be incorporated in the measure to further strengthen the present language. As presently written, the bill does not include a mechanism for the State of Hawaii to transfer ceded lands subsequent to the establishment of the “new” nation.

What is does is seek a process by which an entity will be formed to determine how Hawaiians undertake the issue of obtaining ceded land revenue payments. I believe that a further step must be taken to address ceded lands and ceded land revenues. A nation without land is not a nation. I propose that 20% of the 1.4 million acres of ceded lands presently held by the State of Hawaii, be transferred to the new nation, and the process be delineated in the measure.

To bolster my proposal, the federal recognition report states that “it is the Departments’ recommendation that a priority should be developed for the transfer of future surplus Federal lands to the Native Hawaiian people in appropriate circumstances through legislation. The NH [Native Hawaiian] Office will provide appropriate assistance to Congress on this issue.”

Another important issue not currently addressed in the measure is blood quantum. I believe that it is important to include blood quantum in this measure even if it is only 1/32nd. Although the Native community has suggested that no



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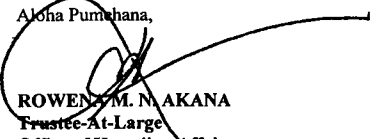
blood quantum be written into the bill, I believe that if a blood quantum is not inserted into the bill the Congress may question how a nation could be formed absent of proof of being a native person.

The U. S. Supreme Court justices in the Rice case also questioned the blood quantum issue. Blood quantum is a sensitive issue. However, in order to begin the process of self-determination it may be necessary to make this insertion.

In summary, Native Hawaiians are at an important juncture in our history. This proposed legislation is the framework from which Native Hawaiians' political status will be constructed. Senate Bill 2899/HR 4904 assists Native Hawaiians in their quest for self-governance and self-determination.

Again, I would like to express my appreciation for the efforts of our Hawaii delegation, the Co-Chairs and members of this committee in bringing this important issue to the forefront. I hope that you will favorably consider my testimony that I have just presented. Thank you for the opportunity to share my thoughts with you today on this very important measure.

Aloha Pumehana,


ROWENA M. NAKANA
 Trustee-At-Large
 Office of Hawaiian Affairs

DATE: August 22, 2000

TO: The U.S. Senate Committee on Indian Affairs
The U.S. House Committee on Resources
Joint Hearings

FROM: Corbett A. K. Kalama, Chairman
Native Hawaiian Working Group

REFERENCE: S. 2899 and H.R. 4904-A Bill to clarify the political relationship between the United States of America and the Native Hawaiians

Aloha to the distinguished members of the committee. My name is Corbett Aaron Kamohaikiokalani Kalama, a Kanaka Maoli and the Chairman of the Native Hawaiian Working Group (NHWG). I am here to testify in behalf of the NHWG. The NHWG supports passage of the above referenced legislation. The NHWG has recognized that the legislation will be refined to reflect and address community concerns prior to final passage. Passage of this bill is tantamount to the process of reconciliation and self-determination for the Native Hawaiians.

The NHWG believes that the Native Hawaiians have a cultural, historical, and land based link to the aboriginal native people who exercised sovereignty over the Hawaiian Archipelago. The NHWG believes that the purpose of the legislation is to clarify the political, legal and trust relationship between Native Hawaiians and the United States. The NHWG understands that the legislation is intended to protect the current programs and services for Native Hawaiians including Hawaiian Homelands, Native Hawaiian Health Care Improvement Act, and the Native Hawaiian Education Act.

The NHWG also recognizes the historical significance of this bill, in that it provides a mechanism and process whereby the Native Hawaiians can achieve self-determination. The NHWG also recognizes that this legislation is not intended to serve as a settlement of any claims against the United States nor is it intended to impede legal action in the international courts.

Since being appointed in April 2000, NHWG members' involvement has been one of commitment, intensity and emotion. We've fulfilled our responsibility of soliciting community input and providing comment on the legislation. We've met weekly since being appointed to the NHWG and have analyzed, critiqued, and worked with the Congressional Staff in making changes to the legislation based on community input. We've also conducted a number of community informational meetings on all islands to ensure that the Hawaiian Community understands the contents and implications of the bill. These meetings have overflowed with emotion. A number of the independent groups have expressed strong opposition to the legislation, however polls of the Hawaiian Community indicate that the majority supports the legislation. These meetings have witnessed the highest level of Hawaiian Consciousness related to self-determination, the importance of incorporating the Hawaiian Culture as part of the process and the significance of gaining control of the land assets and the related revenue generating mechanisms. Hawaiians have recognized that they need to expand their influence in the decision making process. Hawaiians realize that this can only occur through the continued education of the Hawaiian youth, involvement in the political process as a unified body and the continued willingness and true opportunity to influence the legislative process.

Reflecting back on these public meetings fills me with a great deal of emotion. Beneath the differing points of view ranging from the independent groups, to groups asking that the bill not result in the nation-within-a nation model, and to those that support it, I sensed a Great people who were crying out for fairness and for the United States to do what is pono (right).

It was only 37 years ago that the Reverend Martin Luther King gave his famous speech to 300,000 marchers on the footsteps of the Lincoln Memorial. Hawaiians have a dream and a vision. The first step is to acknowledge our uniqueness as a people and to provide a process for self-determination. Aloha.

Testimony by
Beadie Kanahele Dawson ¹
Joint Hearings on S.2899 and H.R.4904
United States Senate Committee on Indian Affairs
United States House of Representative Committee on Resources.
Wednesday, August 30, 2000
Pikake Room, Neal Blaisdell Center
Honolulu, Hawaii

Aloha, Kakou, Chairman Danny Akaka and Honorable Members of the Senate Committee on Indian Affairs and House of Representatives Committee on Resources. Aloha Pumehana Kanaka Maoli and others.

My testimony is in support of the Akaka Bill, with substantial amendments. I believe certain amendments are necessary before this Bill can be responsive to the mana'o of the many Native Hawaiians with whom our Native Hawaiian Community Working Group and I, individually and together, have met to discuss the issues involved. My testimony is based on extensive observations, experience and facts. I will be candid.

I believe this Bill, if amended, can be the beginning of United States justice for our people. This Bill, if amended, can be the first step to the nationhood that was taken from Native Hawaiians in 1893. This Bill, if amended, can be the first step to reconciliation between the Native Hawaiian people and the United States government.

This Bill, however, must not be a final step to permanent wardships for the Native Hawaiian people. There is no joy in being needy. Native Hawaiians don't want to be dependent forever. The history of Native Hawaiians is one of centuries of self-sufficiency. Native Hawaiians long

¹ My name is Beadie Kanahele Dawson, a Native Hawaiian attorney and business women, owner of two family businesses (Dawson International, Inc and Dawson Group, Inc) and former Deputy Attorney General for the State of Hawaii I am vice-chair of the Native Hawaiian Community Working Group.

to be self-sufficient again, and self-supporting in the future. And we will. Sadly, after 100 years, Native Hawaiians have become dependent on programs and support systems. Native Hawaiian needs for health, education, housing, and economic support are real and immediate.

Reality, however is a sharp wake-up call. Without the Akaka Bill, the United States Supreme Court and the Hawaii Supreme Court have ruled against the Native Hawaiian vote for Office of Hawaiian Affairs Trustees and against Hawaii Law which permits only Native Hawaiian to be trustees of OHA. OHA's constitutionality is also being challenged in the courts. Further, we are on notice and we expect the Hawaiian Homes Commission Act, the Alii trusts and all 150 federal laws which benefit our people, to be challenged as well. With the Supreme Court's decision in Rice v Cayetano leading the way, and without the Akaka Bill, it is my legal opinion that all of these challenges will succeed against Native Hawaiians. Why? Simply because Native Hawaiians have not been formally recognized by the United States as being entitled to the same constitutional protections accorded to other native peoples in the United States.

The following is a discussion of amendments which I believe are critical to the viability of this Act.

AMENDMENTS TO S.2899 AND H.R.4904

Comment for a new first paragraph for the Bill:

An added introductory paragraph must clearly state the intent and purpose of the Act, including a statement that the United States Recognition and Protection of the Native Hawaiian people under federal law are not intended to extinguish any Native Hawaiian claims under international law and that participation in the authorized recess and the resulting Native Hawaiian Governing Body is not intended to preclude future action by Native Hawaiians under either federal or international law.

Sec. 1. FINDINGS:

Comment for Sec. 1(2), Findings:

The United States Constitution both explicitly and implicitly gives Congress plenary power over the indigenous peoples of the United States and the Court has

never questioned that authority. This Act aligns Native Hawaiians with the other indigenous people of the United States and must be amended to expressly bring Native Hawaiians under the constitutional provisions of Art. I, Sec. 8 (Commerce Clause), Art. II, Sec. 2, Cl. 2 (Treaty Clause) and Art. I, Sec. 2 and XIV Am, Sec. 2 (Indian Tax Clause) to enable Native Hawaiians to receive the same benefits and protections accorded to Indian tribes and Alaska natives. However, there is no need to perpetuate the error made by Columbus² who called the natives in America “Indians”, when a simple explanation will retire the word “Indians” and properly equate it to indigenous, native people of the land. Labels such as “tribes” and “Indians” are patently offensive to many Native Hawaiians. Thus Section 1(2) should be amended because “tribes” and “Indians” do not describe who we are or our traditional form of government:

“ Sec. 1(2) Native Hawaiians are the indigenous, native people of the Hawaiian archipelago which became a part of the United States”

Comment for Sec. 1, Findings:

Because the history of Hawaii is critical to this Act and because so few Americans (read also Members of Congress) know or understand the actual facts about the desecration of the independent Kingdom of Hawaii and its people, the Findings Section should commence with twenty-five relevant recitals from the Apology Joint Resolution. In addition the Findings Section needs to be amended to acknowledge that at the time of the overthrow, the Kingdom of Hawaii had twenty treaties with other foreign nations in addition to five existing treaties with the United States, and it had ninety-one consulates throughout the world.

Comment for Sec. 1(5), Findings:

This subsection is inaccurate and misleading. It must be amended to state that the Hawaiian Homes Commission Act was enacted for the express purpose of

² “The term “Indian” was first applied by Columbus to the native people of the New World based on the mistaken belief that he had found a new route to India. The term has been understood ever since to refer to the indigenous people who inhabited the New World before the arrival of the first Europeans.”(citations omitted throughout) Brief for the United States, Seth P. Waxman, Solicitor General, Rice v Cayetano.

rehabilitating certain Native Hawaiians back onto the land. (HHCA was never intended to establish a “homeland” for the native people of Hawaii.)

Comment for Sec. 1(16), Findings:

This subsection is presumptuous and should be deleted in its entirety. It presumes to know what the Native Hawaiian people want. Only after an extensive educational period and the Referendum mandated in Section 7(3)(A) will the true desires and wishes of the Native Hawaiian people be known.

Sec. 2. DEFINITIONS:

Comment for Sec. 2(2), Adult Members:

Section 2(2) should be amended to eliminate any reference to either the Secretary of Interior or the Federal Register. (See amendments recommended for Section 7, *supra*.)

Sec. 3. UNITED STATES POLICY:

Comment for Sec. 3(1) United States Policy:

It is critical in the prevention or successful resolution to future legal challenges that this Section be amended to establish that the provisions of Article I, Section 8, (Indian Commerce Clause) and Article II, Section 2, (Treaty Clause) and Article 1. Section 2 and XIV Amendment, Section 2 (Indian Tax Clause) of the United States Constitution apply to the Native Hawaiian people.

Comment for Sec. 3(3) B United States Policy:

The references to the Admissions Act in this Section and also in Sec. 1(18) and Sec. 9(a), are problematic. A court of law may construe these references to the Admissions Act to be an implied or constructive legitimization of the illegal overthrow of the Kingdom of Hawaii, or to be a legitimization of the questionable Annexation and Cession of Hawaii lands to the United States, or to be a legitimization of the questionable referendum preceding Hawaii’s Admission which failed to meet the requirements of international law by not offering an

option for “independence” (as well as options for “territory” and “statehood” status) to Hawaiian’s voters. Therefore, the references to the Admissions Act, the Overthrow and Annexation must be expressly limited to preclude such a legal construction.

Comment for Sec. 3(4)(A) United States Policy:

Native Hawaiians have historically enjoyed many years of autonomy in their internal and external affairs. Native Hawaiians may wish to do so again, particularly in the areas of trade, commerce and exchanges and promotions of culture. Federal laws should be amended to permit them to do so again.

Sec. 4. UNITED STATES OFFICE FOR NATIVE HAWAIIAN AFFAIRS:

Comment for Sec. 4, United States Office for Native Hawaiian Affairs:

The Native Hawaiian Community Working Group has previously requested that the role and authority of the Secretary and the Department of Interior be substantially reduced or eliminated in the Act. I ask for these amendments again and request that Native Hawaiians be represented in the United States Office of Native Hawaiian Affairs and that the Bill give preference to naming a qualified Native Hawaiian to head this Office. I believe the inclusion of “Special Trustee” in the title of this office is both unnecessary and demeaning to Native Hawaiians. It should be removed.

Sec. 7. PROCESS:

Comment for Sec. 7, Process:

Many in the Working Group found that the role and authority of the Secretary in the Process Section was overbearing and unnecessary, particularly since we were aware of the recent revelation of mismanagement and the loss of \$2.4 billion of Indian Trust funds by the Secretary and the Department of Interior. Cobell v Babbitt. The entire Section 7 should be amended so that the role and authority of the Interior is substantially reduced or removed entirely. Native Hawaiians should self-certify themselves. We already know who we are and have been self-

certifying ourselves in the OHA elections for 22 years. I know of no reason or law why Native Hawaiians can not self-certify their Roll and their Elections through the utilization of sworn statements and oversight of the Commission in an expanded role. If a legal requirement for the Secretary's oversight exists for Indian Tribes and Alaska natives, Native Hawaiians should be exempted from it. Native Hawaiians are a People, not a group of multiple tribes. The entire Process Section should be simplified.

Comment for Sec. 7(a)(2) A, Commission:

This Section should be amended so that Commission members are ~~elected~~ by Native Hawaiians and their roles and authority expanded. All Commissioners should be Native Hawaiian and the number of Commissioners should be expanded to include perhaps sixteen representatives, two each from Hawaii, Maui, Molokai, Lanai, Kauai and Niihau and four from Oahu.

Comment for Sec. 7(a)(2) B, Certification:

This section should be amended to permit Native Hawaiians to self-qualify themselves on the Roll by sworn statements. The Commission would review and certify the Roll prior to election of the Interim Governing Council.

Sec. 7(a)(3): Notification: delete

Sec. 7(a)(4): Publication: delete

Sec. 7(a)(5): Effect of Publication: delete

Sec. 7(a)(6): Deadline for Petitions: delete

Sec. 7(a)(7): Certification of Additional Native Hawaiians on the Roll: delete

Substitute: "Additional Native Hawaiians may timely apply to the Commission for inclusion on the Roll"

Sec. 7(a)(8): Hearing: delete

Sec. 7(a)(9): Judicial Review: delete

Sec. 7(a)(10): Publication of Final Roll: delete

Sec. 7(a)(11): Effect of Publication: delete

Sec. 7(b)(1)(A): Organization of the Native Hawaiian Interim Governing Council:
Amend to organize meetings under supervision of the Commission.

Sec. 7(b)(1)(B): Election: Amend to have elections of Interim Council supervised
by Commission

Sec. 7(b)(1)(C): Approval: Amend to have the election of the interim Council
supervised by the Commission.

Sec. 7(b)(2): Powers: No changes

Sec. 7(b)(3): Duties: No changes

Sec. 7(b)(4)(A): Elections: Amend to have the Commission supervise elections to
ratify organic documents.

Sec. 7(b)(4)(C): Further Elections: Amend to have second or further elections to
ratify revised organic documents supervised by the Commission.

Sec. 7(c)(1): Organization of the Native Hawaiian Governing Body: No changes

Sec. 7(c)(2): Ratification: Amend to have ratification of organic documents
approved by the Commission.

Sec. 7(c)(3): Election of Governing Officers: Amend to have election of
governing officers supervised by the Commission.

Sec. 7(c)(7): Additional Rights and Powers: Amend to add Enumerated Powers.

Sec. 7(e): Incorporation: delete

Sec. 8. APPROPRIATIONS:

Comment for Sec. 8 Appropriations:

Amend to require substantial funding for the education of Native Hawaiians prior
to all elections with reference to this Bill and the Process.

Sec. 10. DISCLAIMER:

Comment for Sec. 10 Disclaimer: No Change

Amend to add: "Nothing in this Act is intended to extinguish Native
Hawaiians rights under international law."

Sec. 11. REGULATIONS:

Comment for Sec. 11 Regulations: Delete

Amend to substitute: "The Commission is authorized to make such rules and regulations as necessary to carry out the provisions of this Act."

Conclusion

Throughout this Bill, the amendments accomplish two general purposes. The first is the elimination and authority of the Secretary of Interior throughout the Bill. The second is to expressly state the purpose and intent of the Act at the beginning as well as in the Disclaimers in Section 10.

Theses amendments are necessary for this Bill to become both viable and acceptable. When amended, I believe Native Hawaiians, who hold a spectrum of beliefs and convictions, will be able to rally behind this Act.

I am appending my testimony from the Reconciliation Hearing because I believe it is still very relevant to this Bill.

I wish to express my most sincere mahalo to Hawaii's Congressional Delegation for the care, diligence and aloha that they have given this Native Hawaii Recognition Bill. I give my aloha and mahalo to our Working Group members for their passion, energy and devotion to studying and shaping this Bill and reaching out to our people under such taxing circumstances.

Many of my fellow Kanaka Maoli have presented testimony against this Bill. I ask that you hear them well for they have given just as much passion, energy and devotion to their studies and efforts on this Bill. We have spent many hours kukakuka hoi. To some observers, our positions may appear to be opposing each other. I believe that our support are criticisms of the Bill, where they are constructive, are meritorious. I believe we have the same goal: the best interests and future of our people.

We have before us, a magnificent opportunity to begin to make history pono once again. If we work together, we can make it pono for us, Kanaka Maoli, and for the United States.

You, Congressmen and Senators, together with us, the Kanaka Maoli, we are building a nation. It is a daunting and inspiring task. Imua.

AKAKA BILL S2899, HR4904
O'AHU ORAL TESTIMONY 8/30/00
by Kenneth R. Conklin, Ph.D.
46-255 Kahuhipa St. Apt. 1205
Kaneohe, HI 96744
Phone/fax (808) 247-7942
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Aloha kakou:

Currently we have a unified State of Hawai'i. This Akaka bill would divide us along racial lines. Currently we are all equal under the law. This bill would establish by law two classes of citizens. A racially-defined hereditary elite would have special voting rights and property rights in addition to all the rights of every citizen. Aren't the days of racial supremacy and second-class citizenship over?

The Supreme Court in *Rice v. Cayetano* identified "Native Hawaiian" as a racial classification. Over 150 racial entitlement programs might now be found unconstitutional. The Akaka bill tries to save them -- at the expense of carving up Hawai'i along racial lines. Government help should be based on need, not race.

Are Native Hawaiians like any Indian tribe you ever heard of? In 1840 -- 53 years before the overthrow -- the sovereign King Kamehameha III exercised self-determination by creating a constitution giving voting rights to all subjects of the Kingdom regardless of race. As time went by, thousands of non-natives became subjects of the Kingdom through naturalization or birth. By the overthrow of 1893 only 40% of the population had any native blood at all. Most high government officials had no native blood. Most of the wealth and political power was held by non-natives. All this happened under the authority of the sovereign monarchs. Has there ever been an Indian tribe where most of the wealth and most of the elected or appointed office-holders are non-Indians?

Sovereignty activists and federal officials are well aware that Hawaiians would never qualify as an Indian tribe under the 7 mandatory criteria for federal recognition. That's why the Akaka bill was introduced -- to have Congress create a phony Indian tribe through a political process, setting aside long-established procedures. Didn't Congress learn

CONKLIN PAGE 2

a lesson from the scandal over a similar political recognition of the Mashantucket Pequot tribe in Connecticut? It was documented in Jeff Benedict's book: "Without Reservation: The Making of America's Most Powerful Indian Tribe and the World's Largest Casino." And now you're thinking of doing it again?

Only 157 U.S. soldiers came ashore to maintain order during the overthrow. But ten times that many LOCAL members of the Honolulu Rifles took over government buildings and disarmed the royal guard. These local residents maintained power through 4 years of a hostile Grover Cleveland administration that tried to restore the Queen and secretly supported the failed Wilcox counter-revolution.

The U.S. has apologized for its small role in the overthrow, and wants to give reparations. But to whom are such reparations owed? To just one race of people?

The Kingdom of Hawai'i was not limited to Native Hawaiians. Many non-natives had full voting rights. Only 40% of the population at the time of the overthrow had any native blood at all. Most of the high government officials were non-native. Thousands of ethnic Japanese, Chinese, Americans, and Europeans were naturalized or were native-born subjects of the Kingdom before the overthrow. Their descendants today have equal standing with Native Hawaiians regarding any reparations the U.S. wants to give for its very small role in overthrowing the monarchy; yet the racist Akaka bill totally ignores them.

The Kingdom that had treaties with the U.S. was not Hawaiians-only. Government power, land ownership, and economic wealth were not Hawaiians-only. So why should Congress offer reconciliation and reparations to Hawaiians-only?

Please defeat the Akaka bill. Let us maintain a unified State of Hawai'i, with equality and aloha for all. Do not divide us along racial lines. Do not put us on a path toward Bosnia, Fiji, Rwanda, and Zimbabwe. For further information, visit my website:

<http://www.angelfire.com/hi2/hawaiiansovereignty>

CONKLIN PAGE 2

**Testimony Presented to the
Joint Committees on
Senate Indian Affairs and House Energy and Natural Resources**

Kina'u Boyd Kamali'i

Aloha and thank you for the opportunity to testify on S2899 and H4904. I am Kina'u Boyd Kamali'i, a member of the Working Group appointed to review the federal legislation being considered today and chairperson of Ho'omalua ma Kualoa.

We have very little time to present our testimony, so I would like to highlight my remarks and summarize some of my concerns. In particular:

- I support this Congressional effort to affirm, formalize and make explicit the trust relationship between the United States and the Hawaiian people. To avoid any misunderstanding regarding the intent of this legislation, I urge the inclusion of a Purpose Section clearly stating American intent to provide a process for (a) self-determination, (b) restoration of self-government and recognition within the federal system, and (c) a commitment to address outstanding claims for the former crown and government lands and other resources.
- Consistent with this purpose section, I further urge significant amendment to the Findings Section. As now written, this section confuses a recitation of American actions that led to first, the successful overthrow of the Kingdom of Hawai'i and second, implicit parallels between the Hawaiian experience and current thresholds for extending recognition and redress to tribal entities.

These two elements need to be separated and more fully addressed.

The "Apology Bill" contains an exemplary step-by-step reiteration of events and consequences linked to the overthrow to address the first component. I will leave to your judgment whether these findings can simply be incorporated through reference or need to be repeated.

However, the "Apology Bill" did not include the conspicuous denials of Native Hawaiian rights at the time of annexation and during the territorial period needed to amplify the threshold for recognition. Central to this second component are the historical denials of rights -- specifically self-government -- extended to other native and indigenous peoples within the United States. Among these violations were the lack of a treaty, the denial of a popular vote, the omission of a "disclaimer provision" recognizing and reserving native rights to the lands and resources included in every other territorial "Organic Act" from 1863 on; and the

guarantee of "fair dealing" under the auspices of the United States need to be set forth.

- Currently, these bills speak of a process for "reorganizing" a Native Hawaiian government. We need a straightforward commitment to recognition.

- The Commission section needs to identify how these individuals are to be selected and also require that they be Native Hawaiian. I believe that the Office of Special Trustee for Hawaiian Affairs should be given the rules making powers to develop the qualifications and application process for selection.

- The described enrollment process will work, if a date to close enrollment for purposes of qualifying in the reorganization process is set and an identification card is issued as part of the process. To my mind, two years should be an adequate amount of time to conclude this enrollment. And the issuance of an enrollment card will facilitate verification of voting eligibility later.

Further, reflective of our family structures, allowance for kupuna to register minor grandchildren and great-grandchildren should also be permitted. A provision explicitly protecting the future rights of those individuals and the children who are not registered should also be included.

- I am also recommending the creation of a simultaneous Apportionment Commission of fifteen Native Hawaiian members, again selected from applications to the Office of Special Trustee. These members would also serve for two years. It would be this Commission's recommendations regarding the size, composition and elections process that would be considered for ratification at the called for general meetings to be held on each island and at as many sites as necessary to assure full participation.

Eligibility to attend, participate and vote at a general meeting would be verified by presenting your enrollment card.

- The Interim Native Hawaiian Governing Council also needs a timing mechanism and more description. Members should be elected for a two-year term and complete the work of drafting an organic document within that time.

- A new section describing Powers of Government should be included to assure the Native Hawaiian entity has, at the very least, powers similar to other native nations including, but not limited to, dual citizenship, self-definition of membership, domestic powers of justice, taxation and control over inheritance and other family matters.

Essential to this new section would also be the power to hold title to land and

other real or personal property acquired from any source. All such property would be a part of the trust and subject to the laws and decisions of the new nation. These attributes are already in state law regarding the assets of OHA -- and there should be no need to require additional negotiation, consultation or consent from the state.

■ Linked to this position, I am opposed to the Incorporation Section allowing the Hawaiian government to form a corporation if desired. If the need for this section is to allow ownership of property, then make that a power of the government. Do not force us to assume the trappings and traps of a corporate mentality that have not served the best interests of either the Alaskan Natives or the Office of Hawaiian Affairs.

I realize that I am urging major revision of the bills before us. However, taking more time at this juncture to detail the process will save us years of frustration later.

At this time, I want to thank the members of the Hawai'i Congressional delegation for your dedication and determination to seeing the Hawaiian people recognized. You and the members of these two committees -- and ultimately the full Congress -- hold not only the future of the Hawaiian people in your deliberations, but the future of all Hawai'i.

Anger, hurt and resentment continues to build within the Hawaiian spirit and soul as the promise of making right what has so long been wrong is delayed or deferred. You must act. The "Apology Bill" promised reconciliation. Please keep that promise.



OAHU COUNCIL
Association of Hawaiian Civic Clubs

August 23, 2000

Senator Daniel Inouye
Senator Daniel Akaka
Representative Neil Abercrombie
Representative Patsy Mink
Members of the Senate Indian Affairs Committee
Members of the House Committee on Resources

Aloha,

In December 1918, Prince Jonah Kuhio Kalaniana'ole, Hawai'i's delegate to the Congress at that time, brought together a group of leaders to organize a strong and cohesive group within the Hawaiian community to lead Hawaiians to become actively involved in legislative matters. Today, there are 46 clubs located throughout the United States, 23 of those clubs sit on O'ahu.

Since its founding, the O'ahu Council has actively participated in legislative matters, initiating numerous resolutions on health, education, economic, cultural and land issues. We are proud to say that we were the first to sponsor an informational forum for the public at the State Capitol Auditorium, on July 31, 2000 on Senate Bill 2899 and HR 4904, recognizing the importance of and need for this legislation.

Additionally, at its annual convention held in 1997 and 1999, the Association of Hawaiian Civic Clubs passed resolutions urging a comprehensive settlement of the outstanding claims of the Hawaiian people for land and sovereignty and urging Native Hawaiian participation in a reconciliation process with the Federal government as called for in Public Law 103-105 by attending and speaking out at community outreach meetings, and testifying and/or submitting written testimony at the public hearings.

Today, we are here to speak in support of the **concept** of Senate Bill 2899 and HR 4904, with amendments. We wish to applaud the initiative of Senator Akaka and the support of our other congressional leaders to seek legislation to begin the steps toward some form of recognition to the indigenous people of Hawaii with the intent of preventing further erosion of and threat to current benefits and entitlements. We wish also to applaud the members of the Native Hawaiian Working Group Committee who have met since March 2000 to review the proposed legislation and to make recommendations to strengthen it

However, we are concerned about the following aspects of the Bill:

- Most of the decision-making authority rests with federal officials. The following are examples:
 - The Secretary of Interior would hold the cards in terms of timeliness and appropriateness to approve our organic governing document and election of government officials. The track record of that office as regards the affairs of American Indians has not been favorable, thus, we have strong concerns about the authority being proposed for that office.
 - The Native Hawaiian Interagency Task Force is composed primarily of federal officials, to be appointed by the president (Reference Section 6 of the bill). Thus, while the intent of the bill appears to be to facilitate Kanaka Maoli in seeking their right of self-determination, perception is that the federal government will be controlling the important aspects of the process. Strongly urge that the roles of various government officials be re-evaluated with a view to more involvement in the process by the native Hawaiian community.
- To leave no doubt about the question of entitlements, recommend that strong language be included in the bill that makes clear that the "race based" benefits currently provided for Hawaiians is not a violation of equal protection under the 14th Amendment, but rather is a reconciliation measure under the federal mandate of P.L. No. 103-150.
- The bill does not clearly set forth provisions to address the following:
 - When would the Office of Special Trustee for Native Hawaiian Affairs be established?
 - Who would take the lead to begin the preparation of the "roll" for the purpose of the organization of the Native Hawaiian Interim Governing Council?
 - Who will appoint the commission for certifying the "roll"?
 - How soon after passage of the bill would the "roll" be taken? How much time will be allowed for the "roll" to be established?
 - Sec 7, para (a)(10) says final roll will be published in the Federal Register within 290 days of the receipt by the Secretary of the roll. Could this period be shortened?
 - Within 90 days after the date of the publication of the final roll in the Federal Register, the Secretary shall announce the date of a general meeting of the adult members on the roll to nominate candidates from among the adult members listed on the role for election to the Native Hawaiian Interim Governing Council. Who will facilitate the discussions with the "roll" in establishing the criteria for candidates to serve on the Native Hawaiian Interim Governing Council?

We appreciate the opportunity to comment on SB 2899 and HR 4904 and are optimistic that legislation will be passed that protects all existing and future Native Hawaiian programs.

Me ke aloha pumehana

LEIMOMI KHAN
President

Encls-2

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

A RESOLUTION

ACKNOWLEDGING THE CENTENNIAL OF THE ANNEXATION OF THE HAWAIIAN ISLANDS AS A "CENTURY OF DISHONOR" AND URGING A COMPREHENSIVE SETTLEMENT OF THE OUTSTANDING CLAIMS OF THE HAWAIIAN PEOPLE FOR LAND AND SOVEREIGNTY

WHEREAS, the Congress and President of the United States extended a formal apology to the Hawaiian people for the overthrow of the Kingdom of Hawai'i (P.L. 103-150) which summarized and acknowledged that

- The United States was central to the success of the overthrow of the Kingdom in 1893, a legitimate and friendly government which enjoyed recognized treaty relationships of friendship and trade with the American government, and
- At annexation in 1898 more than 1.7 million acres of former crown, government and public lands of the Hawaiian nation were ceded to the United States "without the consent of or compensation to the Hawaiian people;" and
- The inherent right of sovereignty held by the Hawaiian people has never been extinguished or diminished by a vote of the Hawaiian people, and

WHEREAS, 1998 will mark the centennial of the annexation of the Hawaiian Islands and a "Century of Dishonor" in which the United States and the State of Hawai'i have not addressed, settled or approached any degree of reconciliation with the Hawaiian people regarding a comprehensive settlement of outstanding Hawaiian claims for the lands taken or the sovereignty violated, and

WHEREAS, the land claims are asserted to the crown and government lands, together with all traditional and appurtenant rights including, but not limited to the submerged, marine, air and sky rights associated with these lands, and

WHEREAS, such a settlement is sought and is compelled from and at the will of the Hawaiian people and

WHEREAS, such a settlement must involve and ultimately require the ratification of the Native Hawaiian people in resolution of the land claims and also require self-determination of the Native Hawaiian people to resolve sovereignty,

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs in convention at San Diego, California, this 15th day of November, 1997, that we acknowledge the centennial of annexation in 1898 as marking a "Century of Dishonor" and urge a comprehensive settlement of the outstanding claims of the Hawaiian people for lands and sovereignty, and

BE IT FURTHER RESOLVED, the Association of Hawaiian Civic Clubs encourages and will join with other Hawaiian organizations in commemorating the centennial of annexation not as an occasion for celebration but of shame which can only be absolved by formal and concentrated efforts to address and settle Hawaiian claims to the crown and government lands and the restoration of Hawaiian sovereignty and self-determination, and

BE IT FURTHER RESOLVED, that copies of the Resolution be transmitted to the President of the United States, Office of Hawaiian Affairs, the Hawai'i Congressional delegation, State of Hawai'i Governor Benjamin Cayetano and the mayors of the four counties of the State of Hawai'i



The undersigned hereby certifies that the foregoing Resolution was duly adopted on November 15, 1997 at the 38th Annual Convention of the Association of Hawaiian Civic Clubs at San Diego, California

President

Attest, December 79, 1997

Corresponding Secretary

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

A RESOLUTION

URGING NATIVE HAWAIIAN PARTICIPATION IN A RECONCILIATION PROCESS WITH THE FEDERAL GOVERNMENT AS CALLED FOR IN PUBLIC LAW 103-150

WHEREAS, on November 23, 1993, Joint Resolution 19 of the 103rd Congress of the United States was signed by President William J. Clinton as Public Law 103-150; and,

WHEREAS, Public Law 103-150 (P.L. 103-150) was intended as a means "To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii;" and,

WHEREAS, the text of P.L. 103-150, commonly called the "Apology Bill" incorporates a condemning history of United States conspiracy and armed military intervention to illegally overthrow a peaceful, sovereign nation leading to the annexation of Hawaii in 1898, despite protests from tens of thousands of native and non-native residents; and,

WHEREAS, after a century of colonial rule, the United States offered an apology to acknowledge the historical significance of the overthrow "which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people" and "the deprivation of rights of Native Hawaiians to self-determination;" and

WHEREAS, PL 103-150 includes the following

Section 1 Acknowledgement and Apology: The Congress -

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people;

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people; and

WHEREAS, U.S. Senator Daniel Akaka reported that as President Bush left office the Department of Interior (DOI) issued a damaging legal opinion agreeing with the majority report of the 1983 Native Hawaiian Study Commission that no federal trust relationship existed between the United States and Native Hawaiians; and,

WHEREAS, President Clinton rescinded that opinion in 1993 but the DOI failed to provide any new policy leaving a void with no federal policy and the political status of Native Hawaiians unspecified for the past six years; and,

WHEREAS, a press release of October 20, 1999 from the U.S. Departments of Interior and Justice stated that representatives would conduct community outreach visits and public consultations to implement reconciliation efforts as called for in P.L. 103-150; and,

WHEREAS, the named officials, John Berry, Assistant Secretary, Policy, Management, and Budget for Interior and Mark Van Norman, Director, Office of Tribal Justice, for the Department of Justice, will be visiting neighbor islands starting on December 4 and conducting two public hearings from 8:00 a.m. to 6:00 p.m. on December 10-11, 1999 at the East-West Center; now therefore,

NOW THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs in convention in Ka'anapali, Maui this 13th day of November 1999 urges Native Hawaiian participation in a reconciliation process with the Federal government as called for in Public Law 103-150 by attending and speaking out at community outreach meetings, and testifying and/or submitting written testimony at the public hearings; and,

BE IT FINALLY RESOLVED, that certified copies of this resolution shall be transmitted to the offices of the Hawaiian Congressional Delegation, the Office of Hawaiian Affairs, the President of the Hawaii State Senate and the Speaker of the State House of Representatives

The undersigned hereby certifies that the foregoing Resolution was duly adopted on November 13th, 1999 at the 40th Annual Convention of the Association of Hawaiian Civic Clubs at Ka'anapali, Hawaii's

A. Hoke

President

Attest: December 31, 1999

Lily F. Oa

Corresponding Secretary - 99-17



**SUSAN MASTEN, PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS
TESTIMONY ON S. 2899 AND H.R. 4909, NATIVE HAWAIIAN
RECOGNITION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
AND HOUSE COMMITTEE ON RESOURCES**

AUGUST 30, 2000

I. INTRODUCTION

Good afternoon Vice-Chairman Inouye, Senator Akaka, Representative Abercrombie, Representative Mink, and Representative Faleomavaega. My name is Susan Masten. I am the President of the National Congress of American Indians (NCAI), and Chairperson of the Yurok Tribe of Northern California. NCAI is the oldest and largest, American Indian organization in the United States, organized in 1944 to fight against termination of tribal sovereignty and the assimilation policies promulgated by the federal government. Today, NCAI remains dedicated to protecting the rights of its more than 250 member Indian Nations, and to working to help tribal governments and all Native people achieve self-determination and self-sufficiency.

On behalf of NCAI, I would like to thank you for the opportunity to testify before the Committees regarding S. 2889 and H.R. 4909, bills to express the policy of the United States regarding the United States' relationship with Native Hawaiians. NCAI strongly supports the recognition of Native Hawaiian sovereignty by the federal government and the creation of a process that will lead to self-determination for Native Hawaiian people. Over the last year, the member tribes of NCAI have unanimously advanced two resolutions - Resolution #PSC-99-042 (attached) and Resolution #JUN-00-032 (attached) - supporting the sovereign rights of Native Hawaiians and calling for the federal recognition of the Native Hawaiian Governing Body.

Like all of our nation's indigenous peoples, Native Hawaiians lived on the land and governed their own affairs for thousands of years before the first European contact. Even after European contact, nations from all over the world 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 such as international treaties. The United States officially recognized the Kingdom of Hawai'i as a sovereign political body as early as 1826, evidenced by five treaties between the United States and the

Kingdom of Hawai'i. However, as agricultural ventures on the Hawaiian Islands increased production and profits, pressure came from the United States to annex Hawai'i. Americans precipitated a violent overthrow of the Kingdom of Hawai'i in order to ensure annexation and later statehood for Hawai'i.

There has been an ongoing effort for many years to formally address the organization of the Native Hawaiian community into an entity that would be recognized as having a government-to-government relationship with the United States. There are many different formulations and concepts that have been debated in the Islands. This debate occurs against the backdrop of the unresolved claims against the United States for the illegal overthrow of the Queen in 1893 and subsequent annexation of the Islands by the United States.

The federal government has made it clear that Native Hawaiians have the same status as other native groups, but the sentiment has existed without full legal recognition. Congress has passed more than 150 federal laws addressing the conditions of Native Hawaiians as a distinct and unique group, including the Hawaiian Homes Commission Act of 1920 and the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union." This corpus of legislation sets a legal precedent that provides the basis for federal recognition of a Native Hawaiian governing body.

Among the numerous Acts that refer to Native Hawaiians as a group is Public Law 103-150, or the Apology Act. The Act's purpose is to "acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawai'i, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai'i." This bill enumerates the various wrongdoings of the United States government in relation to the Native Hawaiians and the Kingdom of Hawai'i, including describing the illegal overthrow as a "substantial wrong" and as an "act of war." This law alone entitles the Native Hawaiian people to compensation and reconciliation, and calls for the Congress and the President to support those efforts.

A stimulus to the introduction of S. 2899 and H.R. 4904 was a recent United States Supreme Court decision in *Rice v. Cayetano*, which determined that the election of trustees of the Office of Hawaiian Affairs (OHA) solely by Native Hawaiians violated the fourteenth amendment of the U.S. Constitution. OHA is an entity of the State of Hawaii created in the State Constitution at the behest of Native Hawaiian delegates to the State Constitutional Convention. OHA receives income from certain trust lands and advocates for Native Hawaiians and their issues. Advocates for Native Hawaiians have argued to the U.S. Supreme Court that the OHA should be treated for constitutional analysis purposes similar to an Indian tribe. Rejecting this argument, the Court focused on the fact that OHA is a state agency and not a freestanding political entity recognized by the United States.

S. 2899 and H.R. 4909 both create a system by which Native Hawaiian people, with the

assistance of the Secretary of the Interior through the Office of the Special Trustee, may organize and create their own entity that the United States will recognize. It is clear that Native Hawaiians must support any process designed for this purpose in order for it to be successful. NCAI will support whatever path the Native Hawaiian people choose to assure their self-determination, and will assist by sharing our own experiences where they are relevant.

S. 2899 and H.R. 4904 is based in part upon the recognition or restoration process that Congress has followed for several decades with many tribes, including my own Yurok Tribe. The Yurok Tribe, though federally recognized since the mid-nineteenth century, had never formally organized its governmental structure. We shared a reservation with the Hoopa Valley Tribe and individuals were in frequent litigation over resource distribution, fishing, and cultural rights. In 1988, the Congress divided our formerly joint reservation and set out a process that included creating a membership roll, electing an interim council, drafting a constitution, and then receiving federal recognition or acknowledgment of our designated government. It was a successful, but not problem-free, process. During our constitutional process there was debate in our community over whether having an organized government with the potential of Department of the Interior interference was preferable to our then-current situation. The late Joe De la Cruz, then-President of the Quinault Indian Nation, visited our people and assured us that the benefits of being an organized government, including the enhanced control over our own destiny, far outweighed any power that the Department of the Interior might have. Let me assure you that time has shown his judgement to be correct. Our ability to serve our people and to protect our resources does indeed far outweigh the problems with the federal bureaucracies.

II. THE ARGUMENT FOR NATIVE HAWAIIAN SOVEREIGNTY

It is important to formally recognize the sovereignty of the Native Hawaiian people because of the historical wrongdoings and deprivations that the Native people faced at the hands of the United States when their government was taken from them. But self-determination is needed not only to ensure a measure of justice, but more importantly to protect the unique indigenous Hawaiian culture which is constantly threatened by the incursions of a predominant non-native culture. Self-determination is also necessary for the protection and governance of lands, which are necessary for any culture to continue to survive, to allow native people to live together as a community, continue traditional land-based cultural practices, and provide the economic means to live productive and healthy lives.

Through S. 2899 and H.R. 4904, Congress is taking the initiative to help Native Hawaiian people create a sovereign political entity of their own creation. The legislation provides for the creation of a Native Hawaiian Interim Governing Council. This council, being comprised of nine members—all of whom are Native Hawaiian—will serve as the first step

in the creation of a Native Hawaiian governing body for the Native Hawaiian population.

The creation of a Native Hawaiian governing body will begin reconciliation between the federal and state governments and the Native Hawaiian people. With a representative council, the Native Hawaiians will have a unified voice with which to speak to local, state, and federal government entities on a government-to-government basis. This government-to-government interaction fulfills the President's Executive Order #13084, which requires the federal government to consult with Native governments on mutually important matters.

The creation of the Council, along with the recognition of Native Hawaiian sovereignty, will protect it against attacks from non-natives who do not respect the inherent rights of Native people to self-government. With a governing Council in place, Native Hawaiians no longer have to worry about non-native individuals running for seats on their governing body, which has happened as a result of the Supreme Court Decision in Rice v. Cayetano.

NCAI works to protect tribal sovereignty and indigenous cultures worldwide. We strongly believe that these fundamental principles will serve to the benefit of Native Hawaiians and to all who live in Hawai'i. On the mainland, we have seen how respect for tribal sovereignty has transformed failing Indian communities into strong partners in providing law and order and governmental services, as well as in economic development. We would strongly urge that all Hawaiians consider the merits of this legislation and support its passage in the U.S. Congress.

III. PROVISIONS OF THE LEGISLATION

We have reviewed S. 2899 and H.R. 4904 and offer the following comments:

Sections 1 and 3. Findings and Policy

The findings and policy sections are very important because they make the legal case for Native Hawaiians as Native peoples for whom the United States has a trust responsibility and for whom the Congress has the authority to legislate.

Section 2. Definitions

The key definition is that of "Native Hawaiians", which provides for the lineal descendants of the Native people who resided in Hawai'i on January 1, 1893. This definition requires the broad-based support of the Native Hawaiian people. My own experience as a member of the interim council for the Yurok Tribe, which was responsible for developing our tribe's constitution, was that the congressionally delineated criteria for our tribal membership excluded many whom we at home considered Yurok. Under our own constitutional standards, our membership rose over fifty percent. Although we cured the

problem in practice, the effects linger and we still fight to have our real numbers used as the basis for federal funding.

Sec. 4. Establishment of the Office of Special Trustee for Native Hawaiian Affairs

This trustee is clearly different and has a more limited role than does the Secretary of the Interior as trustee for Indian tribes. The office does not hold title to land or other resources, but seems to have a consulting and coordinating role. An important role of the Secretary of the Interior is representing the interests of tribes in litigation against states where tribes may be barred by the 10th Amendment from litigating directly. Although section 5 (designation of Department of Justice representative) seems to imply this responsibility, you may wish to consider specifying this representative role for the Trustee.

Sec. 7. Process for Development of a Roll, Interim Governing Council, Native Hawaiian Governing Body, and Federal Recognition

The process of establishing a roll is extremely time consuming and labor-intensive. The nine member commission needs to have an adequate budget, a basis for community input as to who the members will be, how the commission will be compensated, and what their term of office will be. In the Yurok Tribe's situation, we had a five member Yurok Transition Team that assisted in the preparation of the roll. It was dissolved upon the election of the interim council, something that is not provided for in S. 2899. Although time lines in federal statutes infrequently are met, without them, the roll development process could take an inordinately long time. Native Hawaiians know their own community and should be able to suggest an appropriate time frame for the roll process.

As written, the process of appeals for membership decisions ends in federal court; is the federal court's review a review on the full record (a de novo review), or is it one simply limited to determining whether or not the Secretary was arbitrary or capricious? Without a clear Congressional intent demonstrated, federal courts will simply apply the Administrative Procedures Act and its rather limited review standard. The importance of this question increases with respect to the Secretary's determination that the governing documents are consistent with applicable law and the special trust relationship in order to ratify federal recognition of the Native Hawaiian governing body. If the Secretary rejects the organic documents within 45 days, what is the appeals process and what standard of review will the court use? This is especially important where the statutory standard provided is vague and without Congressional direction, because the courts will defer to the Secretary's discretion in interpreting statutes that the Secretary implements.

The number of members of the interim council is not set in the legislation, nor is any process described for determining that number. I realize that issues of representation need to be worked out in the community, for example, the number of representatives, at-large membership, district membership, designated members or some mix, but generally the

place for that is in the governing documents. In our case, we had a five member interim council elected at large, who implemented the process for developing our governing document, our Constitution. The Constitution provides for an elected seven member council, where the chair and vice-chair are elected at large, and five members of the council are elected from districts designed to reflect the historic and cultural patterns of our tribe even though the districts are of unequal sizes and voter populations. S. 2899 and H.R. 4904 also limits the interim council to only those powers provided in these bills. We had a similar restriction in our legislation and, as such, were not able to contract with any federal agency for funds. As this was the case, we were forced to go back to Congress for an amendment.

With respect to developing governing documents, a most important thing we did was to encourage as much community input as possible. We established a community-based drafting committee; we held numerous community-based meeting; we polled the community on specific policy questions before drafting; and we utilized our attorneys as an integral part of the drafting process.

Finally, with respect to claims and potential land base, I understand that this bill does not directly address these issues. It does provide that the United States is authorized to negotiate an agreement with the State of Hawai'i for the transfer of land and assets to the Native Hawaiian government. Although not self-executing or binding on the State of Hawai'i, it is important recognition of this significant issue. In our own experience, we are still struggling with our claims issues, as well as trying to develop and appropriate and viable land base and adequate funding for our needs. We are, however, better able to address these issues as an organized tribe. Organizing our government has not automatically cured these issues. I would suggest at a minimum, with respect to claims, this legislation include a provision that makes clear that nothing therein waives any of the claims or can be used as a set off in those claims.

IV. CONCLUSION

Distinguished Committee members, as you know, the issue of self-government and sovereignty is the most important one for Native people in this country. The survival of our cultures, our homelands, and our life-ways depend on our ability to control our own affairs and govern ourselves. The most basic of our inherent rights as Native people, sovereignty is the essence of our very being. The first and most critical step of lifting a people to the level of parity with other governments is recognizing the deep-seated right of our people to self-government. As President of NCAI, an organization whose primary goal is to assist indigenous people in the attainment of sovereignty, I commend you for your continual efforts in assisting our Native Hawaiian brothers and sisters in doing just that.

On behalf of NCAI, I thank you again for the opportunity to present testimony on this very

important piece of legislation. In this era of self-determination policy, it is critical that Native Hawaiians realize their goal of sovereign self-government that they have been pursuing for the last century. NCAI believes that, by giving the Native Hawaiian governing board the duty and license enumerated in this bill, it will allow Native Hawaiians to create their own broad and encompassing version of self-government. NCAI and its 250 member Nations applaud the efforts of the Hawai'i Congressional delegation to introduce and enact this landmark legislation.

I would be happy to respond to any questions that you may have.

* * * * *

ATTACHMENTS

NATIONAL CONGRESS OF AMERICAN INDIANS

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Yank Tribe

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Dr. Ron Allen
Jamestown S'Kalliam Tribe

RECORDING SECRETARY
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Julia Williams
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Bernada Churchill
Mille Lacs Band of Ojibwa

MUSKOGEE AREA
S. Diane Kelley
Cherokee Nation

NORTHEAST AREA
Adina Ransom
St. Regis Mohawk Tribe

PHOENIX AREA
A. Brian Wallace
Wadsworth Tribe of NV/CA

PORTLAND AREA
Ernest L. Stenberg
Coww' d'Alene Tribe

SACRAMENTO AREA
Mervyn E. Hess
Bishop Paiute Tribe

SOUTHEAST AREA
A. Bruce Jones
Lumbee Tribe

EXECUTIVE DIRECTOR

John R. Chase
Mandan, Hidatsa & Arikara

THE NATIONAL CONGRESS OF
AMERICAN INDIANS

RESOLUTION # JUN-00-032

Title: Support Federal Legislation Calling for Recognition of the
Hawaiian Nation and Return of Land to the Hawaiian Nation

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, the federal policy affords all Native Americans and Alaska Native the right to be self-governing within a defined land base; and

WHEREAS, there is a need for self-government; and

WHEREAS, NCAI at its 56th annual session adopted Resolution #99-042, which supports the sovereign rights of Native Hawaiians and recognizes the need to develop a true government-to-government relationship with the Hawaiian Nation; and

WHEREAS, NCAI also adopted in that same resolution that the Hawaiian Nation's goal is federal recognition as a sovereign indigenous nation with inherent rights to self-determination and self-governance.

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NOW THEREFORE BE IT RESOLVED, that NCAI does hereby support federal legislation calling for recognition of the Hawaiian Nation, a self-determined entity created by and for native Hawaiians and their descendants in furtherance of a true government-to-government relationship; and

BE IT FURTHER RESOLVED, that NCAI further supports the return of land to the Hawaiian Nation.

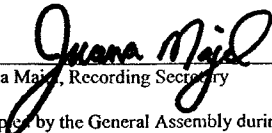
BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the Hawai'i state legislature, the Hawai'i congressional delegation, the 106th Congress of the United States of America, Secretary of the Department of Interior, Attorney General of the United States, Secretary of State and the President of the United States of America.

CERTIFICATION

The foregoing resolution was adopted at the 2000 Mid-Year Session of the National Congress of American Indians, held at the Centennial Hall in Juneau, Alaska on June 25-28, 2000 with a quorum present.


Susan Masten, President

ATTEST:


Juana Maja, Recording Secretary

Adopted by the General Assembly during the 2000 Mid-Year Session of the National Congress of American Indians, held at the Centennial Hall in Juneau, Alaska on June 25-28, 2000.

NATIONAL CONGRESS OF AMERICAN INDIANS

THE NATIONAL CONGRESS OF
AMERICAN INDIANS

RESOLUTION # PSC-99-042

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RECORDING SECRETARY
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Marilyn Tappan
Pawnee Band of
Pottawatomie of Kansas

BILLINGS AREA
William Old Chief
Blackfoot Tribe

BUNEAU AREA
Mike Williams
Tussock

MINNEAPOLIS AREA
Bernice Churchill
Middle Lac du Flambeau of Ojibwa

MUSKOGEE AREA
S. Diane Kelley
Chevone Nation

NORTHEAST AREA
Alma Ransom
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PHOENIX AREA
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Washoe Tribe of NV/CA

PORTLAND AREA
Ernest L. Strongear
Cowichan of Alaska Tribe

SACRAMENTO AREA
Marvin E. Hays
Indio/Pawnee Tribe

SOUTHEAST AREA
A. Bruce Jones
Lumbee Tribe

EXECUTIVE DIRECTOR

Joann K. Chase
Mandan, Hidatsa & Arikara

**Title: Support the Sovereign Rights of Native Hawaiians and Recognize the
Need to Develop a True Government-to-Government Relationship
with the Hawaiian Nation**

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, the federal policy affords all Native Americans and Alaska Natives the right to be self-governing within a defined land base; and

WHEREAS, there is a need for self-government; and

WHEREAS, there has been more than a century of injustice, including neglect and abuse of Native Hawaiian entitlements and human and civil rights, by the United States and its agent, the state of Hawai'i; and

WHEREAS, in 1993, the United States Congress passed the Apology Bill (Act of Nov. 23, 1993, Public Law 103-105, 103rd Congress, 107 STAT 1510) acknowledging its role in the illegal overthrow of the Hawaiian Nation in 1893 and called for reconciliation; and

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WHEREAS, the Apology Law further stated "...the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum; and

WHEREAS, the Hawaiian Nation's goal is federal recognition as a sovereign indigenous nation with inherent rights to self-determination and self-governance.

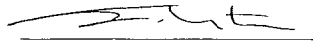
NOW THEREFORE BE IT RESOLVED, that NCAI does hereby support the sovereign rights of Native Hawaiians and recognizes the need to develop a true government-to-government relationship with the Hawaiian Nation; and

BE IT FURTHER RESOLVED, that NCAI does hereby request the government of the United States to articulate and implement the federal policy of Native Hawaiian self-government with a distinct, unique and special trust relationship and to implement reconciliation pursuant to Public Law 103-150; and

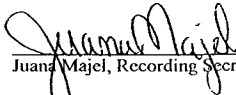
BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the Hawai'i state legislature, the Hawai'i congressional delegation, the 106th Congress of the United States of America, Secretary of the Department of Justice, and the President of the United States of America.

CERTIFICATION

The foregoing resolution was adopted at the 1999 Annual Session of the National Congress of American Indians, held at the Palm Springs Convention Center, in Palm Springs, California on October 3-8, 1999 with a quorum present.


Susan Masten, President

ATTEST:


Juana Majel, Recording Secretary

Adopted by the General Assembly during the 1999 Annual Session of the National Congress of American Indians, held at the Palm Springs Convention Center, in Palm Springs, California on October 3-8, 1999.

Testimony of Mark C. Van Norman
 Before the Senate Committee on Indian Affairs and
 The House Committee on Resources on S 2899 and H.R. 4904
 August 30, 2000

Good Afternoon. Mr. Chairmen and Members of the Committees, my name is Mark C. Van Norman. Thank you for providing me with the opportunity to provide testimony today on S. 2899 and H.R. 4904. Until August 15, 2000, I served as the Director of the Office of Tribal Justice in the U.S. Department of Justice, but I have left the government and I am in transition to the private sector. I appear in my personal capacity to strongly urge Congress to enact S. 2899 and H.R. 4904 to promote Native Hawaiian self-determination under federal law.

Over the past several years, I have met with members of the Native Hawaiian community on numerous occasions in diverse situations to discuss the Native Hawaiian people's history, circumstances, and self-determination. These meetings included the Interior and Justice Department reconciliation meetings, congressional hearings, the State Department's meetings on the rights of indigenous peoples in international law, Native Hawaiian issues forums at the Smithsonian Institute, site visits to Native Hawaiian communities and institutions, meetings at the University of Hawaii, meetings of the National Congress of American Indians, meetings of the Federal Bar Association, and other professional gatherings in both Hawaii and Washington, D.C. During this time, I have studied the history and the circumstances of the Native Hawaiian people.

In addition, I am an attorney and for the past twelve years, I have practiced in the area of Federal law relating to the native peoples of the United States. Before I joined the Department of Justice, I represented American Indian tribes before Congress and Federal, tribal, and state courts. During my five year tenure with the Department of Justice, I worked on a broad array of legal and policy issues affecting American Indian, Alaska Native, and Native Hawaiian peoples.

On a personal and professional level, I strongly support S. 2899 and H.R. 4904 because the measures represent major steps towards Native Hawaiian self-determination and self-governance. If accepted by the Native Hawaiian people, these measures would provide a representative native governing body to work to address the injuries that the Native Hawaiian people suffered as a result of the overthrow of the Kingdom of Hawaii.

I. The History and Circumstance of the Native Hawaiian People

The Native Hawaiian people are the aboriginal, indigenous people of Hawaii. The ancestors of the Native Hawaiian people were Polynesian people, who navigated the Pacific and discovered and settled Hawaii over one thousand years ago. According to some sources, the Native Hawaiian settlement of Hawaii may have taken place at or before the time of Christ. Through traditional chants, the Native Hawaiian people

maintain an oral history of many centuries of life in Hawaii. These chants are a reflection of the strength of the Native Hawaiian people's attachment to their land.

Before the arrival of Captain James Cook in 1778, the Native Hawaiian people had a highly developed system of self-government and a self-sufficient lifestyle based on agriculture, aquaculture, and other traditional uses of Hawaii's natural resources. Native Hawaiians are renowned for the beauty of their traditional songs, music, dances and raiment – and most especially for their traditional welcoming spirit of Aloha. As the Interior-Justice Report on the Reconciliation Process states, the Native Hawaiian people “made remarkable artistic, cultural, and scientific advances . . . prior to the first contact with Europeans in 1778.” *Id.* at 1.

In 1810, King Kamehameha I unified the Hawaiian Islands in the Kingdom of Hawaii, which was at its very essence the Kingdom of the Native Hawaiian people based upon their traditions and culture and governing themselves and their land. The United States, Great Britain, and Japan entered into a series of treaties on friendship, commerce, and navigation with the Kingdom of Hawaii. These treaties acknowledged the Kingdom as an independent, sovereign nation.

In the mid and late Nineteenth Century, western influence over the Kingdom of Hawaii increased, resulting in the “Bayonet” Constitution that vested the Royal Cabinet with authority at the expense of the Monarchy. In 1893, as Queen Liliuokalani began to plan for a new Constitution to restore the position and the power of the Crown, a group of western plantation owners plotted the overthrow of the Kingdom of Hawaii. The United States Minister, acting without authority, participated in the conspiracy and aided the overthrow by causing U.S. naval forces to invade Hawaii in support of the overthrow under the guise of maintaining public order. Queen Liliuokalani ceded authority under protest, and President Cleveland acknowledged the wrong that had been done to the Native Hawaiian people, a peaceful people friendly to the United States.

As a result of the overthrow, the provisional Republic of Hawaii seized the crown and public lands of the Kingdom, including the lands held by the Crown for the benefit of the Native Hawaiian common people. In 1898, when Hawaii was annexed as a territory of the United States, the Republic of Hawaii ceded the former crown and public lands to the United States (the “ceded” lands). The Native Hawaiian common people were displaced from their lands and their traditional agriculture and aquaculture lifestyle was undercut. Native Hawaiians suffered mortality, disease, and economic and social dislocation as a result. In an effort to assist their people, members of the Native Hawaiian Royal Family established trusts, such as the Bishop Estate, using their personal landholdings to provide Native Hawaiian people with educational, medical, and children's services.

Recognizing the suffering of the Native Hawaiian people, Prince Kuhio and other members of the Territorial Legislature proposed that Congress provide a Native Hawaiian homesteading program on the ceded lands in 1920. In response to that request for federal assistance to the Native Hawaiian people, Congress held hearings and heard testimony

concerning the plight of the Native Hawaiian people. During the hearings, the Secretary of the Interior acknowledged that the United States has a trust responsibility to the Native Hawaiian people. In addition, the Chairman of the Committee inquired as to whether a measure directed solely for Native Hawaiians would be constitutional, and the Solicitor of the Department of Interior opined that the measure would be constitutional, drawing on the General Allotment Act, which provided individual lands in trust for American Indians, as a precedent. The Committee Report notes its agreement with this opinion. Ultimately, Congress enacted the Hawaiian Homes Commission Act of 1920 for the purpose of rehabilitating the Native Hawaiian people by providing them with homestead and agricultural lands under federal law protections against alienation. This Act is an important measure in the context of the Committee's consideration of S. 2899 and H.R. 4204 because it embodies an early congressional determination that the Native Hawaiian people are a native people of the United States, deserving of protection and assistance from Congress. In short, the HHCA recognizes the Native Hawaiian people as a distinct native people under the protection of the United States.

In the Statehood Act, Congress continued to act pursuant to its political and moral responsibility to promote the welfare of the Native Hawaiian people. Congress required the State of Hawaii to take over the administration of the HHCA for the benefit of Native Hawaiians, subject to continuing congressional oversight. Congress also required the State to administer the ceded lands, in part, for the "betterment" of the Native Hawaiian people. History has shown, of course, that while these measures were well-intentioned and important measures, in practice they have not provided the Native Hawaiian people with the full benefit that Congress intended.

Moreover, given the history of economic and social dislocation wrought by the overthrow, time has shown that the HHCA and the ceded lands trust alone are not enough to raise the economic, educational, health, and social conditions of the Native Hawaiian people. Since the 1970s, Congress has enacted a number of special programs designed to serve the Native Hawaiians as one of the native peoples of the United States. Yet Native Hawaiian people made clear during the Interior-Justice reconciliation meetings that they continue to suffer adverse health conditions, low educational attainment and high drop out rates, lack economic opportunity, and suffer from alcohol and drug problems. Given these stark realities, the United States should do more to assist Native Hawaiians under its special trust responsibility to promote their welfare.¹

Despite these adverse conditions, there is also great hope in the Native Hawaiian community. The Native Hawaiian people are actively taking charge of their own affairs. For example, Native Hawaiians have established Native Hawaiian language immersion

¹ For example, in the area of housing, Native Hawaiians have the poorest housing conditions in the Nation, yet, HUD has until very recently interpreted its statutes to prohibit the use of HUD funds to build housing for Native Hawaiians on HHCA lands. Thus, Native Hawaiians have been denied HUD funding through an erroneous legal interpretation. To remedy this situation, Congress should enact S. 225 to provide direct funding for Native Hawaiian housing on HHCA lands.

programs and schools dedicated to teaching Native Hawaiian students about their own culture and tradition, in addition to standard academic subjects. Native Hawaiians have established health care clinics and programs to promote community wellness. Native Hawaiians are using traditional justice concepts to help Native Hawaiian offenders to reintegrate themselves into the community. Native Hawaiians volunteer their time to safeguard the environment and to promote sound ecosystems on the land and waters. And, as I am sure you will hear from most Native Hawaiian witness, Native Hawaiians desire to enhance their control over their lands, resources, and affairs.

During my site visits in Hawaii, as part of the Interior-Justice reconciliation process, I met with Native Hawaiians who are engaged in the activities described above. For example, although we did not travel to Ni'ihau, which is primarily populated by Native Hawaiians and is closed to the public, we did meet with residents of Ni'ihau. At Kauai, we met with Native Hawaiian parents from Ni'ihau who are concerned that their children, who speak Hawaiian as a first language, sometimes have difficulty interacting with non-natives on their trips to neighboring islands. On Hawaii, we visited Aha Punana Leo, a Native Hawaiian language immersion school, and students greeted us with traditional welcoming chants in the Hawaiian language. We toured the grounds of the campus and the Native Hawaiian students had planted Taro, the traditional staple, had established a fish pond, and a conservation area for endangered plants. We also visited a Native Hawaiian health care clinic, where Native Hawaiian medical practitioners and staff are seeking to educate the community about proper nutrition and health maintenance to reduce the high level of diabetes, heart disease and other illness among the community. Traditional foods, including Poi made from the Taro plant, are used as part of the Native Hawaiian nutrition wellness program.

On Molokai, we visited a Native Hawaiian preschool and 3 and 4 year-old Native Hawaiian students sang traditional Native Hawaiian songs and read a traditional Native Hawaiian story to us. We also visited a Native Hawaiian elders center. While I was there, I met Native Hawaiian elders who explained to me that the Hawaiian Home Land communities were a center of Native Hawaiian cultural activities and that many Native Hawaiian homesteaders were raised speaking Native Hawaiian as a first language. We also visited a Native Hawaiian ecosystem project, where local Native Hawaiians patrol the shoreline along HHCA lands to protect the coastal areas from pollution, excessive fishing, and other environmental damage. This ensures continuing Native Hawaiian access to sustainable subsistence resources. We visited another area where local Native Hawaiians have planted Taro to clean a watershed above the historic fish pond that they are restoring for subsistence purposes. They explained to us that the fish pond under restoration was several hundred years old and its restoration provided an important spiritual, cultural, and historical link with their ancestors over those many generations. On Molokai, Native Hawaiians are also using their lands to develop renewable wind and solar energy projects. In sum, the people of Molokai demonstrated the vibrancy of the Native Hawaiian culture and community spirit and their continuing close connection and reverence for the land.

On Maui, Kauai, Oahu, and Molokai we visited Hawaiian Home Land sites and met with residents.² Our visits to the Home Lands revealed that the Native Hawaiians on HHCA lands take great pride in their attachment to their ancestral territory and culture, and the HHCA lands often serve as a focal point for Native Hawaiian community and cultural events. The HHCA residential communities are distinctly Native Hawaiian areas. On Kauai, Habitat for Humanity has established a project to assist Native Hawaiians with home building on HHCA lands. This is especially significant because mortgage lending is often difficult to obtain because lenders are unfamiliar with the legal status of HHCA lands.

Yet, despite some recent progress, Native Hawaiians made clear that the HHCA has not been implemented as intended. There is a tremendous need for more and better residential and agricultural lands under the HHCA program, and there is also a need for better access to mortgage lending to develop the land. Native Hawaiian people face many hardships as a result of the shortage of available land under the program. For example, while eligible Native Hawaiians wait for years for a lease of HHCA lands under the terms of the Act, they are sometimes forced to lease HHCA lands at a premium. This creates difficulty, especially for Native Hawaiian subsistence farmers. Other Native Hawaiians are offered residential sites on neighboring islands, far from their families and home. In light of these problems, Native Hawaiians would like to see more land available for residences and agriculture, desire better financing options for developing the land and increased funding so that the intent and promise of the HHCA can be fulfilled in practice. Here again, enactment of S. 225 would be an important step forward.

Throughout our visits, I was struck by the fact that Native Hawaiians are a distinctly native people, who despite years of adversity have maintained their own language, culture, and traditions and who have maintained their own social and governmental service organizations. The Native Hawaiian people will never give up their desire to speak the Hawaiian language, practice their culture and honor their traditions. They will never give up their desire to transmit their ancestral lands to their future generations because the Native Hawaiian people come from the land.³

² My other visits to Hawaii have confirmed the strength and endurance of the Native Hawaiian community. For example, I visited Mauna Laha valley, where Native Hawaiian residents trace their tenure to the King Kamehameha's High Chief, who was vested with the land under the law of the Kingdom. They explained that after annexation, Native Hawaiians, including their parents and grandparents faced discrimination, and were unable to confirm their title to the land under territorial law based on the refusal of territorial officers to recognize their rights. Meanwhile, they explained, territorial officers granted non-natives fee patents to surrounding lands. Despite this history, this community of Native Hawaiians has maintained itself continuously on these aboriginal lands up to the present day, within a 15-minute drive from downtown Honolulu.

³ Understanding that Indian means aboriginal, native, or indigenous, it is clear to me that if Native Hawaiians had been afforded an opportunity for federal recognition as an Indian tribe under the Secretary of the Interior's process, the Native Hawaiian people would have met the criteria for such recognition. 25 U.S.C. sec. 83.8. The Native

II. Native Hawaiian Self-Determination

In 1993, Congress enacted Public Law 103-150, commonly referred to as the Native Hawaiian Apology Act. The Act acknowledges that the Native Hawaiian people never voluntarily surrendered its sovereignty or its lands to the United States and it also acknowledges the United States' role in the wrongful overthrow of the Kingdom of Hawaii.

Hawaiian people has been universally identified as an native people since the time of first contact in 1778, through the territorial period from 1893 to 1959, and continuously since then to the present day. The Native Hawaiian people maintains cohesive, continuous native communities and settlements both on and off the Hawaiian Home Lands. Native Hawaiians have also maintained their own social and political organizations since the time of the Kingdom. Native Hawaiians today are the direct descendants and successors in interest of the aboriginal people that inhabited Hawaii prior to the first European contact. The United States and the State of Hawaii have repeatedly acknowledged the character of the Native Hawaiian people as a unique and distinct indigenous people. However, the Native Hawaiian people has never been afforded access to the Interior recognition process. 25 C.F.R. sec. 83.3(a).

Some commentators critical of Native Hawaiian self-determination suggest that because the Kingdom of Hawaii included non-native citizens that the United States may not now deal with the Native Hawaiian community as a native people. That is simply contrary to 200 years of American history and practice. In the earliest treaties, the United States acknowledged that there were interactions between Indians and non-Indians. The first treaty, the Treaty with the Delaware, 1778, sets up a joint U.S.-Delaware Nation dispute resolution council. In another early treaty, the United States withdrew its protection from non-Indians who ventured onto Indian lands without Federal permission. Later treaties, bowing to the realities of the time, permitted non-Indians who were integrated into Indian communities to remain there. However, the Supreme Court has made clear that Congress may deal distinctly with native people, and need not treat non-natives as members of a native community, even if the native community recognizes them as citizens. *United States v. Rogers*, 45 U.S. (4 How.) 567 (1846).

Other critics of Native Hawaiian self-determination claim that there has been some hiatus or gap in the existence of the Native Hawaiians as a native people, but that criticism simply ignores the facts. After the overthrow, the Native Hawaiian people continued to maintain their distinct community. In 1920, Congress, through the HHCA, has promoted the rehabilitation of the Native Hawaiian people as a distinctly native community, tied closely to its aboriginal lands and traditional agricultural lifestyle. Moreover, the Native Hawaiian people have continuously maintained numerous social and political organizations, including the Native Hawaiian trusts, loyalist organizations, civic clubs, HHCA shareholder association, and other groups. There is no foundation for the argument that there has been a hiatus in the existence of the Native Hawaiian people as an aboriginal, indigenous, native people.

In furtherance of Public Law 103-150, the Departments of Interior and Justice conducted a series of site visits and public hearings in December 1999. For the past several decades, Native Hawaiians have been calling for more control over their own affairs. I heard the call of the Native Hawaiians for self-determination at almost every occasion and meeting that we held.

The Interior-Justice Report responds to that call with its first and perhaps most important recommendation:

It is evident from the documentation, statements, and views received during the reconciliation process undertaken by Interior and Justice pursuant to Public Law 103-150 (1993), 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. As a matter of justice and equity, this report recommends that the Native Hawaiian people should have self-determination over their own affairs with the framework of federal law, as do Native American tribes. For generations, the United States has recognized the rights and promoted the welfare of Native Hawaiians as an indigenous people within our Nation through legislation, administrative action, and policy statements. To safeguard and enhance Native Hawaiian self-determination over their lands, cultural resources, and internal affairs, the Departments believe that Congress should 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....

The model recommended is commonly referred to as a Nation-within-a-Nation model. In other words, our Nation has historically acknowledged that the native peoples had their own self-governing nations prior to the arrival of Europeans, and that native peoples have a right, within the framework of federal law, to self-determination over their own lands, resources, and internal affairs. Historically, the United States has had a government-to-government relationship with native governing bodies and has continued to deal with native communities on a political basis.

I strongly endorse this recommendation for several reasons. First, as a practical matter, many within the Native Hawaiian community seek to enhance Native Hawaiian control over Native Hawaiian lands, resources, and government programs administered for their benefit. The opportunity to organize a Native Hawaiian governing body within the framework of federal law, offered by S. 2899 and H.R. 4904, would empower the Native Hawaiian community in these areas. For example, the reorganized Native Hawaiian governing body could establish a community development corporation and financial institutions to provide the economic opportunities that are so sorely needed among Native Hawaiians today. The reorganized Native Hawaiian governing body could also establish a housing authority to administer HUD housing programs for Native Hawaiians. Similarly, the Native Hawaiian governing body could advocate for improved health care, education, and community infrastructure, such as the water systems that are desperately needed on Kauai and Molokai. The Native Hawaiian governing body could

also work with the Federal and state governments to acquire the funds necessary to perform this work. The Native Hawaiian governing body could also build coherent coalitions with existing Native Hawaiian organizations to work on community infrastructure and governmental services. Through such activities, the Native Hawaiian governing body could promote real progress for the Native Hawaiian people.

Second, American Indians and Alaska Natives have proven the value of indigenous self-government within the context of Federal law. American Indian and Alaska Native peoples also strongly desire to maintain their own languages, cultures, traditions and lands and to pass them on to the generations to come. Nation-within-a-Nation status helps American Indian and Alaska Natives to preserve their distinctly native communities. For example, many Indian tribes through treaties have preserved large areas of their aboriginal lands. The Navajo Nation, for example, with its 250,000 people has a land base of 17 million acres. The Navajo Nation uses its land base to develop economic opportunities for its members, including mining and oil production, and to maintain traditional agricultural lifestyles, such as shepherding livestock. The Hualapai Nation is located at the end of the Grand Canyon, and it plans to develop a portion of its land for tourism to provide economic opportunities for its members while maintain other areas of their reservation in their pristine condition. The Timbisha Shoshone Tribe is in the process of reacquiring an area of its ancestral lands near Death Valley and it plans to develop an eco-tourism industry as well. The Salish & Kootenai Tribe in Montana owns an irrigation system and a dam on its reservation, which provides economic opportunities for its members and resources for the tribal government. Indian nations also operate their own schools, develop their own curriculum, and promote native language development. Indian nations operate their own hospitals, clinics and treatment centers. Indian nations administer justice programs to serve their members and a number of Indian nations use traditional, restorative justice concepts to promote community harmony and balance. In my view, the Native Hawaiian community's desire to enhance Native Hawaiian control in these areas would be well served by the enhanced authority offered by S. 2899 and H.R. 4904.

Third, there is not a single model for a native governing body that the Native Hawaiian community must adhere to. There are numerous models. For example, the Navajo Nation has an Executive, an 88 member Tribal Council, and an independent judiciary and peace-maker court at the national level. At the local level, the Navajo Nation is divided into chapters that have their own chair and councils to represent local interests and make recommendations concerning those interests to the Tribal Council. Under the Indian Reorganization Act ("IRA"), many other Indian nations adopted constitutions which establish the Tribal Council as the governing body and the Chairman of the Tribal Council normally exercises executive authority pursuant to Tribal Council delegation. Many of these Indian nations have western style tribal courts, but are moving to include traditional restorative justice concepts into the system through elders councils or magistrate courts. Other Indian nations established IRA Corporations (which serve as community development corporations as well as tribal governments) and administer their affairs through the Corporation's Business Council. Alaska Natives have a bifurcated system, where Alaska Native Claims Settlement Act ("ANCSA") Corporations hold title

to Alaska Native lands on a village and a regional basis and promote economic development and Alaska Native village councils make governmental decisions for the villages. Under S. 2899 and H.R. 4904, the Native Hawaiian people would be free to establish their own governing body in the manner that best serves the community consistent with Federal law.⁴

Furthermore, to effectively serve the needs of the Native Hawaiian people, the Native Hawaiian community should have the unified voice that a governing body would provide. In the past, the Native Hawaiian community might have used the State Office of Hawaiian Affairs as a surrogate for a representative Native Hawaiian entity, but after the Supreme Court's decision in *Rice v. Cayetano* OHA is disabled in that role. Moreover, a representative Native Hawaiian governing body that is grounded in the original, inherent sovereignty of the Native Hawaiian people will better reflect the values and advocate the views and interests of the Native Hawaiian community.

III. The Federal Definition of "Native Hawaiian"

One of the thorniest issues contained in the legislation is who is a Native Hawaiian under the preliminary federal definition necessary to establish the process for empanelling the Interim Council. On one hand, many Native Hawaiians feel that it is not the role of the Federal Government to define who is a Native Hawaiian. Rather, they feel that the Native Hawaiian community should determine who is a Native Hawaiian. And, indeed, S. 2899 recognizes the primacy of the Native Hawaiian community in this area after the formation of the Native Hawaiian governing body. Nevertheless, as many will acknowledge, the Native Hawaiian community does not currently have a mechanism for establishing and maintaining a community membership roll. Accordingly, there is a need for some sort of preliminary federal definition in this area.

In the *Rice v. Cayetano* decision, there are some suggestions in the concurring opinion of Justices Breyer and Souter concerning a federal definition of Native Hawaiian.

⁴ In my view, it is important for Native Hawaiian people to take advantage of the opportunity for increased self-determination within the framework of federal law offered by S. 2899 and H.R. 4904 because a great deal of progress can be made by the Native Hawaiian community under these measures. While some Native Hawaiians advocate for independence from the United States or restoration of the Kingdom of Hawaii, they should note that the Interior-Justice report explains that it is intended to deal with questions of domestic law and does not have any implication for international law matters. *Id.* at 4. Similarly, congressional measures such as S. 2899 and H.R. 4904 do not address international law questions. They deal with domestic law.

For its part, however, the United States Department of State has made clear its position that the people of the State of Hawaii exercised their rights under international law through the vote on statehood. If people are interested in these issues, they should write to the State Department.

Read in the context of Federal law, the concurring opinion suggests that the preliminary federal definition of who is a Native Hawaiian should have the following elements:

- A person should be included in the preliminary federal definition of a Native Hawaiian only if he or she is in some substantial degree Native Hawaiian and in some substantial way connected to the Native Hawaiian community.
- A person should be included only if he or she desires to be included as a member of the Native Hawaiian community.
- The time frame for determining native lineage should not be too remote.
- The methodology for determining native lineage should be reasonable.

S. 2899 and H.R. 4904 use a preliminary federal definition that is based on Native Hawaiian lineal descent from the aboriginal Native Hawaiians who resided in Hawaii prior to 1893, the time of the overthrow and includes voluntary affiliation with the Native Hawaiian people as a factor. Because this is an issue that is likely to receive great scrutiny and may be subject to legal challenge, I would recommend a definition that is keyed upon an event closer in time to the present: the enactment of the HHCA.

In 1920, the Hawaiian Homes Commission Act defined those Native Hawaiians eligible to receive homelands as Native Hawaiians of $\frac{1}{2}$ blood or more. This represents a congressional determination close in time to the overthrow of the Kingdom that this group of persons were distinctly Native Hawaiian. Of course, to receive HHCA lands a person must prove that he or she met the statutory criteria, so there is also some official documentation of Native Hawaiian lineage maintained first by the territorial government and later by the State Department of Hawaiian Home Lands. Congress has amended the HHCA in recent years to permit Native Hawaiians of $\frac{1}{4}$ blood to receive HHCA lands by devise. This group of Native Hawaiians is readily ascertainable and those who seek to hold HHCA lands demonstrate thereby their close connection to the Native Hawaiian community. Thus, the preliminary federal law definition of Native Hawaiian might include:

1. Persons who are eligible to hold HHCA lands as a Native Hawaiian as an initial lessee or by inheritance, and who voluntarily choose to be included as members of the Native Hawaiian community.

Many Native Hawaiians do not want to be limited by a blood quantum because there are some, who although they may be less than $\frac{1}{2}$ or $\frac{1}{4}$ Native Hawaiian, maintain a close connection to the Native Hawaiian community and are recognized by the community as Native Hawaiians. Accordingly, the preliminary federal law definition of Native might also include an additional group:

2. Persons who are lineal descendants of a Native Hawaiian who was eligible to lease HHCA lands, who are recognized by Native Hawaiian elders as

members of the Native Hawaiian community,⁵ and who voluntarily choose to be included as members of the Native Hawaiian community.

Given the eighty years since the passage of the HHCA in 1920, a Native Hawaiian who is a lineal descendant of a Native Hawaiian who was eligible to lease HHCA lands may be four generations removed from the person who was original eligible as a lessee. So this latter group of Native Hawaiians may include those who are between 1/8 and 1/32 Native Hawaiian blood. Thus, without explicitly establishing a blood quantum, Congress could reasonably assume that the persons included in this group would meet the criteria of being Native Hawaiian in some substantial degree, having a recognized connection to the Native Hawaiian community, and voluntarily choosing to be included as members of the Native Hawaiian community.

I believe that, taken together, these suggestions for a preliminary federal definition of the term Native Hawaiian would be consistent with the criteria reflected in the opinion of Justices Breyer and Souter in the *Rice v. Cayetano* case. Given that after the formation of the Native Hawaiian governing body, the Native Hawaiian community may establish its own rule for membership as a Native Hawaiian, prudence counsels that this slightly more conservative definition be adopted to avoid any future litigation difficulties.⁶

Conclusion

In conclusion, I strongly support the enactment of S. 2899 and H.R. 4904 because these measures will provide the Native Hawaiian people an opportunity to reorganize a native governing body with a strong, clear voice to represent their community and to address long standing issues of concern to the community.

⁵ The use of community recognition as a native person was a mechanism used by Congress in the Alaska Native Claims Settlement Act for native persons who could not document a 1/4 blood quantum. This provision was cited with approval by Justices Breyer and Souter.

⁶ One additional issue is worth noting. The Native Hawaiian governing body might in the future be delegated responsibility, in whole or in part, for the management of the HHCA lands. If so, I would suggest that the Committees may wish to consider some type of savings clause to safeguard existing rights and expectancies of Native Hawaiians who currently hold HHCA lands or are waiting to receive HHCA lands. That was a concern that I heard express on several occasions during the Interior-Justice reconciliation visits.

**AHA HAWAI'I 'O'IWI
P. O. BOX 37396
HONOLULU, HI 96837**

**TESTIMONY
OF
CHARLES ROSE**

Aloha!

My name is Charles Rose, I am the chairperson of the **Aha Hawai'i 'O'iwi** (Native Hawaiian Convention). I appear before you in that capacity to inform you that we believe that any reconciliation between the United States of America and the Native Hawaiian people as called for in the Apology Bill of 1993, cannot occur until the Native Hawaiian people have been given an opportunity to choose an entity to represent them.

No individual, nor any organization, who may appear before you or provide any type of testimony to you, can claim that they speak for the majority of the Hawaiian People. Any one who does so will be providing you with false testimony. The Native Hawaiians as a people have never chosen any entity to represent us. We have never been asked.

For the United States to recognize any group or organization at this time would be improper. As an example, for the United States to recognize the Office of Hawaiian Affairs or the Department of Hawaiian Homes Lands as the official representative of our people would be wrong.

(2)

Our people need to be given the opportunity to choose for themselves. **That is what the Aha Hawai'i 'O'iwi is all about.**

The Aha Hawai'i 'O'iwi (Native Hawaiian Convention) is in the process of providing the opportunity for the Hawaiian people to finally make the choice. To decide on an entity to represent us. We believe in the people and that the people should choose. Our mission is a simple one **"To propose a form of government to the Native Hawaiian People".**

At this point, please allow me to provide some background about the Aha Hawai'i 'O'iwi (Native Hawaiian Convention). We trace our roots to 1996, when the Native Hawaiian Vote was held. At that time, a question was posed to the people **" Shall the Hawaiian People elect delegates to propose a Hawaiian government."** Of the people who voted, 73% voted yes.

On January 17, 1999, the 106th anniversary of the overthrow of the Kingdom of Hawai'i., a historic election was held to select delegates for the Native Hawaiian Convention. **This was a first time ever election conducted by Hawaiians for Hawaiians.** The process was inclusive and for the first time, Hawaiians throughout the world were invited to participate. Additionally, incarcerated Hawaiians were invited to participate. In fact, prisoners being held in a Minnesota jail did cast votes. **This was democracy in action at its purest form.**

During the election, delegates were selected by the communities to represent them in eight (8) Moku (districts) throughout the State of Hawai'i. A ninth Moku represents those Hawaiians living outside the State of Hawai'i. Out of an apportionment of 85 delegates, 78 individuals were elected. The delegates elected represent specific communities and include a wide spectrum of

(3)

Hawaiians as it relates, to gender, age, education, occupations, philosophy and experience. They are a very diverse group. I am proud to serve among them.

The delegates have been meeting since February of 1999 and at our last meeting, the Executive Council voted to disseminate three (3) models of a Government for the people to review and consider. **The models are a Independent Nation, a Free Association Nation and a Integrated Nation.** We plan to contact as many Hawaiians as possible to obtain their input and Manao. We welcome the suggestions and recommendations of everyone. In order to do this we need funding assistance. If you are in the position of providing funding help it would be appreciated.

I suggest and recommend that your first order of business should be to assist us in providing the Native Hawaiian people the opportunity to choose their own form of government. Once this is done, then the United States can officially recognize the People's Choice.

With your indulgence, I think it is appropriate for me to address the recognition process and offer some suggestions for you to consider.

It is my understanding that the Executive Branch has the authority to recognize indigenous people in every state except Hawai'i. **This rule appears to be discriminatory and should be corrected.** I further understand that the recognition process is contained in that body of law known as Federal Indian Law. Furthermore the procedure is clearly spelled out in 25 CFR 1983.

(4)

I recommend that while we are in the process of choosing the entity to represent us, you explore the possibility of modifying the procedure for recognizing indigenous people contained in 25 CFR 1983, to fit the unique situation of the Native Hawaiians.

Our situation clearly differs from any and all Indian Nations. **We are indigenous people, but we are not Indians.**

At the time of the overthrow, the Kingdom of Hawai'i was recognized as a foreign sovereign by the United States of America and by other nations within the International community. We had entered into treaties with America and other countries. The 1878 treaty involved 55 countries. Our last treaty with America was in 1884. It is my understanding that the Indian Nations only had treaties with America and that Congress ended the treaty process with Indians in 1871.

Chapter 14, Section C 1, page 799 of Felix S. Cohen's Handbook of Federal Indian Law states **"From Western contact in 1778 through most of the nineteenth century, Western nations recognized the monarchy as a foreign sovereign. This is in contrast to the status of tribes within the Americas, whose sovereignty was considered subordinate to "discovering nations". In other words we were a foreign sovereign while Indians were domestic sovereigns.**

Additionally, the State of Hawai'i is currently holding the island of Kaho'olawe in trust and shall transfer it to the sovereign Native Hawaiian entity upon its recognition by the United States and the State of Hawai'i.

(5)

Our situation is unique and different from the Indian Nations in other areas;

1. For instance, there is only one Hawaiian Nation as compared to the many Indian Nations throughout America.
2. Native Hawaiians are located throughout Hawai'i and the world. We are not confined in one geographical area like the Indian Nations.
3. The one half blood quantum required in the CFR for recognition is inappropriate for the Hawaiian people. Except of the Hawaiian Homes Act, the Admissions Act and the Office of Hawaiian Affairs Legislation, we do not divide ourselves by blood quantum. This provision needs to be changed.

In capsule form, I have attempted to demonstrate to you our situation as I view it.

I have listed just a few areas that we differ with the various Indian Nations, I am sure that there are more areas that I haven't identified. Hopefully they will be mentioned by others who are providing testimony.

As I have indicated, our situation is unique and requires a different approach. I request that you work with us in crafting a creative and innovative process for the United States and the State of Hawai'i to recognize whatever Native Hawaiian Government that our people will have chosen.

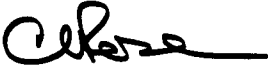
Finally, as we pursue self-determination, we must acknowledge that there are currently in place many valuable federal entitlement programs that benefit Hawaiians. We must assure that these programs are not diminished in any way. I request that while we are in the process of

(6)

choosing the entity to represent us, you take the necessary steps to assure that the current federal entitlement programs that benefit Hawaiians are protected.

In closing, let me emphasize that we believe that no reconciliation can occur until our people have chosen the Government that they want to represent them. We ask that you join us and assist us in seeing that this objective becomes a reality.

Aloha!

A handwritten signature in black ink, appearing to read 'Charles Rose', with a long horizontal flourish extending to the right.

Charles Rose, Chairperson
Aha Hawaii'i 'Oiwī

EDITORIALS

Friday, July 17, 1998

Hawaiian community must unite for meeting

There are elements within the Hawaiian community who are portraying Ha Hawai'i as some sort of evil presence designed to bring disaster to the Hawaiian people. In their zeal, these elements are distorting facts, making false statements and deliberately lying.

These misstatements and untruths must stop. One Hawaiian organization attacking another Hawaiian

Island Voices

CHARLES
ROSE

organization must stop. Hawaiian individuals attacking other Hawaiian individuals must stop. The tactic of confrontation, agitation and intimidation must end. The hostility displayed toward our effort must end.

These activities are counterproductive and do not serve our people in any way. This is just not *pono*. We are not each other's enemy. We must agree to disagree. We must take our disagreement to a higher level.

If you are opposed to a Native Hawaiian convention, let's hear your reasons. Let's talk about the issues and stop these character assassinations.

Let me delineate as clearly as I can about what Ha Hawai'i is all about and what it is not. Its mission is to see that a Native Hawaiian convention attended by delegates selected by the communities becomes a reality.

We are not a sovereignty group. We do not advocate for any form of sovereignty. We believe that to be the purview of the convention delegates. We do, however, advocate for a process that provides the opportunity for all people of Hawaiian ancestry throughout the world to participate.

At present our effort is supported by the State Council of Hawaiian Homestead Association, the Association of Hawaiian Civic Clubs, the Native Hawaiian Chamber of Commerce, the Native Hawaiian Bar Association, the Hui Kalai Aina, the Nation of Hawaii, the Pa Kūi a Holo, the Council of Hawaiian Organizations, Alu Like Inc., the Native Hawaiian Legal Corporation and the Nation of Ku. Our support grows daily.

Our plans call for the election of delegates to be held on Jan. 17, 1999, the 106th anniversary of the overthrow of the Hawaiian monarchy. Voters will be required to go to the polls to participate. Absentee voting will be permitted. The convention will be held during the summer of 1999.

Let me point out that our right to vote is one of our most precious rights.

Please do not give up your right just because someone asks you to do so. Do not heed any call to boycott this election.

Charles Rose is president of Ha Hawai'i.

Sunday's Hawaiian election is fair and open to all



VIEW POINT

By Charles Rose

Critics of Ha Hawaii's election process should give up their hostility

VARIOUS misleading and untrue statements have recently been circulated about Ha Hawaii and Sunday's election of delegates to a Hawaiian sovereignty convention. As past president of Ha Hawaii, I am offended by the manipulation of the truth, the false allegations and irresponsible conduct by people opposed to the election process. They appear to be desperate so they attack others.

I say to every person of Hawaiian ancestry: Ha Hawaii, utilizing the skills of Hawaiians who are experts in their field, has put together an operational plan and an appointment plan that is fair and sound.

The process is a people's process. It affords the opportunity for every person of Hawaiian ancestry throughout the world to participate.

The choices will be made by the people. The process is inclusive.

How inclusive is it? In all organizations, whether Hawaiian or not, you must join and become a member before you can participate. In the Ha Hawaii process, you do not have to be a Ha Hawaii member to participate.

All you have to be is Hawaiian. This is unique. If you are opposed to this process, then you are against the people.

Ha Hawaii is not a state agency and to make such claims is reckless. To imply that the 137 people seeking to become delegates are agents of the state and are part of some plot to control the Hawaiian people is an insult to these individuals.

I ask those who make this claim, where is your evidence? There is none. Proponents of these claims should hang their heads in shame. They are attacking their own people. Some could be their own relatives. How dare they do this!

To those critics who are calling for a boycott of the election, and suggesting the Ho'omaluku process as an alternative, I submit that they have not been candid with the Hawaiian people.

They have failed to inform the people that the Ho'omaluku (Unity Gathering) had only one meeting in 1988. The result of that meeting was to condemn one Hawaiian organization (the Office of Hawaiian Affairs) and not to support another (Ha Hawaii). Is this an example of unity?

They also failed to tell the people that many established Hawaiian organizations have decided not to participate in any future Ho'omaluku activities.

I ask the supporters of Ho'omaluku, what or-

ganizations support you? The Ha Hawaii process has a host of supporters.

To the Iulua hui, including Ilouiloa-kalani, that are calling for a boycott of the election, I express my disappointment. This election is based on misinformation.

I made every effort to meet with the leadership of Ilouiloa-kalani and sent information packets to many hui requesting the opportunity to meet with them, too. My disappointment is that they made their decision to oppose us without giving us a chance to appear before them and present our side of the issue. I ask that they reconsider.

FINALLY, I am concerned that there is a segment in the Hawaiian community that has been demonstrating strong hostility toward the election process and Ha Hawaii. I ask that these individuals re-evaluate their positions.

Why are you so hostile? What is wrong with providing our people the opportunity to choose? Why are you against the people?

I ask all those of Hawaiian ancestry not to heed the call to boycott the election, but to instead participate in the process by voting. The right to vote is a precious right. Do not give up this right because someone asks you to do so.

There are many well-qualified candidates running. Hawaiians should learn as much as they can about them. I am sure that they will find among them those who are worthy of their support.

Charles Rose, past president of Ha Hawaii and a candidate in the election, has been a participant in Hawaiian community issues for 27 years.

Hawaiians will choose delegates for 85 seats

The election of delegates to a Hawaiian sovereignty convention will take place between 7 a.m. and 8 p.m. Sunday at polling places statewide, most at public schools or community parks.

Up for grabs are 85 delegate seats representing the districts, or mo'ua, in Hawaii, including seven seats for those abroad.

Ha Hawaii, organizer of the election, is holding absentee and mail-in balloting, with votes expected to be cast from as far away as France, Zimbabwe and the Solomon Islands.

There will be walk-up registration and voting for those who can prove their Hawaiian ethnicity with identification.

All ballots cast will be placed in locked metal boxes and sent to a guarded processing site in Pearl City once the elections are over.

Tabulation of the ballots will begin on Jan. 28, following a 10-day holding period to allow the 2,000 mail-in ballots to arrive. The results are expected to be announced Jan. 27.

Friday, Jan. 15, 1999

welfare leavers in New York City found that more than half of those who were worse off after leaving aid had returned to family welfare or some other social benefit.

But the income losses do underline two problems with the way welfare reform has developed, both unexpected by its architects. One is that

stampede, taking off many families that are less resilient. Localities have diversion policies designed to steer aid applicants into work immediately or to give them short-term help without putting them on the rolls. That may have discouraged some of the most needy from seeking help. The very fact that they're less com-

but to ensure that recipients did something to help themselves in return for aid. Those demands should drive the employable off welfare but keep the less capable on. Well done, reform should produce a smaller, more paternalistic welfare system, focused on restructuring the lives of the most needy.

Sovereignty is progressing

From workshops and seminars to planning meetings and Neighbor Island gatherings, the Native Hawaiian Convention is moving forward.

As the newly elected chairperson of the 'Aha Hawai'i 'Owi (Native Hawaiian Convention), I take this opportunity to provide the general public and especially the Native Hawaiian community with an update of our activities.

In response to the Native Hawaiian vote of 1996, on Jan. 17, 1999, the 106th anniversary of the overthrow of the Kingdom of Hawaii, an election was held to pick 85 delegates to a Native Hawaiian Convention.



ROSE

Hawaiians outside the state of Hawaii and incarcerated Hawaiians were invited to participate. All persons of Hawaiian ancestry throughout the world were encouraged to become part of the process.

Extensive education workshops and seminars for the delegates and the public were held during June and July. Additionally, community outreach meetings were held in Hilo, Honolulu, Koolauloko and Koolauloa.

The opening ceremonies of the 'Aha Hawai'i 'Owi were held on the grounds of Iolani Palace on July 31. Following the ceremonies, the delegates gathered for our first official session. Our first guest speaker was former governor John Waihee.

ISLAND VOICES

CHARLES ROSE

Charles Rose is chairperson of 'Aha Hawai'i 'Owi.

We elected permanent officers and introduced various proposals for the delegates to consider. Some of the proposals include creating an independent form of government, a free association form of government and an integrated form of government.

One proposal calls for the restoring of the Kingdom of Hawaii. Another is a proposed constitution that amends the constitution that was in effect in 1893. The delegates have also been asked to examine the constitutions of Ka Lahui Hawai'i and the Nation of Hawaii. The Palapala 'Aelike developed in 1997 at Kualoa has been introduced for consideration.

We held our second session during the Labor Day weekend and heard from U.S. Sen. Daniel Akaka, who made it clear that the apology bill does not have an expiration date, as some have claimed.

Our next speaker was Federal Senior District Judge Samuel King, who discussed his recent article on sovereignty that was published in the Hawaii Bar Journal in July. Our final speaker was Office of Hawaiian Affairs Chairperson Rowena Akana, who gave her views on self-determination and sovereignty.

During our business portion, the delegates introduced additional proposals and adopted an operational plan that will guide our activ-

ities for the future.

Following this session we conducted educational workshops on Maui and Molokai. More community gatherings are planned.

We are moving in a very positive manner toward our objective of proposing a Native Hawaiian government to the Hawaiian people. Being that our process is an open and inclusive one, we invite all persons of Hawaiian ancestry to join us. Should anyone have an idea on what he or she believes the Native Hawaiian government should consist of you are urged to contact the delegate from your moku or any other delegate and ask them to introduce your ideas for the convention to consider.

To those who have opposed us, I urge you to put aside your differences and help us to mobilize our resources for the good of our people. Let us all be part of the solutions and not part of the problems.

We have been fortunate to have received funding assistance from the Department of Hawaiian Home Lands for convention expenses of their beneficiaries. We need funding help for our other delegates. I urge the trustees of the Office of Hawaiian Affairs to please consider funding our efforts. Assistance from anyone and any source will be appreciated.

Finally, I would be remiss if I did not acknowledge the outstanding assistance that we have received from Pua'ala McElhaney, president of Ha Hawai'i. She and her board of directors, staff and volunteers have been available for us at a moment's notice and have served beyond the call many times under stressful circumstances. We send our deepest mahalo to them.

WEDNESDAY • MARCH 15, 2000

The Honolulu Advertiser

Hawaiians must seek unity

The state's native people should now determine what form of nation we want so reconciliation can proceed.

The U.S. Supreme Court decision on Rice vs. Cayetano has caused great concern within the community and especially among Hawaiians.

At hearings throughout the state, Hawaiian voices have again been raised in protest. Many Hawaiians and some non-Hawaiians have been quite eloquent in their objections. Our people are very upset and rightly so.

There has been a call for civil disobedience. While this is a viable option, I believe that this is not the time. We still have other approaches and alternatives available.

This decision and its ramifications make the efforts of the Aha Hawaii Oiwi (Native Hawaiian Convention) more compelling. There is a need to have a quasi-sovereign entity that would be the voice of the Hawaiian people.

As everyone is aware, the mission of the delegates of Aha Hawaii Oiwi is to present a form of government for the native Hawaiian people to ratify. We are a people's process. We believe in the people and that the people should choose. We propose to provide the opportunity for every person of Hawaiian ancestry to participate in the process.

Throughout our history, decisions affecting Hawaiians have been made mostly by non-Hawaiians, and many times these decisions have been detrimental and insensitive to our concerns. It is time for Hawaiians to make the decisions that affect them. In order to do this, we must first design a form of government that the people will accept, then select the leaders of that government to make

ISLAND VOICES

CHARLES ROSE

Charles Rose is chairman of the Native Hawaiian Convention.

the decisions on our behalf.

It is important to point out that 22 years ago at the state Constitutional Convention, delegates recognized the plight of the Hawaiian people and, persuaded by Hawaiians, proposed amendments that created the Office of Hawaiian Affairs. Those amendments were ratified by a majority of all of the citizens of the state of Hawaii, not just Hawaiians.

This demonstrated that the citizens of Hawaii in their wisdom did what was really the responsibility of the United States. They designed a plan to address the concerns of the indigenous people of this land. They also created a Hawaiian-only election process. The process was in effect for 20 years, and Hawaiians actively participated.

In fact, in 1998, some 64,000 Hawaiians voted, the largest turnout by far. Now that process has been ruled unconstitutional. Therefore, we must move on. The question is where do we go and what do we do?

First of all, condemning the governor, the federal government, the state of Hawaii, the trustees of the Office of Hawaiian Affairs or anyone else is pointless and counterproductive. Instead, we should direct our energies toward identifying positive solutions and alternatives.

Conventional wisdom now indicates that in order for us to obtain true self-determination and sovereignty, we must deal with the federal government. The state cannot grant

us sovereignty. The Office of Hawaiian Affairs as designed is not quasi-sovereign and cannot be the entity that represents us.

At the reconciliation hearings in December 1989, Secretary of Interior John Berry committed his department to not interfere with the Hawaiian people as we determine the entity that would be our voice. However, he would be ready to enter into reconciliation once we have created our nation. In other words, the venue for self-determination is available.

Aha Hawaii Oiwi delegates have worked since February 1999 to carry out their mission. They have developed an operational plan that calls for a ratification process to be held in the fall.

The plan has flexibility and is subject to modification as needed. The delegates also voted that they would circulate a constitution for an independent form of government and a constitution for an integrated form of government to the people. They have also approved draft outlines for both constitutions.

Our next General Assembly will be held Saturday and Sunday in Honolulu. I anticipate that the documents will be finalized at the meetings. We are inclusive and welcome everyone. I would also like to take this opportunity to extend the olive branch to those organizations that have shied away from us due to misinformation or misunderstanding.

We believe that we have acted honorably in this effort. To those who are hostile to us or see us as a threat, I ask that you re-examine your position. Let us sit down and try to resolve any difference we may have. The Hawaiian people need to unify. We cannot do it by calling each other names and publicly condemning each other.

Interior seeks control of process



VIEW POINT

By Charles Rose

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I am having great difficulty understanding the rationale of several provisions contained in a bill introduced in Congress and scheduled for hearings later this month. I am specifically concerned with its provisions calling for the establishment of a roll and controlling the creation of a Hawaiian government.

In 1998, at the request of several Hawaiian health providers, Sen. Daniel Inouye's office circulated to Hawaiian organizations and agencies a proposed draft bill. It called for Congress and the president to develop a procedure for recognizing the Hawaiian people once they have created their own government.

The proposed bill did not contain any process for creating a Hawaiian government.

There was a large hue and cry from some Hawaiians who misunderstood the

intent of the proposal. As a result, nothing further was done at that time.

In December 1999, the U.S. government sent to Hawaii two representatives to hold hearings on the matter of reconciliation. These hearings were conducted throughout the state by Assistant Secretary of the Interior John Berry; representing the Department of Justice was Mark Van Norman of the Tribal Justice Division.

They promised a report in February 2000. But their report has yet to be issued.

On Dec. 11, 1999, at a hearing in Honolulu, Berry promised to the Hawaiian people that neither he, the Department of Interior nor the United States of America would interfere with the Hawaiian people's attempt to develop a Hawaiian government of our choosing.

Both the Republican and Democratic parties in Hawaii have included in their year 2000 platforms language that supports the right of the Hawaiian people to choose their own form of government.

The original draft of the congressional bill provided for the recognition of the Hawaiian people. The draft bill contained no process for creating a Hawaiian government.

Since the first draft, major changes have been made. In the bill introduced, someone has inserted a detailed process for establishing a roll and creating the Hawaiian government. The bill also places the process under the control of the Department of the Interior.

I have asked several members of the Hawaiian working group of the task force whose idea it was to add the process provisions to the bill. They have indicated that it was not a decision of the working group. It appears that these provisions were developed at another level by parties not publicly identified.

In view of these facts, I am deeply concerned that these provisions take away from the Hawaiian people our right to control our own destiny. It also places our future in the hands of the Department of the Interior, an entity that is six months behind in submitting a report that was promised us.

As an alternative, I will be recommending to our congressional delegation and to the joint committee holding the hearings that they seriously consider eliminating the provisions establishing a roll and creating a government from the legislation, and consider either the 1998 Inouye draft proposal or the original draft proposal by Sen. Dan Akaka.

I urge all Hawaiians who believe that it should be the Hawaiian people making the choices to join me in attempting to persuade the committee that the bill before them is seriously flawed.

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Charles Rose is past president of Ha Hawai'i and past chairman of the Aha Hawai'i O'iwi (Native Hawaiian Convention).

Testimony of Anthony L. Clapes
Concerning S. 2899 and H.R. 4904
before the United States Senate Committee on Indian Affairs
and the United States House of Representatives Committee on Resources
August 30, 2000

I am a lawyer. From my office here in Honolulu, I represent mainland high-tech companies in court and before administrative agencies on the US mainland and in Europe, not here in Hawaii. In that sense, I have a purely export business. I have been a computer industry lawyer all my professional life. I also write books, the most recent of which are fiction and nonfiction books about Hawaiian themes, including a forthcoming book on developing a meaningful high tech sector for the Hawaiian economy. I have a keen interest in the history of the islands, their multi-ethnic culture, their economy and their future, particularly as it may relate to technology-based industry. My purpose here today is neither to interfere with nor to participate in the quest of a portion of Hawaii's Native population for self-determination. I'm here to say three things about the Akaka/Abercrombie bill and Hawaii's future.

First, the bill is being oversold, and that is a recipe for disappointment, despair and discontent. Second, the exclusion of Hawaii's non-Native population from the process that led to the bill was a big mistake and an affront, because this bill affects non-Native Hawaiians, too. And third, The bill is deeply flawed as a piece of legislative drafting, in ways that can only lead to trouble, and if it is rushed through the Congress as is, the people of Hawaii will likely pay a high price for the drafters' mistakes.

1. Overselling supervised sovereignty

Akaka/Abercrombie is being sold, and I use that word advisedly because of advertisements and guest articles in the media, as providing "federal recognition for Hawaiians", "a process of self-determination", "reparations and restitution for acknowledged wrongs", and "continued state and federal funding of Hawaiian programs and entitlements." (OHA ad, 8/20 Advertiser.) The bill does none of these things. Senators Akaka and Inouye have told the people of Hawaii that the bill is simply a clarification of the relationship between the federal government and Native Hawaiians, and that it provides a basis for "government to government" relations between the government of the United States and Native Hawaiian peoples. (Article, 8/20 Advertiser.) It is neither of those things, either. The truth is that this bill is no more or less than an effort to provide for the *possibility* of continued funding for Native Hawaiian programs that would otherwise be at risk as unconstitutional, and to do so hurriedly using the only expedient ready to hand: the American Indian model. There's nothing wrong with the funding goal, if it can be achieved; there may or may not be things wrong with the American Indian model; but there's a lot wrong with trying to sell this bill as something different from what it is.

The so-called "self-determination" offered by Akaka/Abercrombie is based on a partial recitation of the history of US relations with Native Hawaiians that portrays them as wards of the state, and that's the way the bill proposes to treat them that way in the future, not as a sovereign people. The supervised sovereignty it offers is not the independence that many sovereignty advocates have been seeking.

While it is true that Native Hawaiians have been treated both by the federal government and the state government as wards of the state for many decades, the right to self-determination need not (indeed, should not) be justified by assuming a *past* relationship of trustee and ward, as Akaka/Abercrombie does. It can also be justified by a *present* relationship of equality. If a meaningful number of Hawaiians assemble on land to which -- for whatever reason -- no superior force lays claim, and conduct themselves in a way that bespeaks self-determination sufficiently to convince other nations to recognize their sepa-

rate existence, then they will have achieved self-determination irrespective of the historical record, just as the Hawaiian nation had done after Kamehameha I united the Islands. If we ever get to that point, it will be through a process to which Akaka/Abercrombie bears no relation whatsoever.

The key to self-determination -- land -- is barely mentioned in the bill, and only referred to as a subject on which the state and federal governments (not Native Hawaiians) should negotiate. The "Native Hawaiian Governing Body" would be set up whether or not it has land on which to govern. Of course, a people cannot really have self-determination on land controlled by another authority. Nor, on the same land, can there be competing armies or police forces with the same level of authority; two criminal justice systems with duplicative coverage; or two heads of government with neither answerable to the other. Akaka/Abercrombie solves that problem by making it clear that Hawaiian self-governance will be controlled by a superior power: the federal bureaucracy.

Added to the land problem is the bill's failure to advance a second prerequisite to self-determination: the demonstration that a people seeking self-determination are in fact in a position effectively to govern themselves within the international community. Akaka/Abercrombie provides for native Hawaiian self-determination only "within the framework of federal law" and subject to consultation with a federal "Trustee of Native Hawaiian Affairs", with oversight by the two Congressional committees represented here plus one other, and with the involvement of a task force consisting of representatives of various federal agencies. Further, the laws of the "Native Hawaiian Governing Body" will only be effective to the extent the Secretary of the Interior approves them. That approach disadvantages, rather than advancing, the status of Native Hawaiians in the community of nations. The bill is also called by some a "recognition" bill, but recognition of a Native Hawaiian nation is definitely not contemplated in the bill; the only recognition of the Native Hawaiian governing body as the "representative governing body of the Native Hawaiian people." All that means is that once the federal government has resolved an issue with the governing body, it has resolved that issue as to all Native Hawaiians. In that sense it is a nonrecognition bill for Native Hawaiian groups other than the governing body.

Thus, in exchange for the *potential* for future funding, Native Hawaiians will have to give up their quest for true sovereignty, just as the American Indians have. It's not for me to say whether that's a good deal or not. But the result of selling the bill without making clear what the bargain is can't help but lead to greater acrimony, bitterness and loss of self-image in the Native Hawaiian community.

2. The bill affects the futures of all Hawaiians, not just Native Hawaiians

Akaka/Abercrombie states that "Native Hawaiians have never relinquished their claims of sovereignty or their sovereign lands." That statement depends on an undisclosed definition of "sovereignty" and "sovereign lands". In one sense, until foreign forms of government were adopted during the 19th Century, Native Hawaiians other than the ali'i had no sovereignty, and the sovereign lands all belonged to the ali'i. However, the bill does not suggest that it is monarchical claims to sovereignty and lands that are being recognized. So what claims does the bill propose to recognize? Here's why that question is important:

A right, to self-determination or otherwise, is a relationship with other people in which those other people owe you some kind of duty. You have a right that other behave in a certain way toward you if they have a duty to behave in that way toward you. In other words, to say that Native Hawaiians have a right to self determination is to say that the United States *and its citizens* have a duty to recognize Native Hawaiians as a sovereign people. Senators Akaka and Abercrombie have attempted to allay the concerns of non-Native Hawaiians by saying that the bill would not change the relationship of the federal government with non-Native Hawaiians or with other state governments. Unfortunately, that statement

doesn't address the most important issue: how does the bill change the rights of Native Hawaiians as against non-Native Hawaiians and the duties of non-Native Hawaiians toward Native Hawaiians?

Akaka/Abercrombie takes the view that the existence of that duty is based on the history of the relationship between the United States and the native Hawaiian people. That may well be so, but looking at the whole history does not produce a clear picture of what that right and duty are. Overthrow and annexation were points on a timeline. Before they occurred, Native Hawaiian self-determination had been diminished by degrees. Steep declines in population, consolidation of property ownership in non-Native hands, massive immigration, and disproportionate influence of non-Native Hawaiians in the royal governments all weakened the autonomy of Native Hawaiians in their own land well before the overthrow.

In fact, annexation itself was a notion that arose under the monarchy. King Kamehameha III ceded the Hawaiian Islands to England under force of arms in the 1830s. In 1849, the French seized government buildings for a brief period. Many years later, apparently because of concerns over British and French aggressions, Kamehameha III offered to cede the Islands to the United States.

Some believe that this diminution of self-determination resulted from pressure and threats of force by the British, French or Americans, and was not something the monarchy independently desired for their subjects. Pressure and threats may well have been the primary motivating factor, but even if so, that factor speaks to the monarchs' recognition long before the overthrow that Hawaii could not maintain an independent course in the world;

If history is to dictate what right of self-determination Native Hawaiians may now claim, which is certainly what Akaka/Abercrombie presumes, then the whole history should be considered, not just part of it. Native Hawaiians and non-Native Hawaiians alike (except for the occasional protester) have submitted to the jurisdiction of the United States and enjoyed the benefits of US citizenship for many decades. They have bought, sold or leased real estate pursuant to state law, paid state and federal taxes, travelled on US passports, received Medicare, Medicaid and Social Security payments, served in the US military, paid state and federal taxes, received federal loans for college or for starting businesses, and otherwise comported themselves as citizens of the United States and the State of Hawaii. Conversely, they have not (except for the occasional protester) comported themselves as citizens of an independent Hawaiian nation. No matter whether American citizenship was embraced or suffered resignedly, there was never any significant effort by a Hawaiian nation to reimpose itself after annexation.

Does sovereignty have to be relinquished by saying, "I relinquish my sovereignty," or are actions enough? There are legalistic answers to that question; but put aside the legal arguments. What is the purpose of the bill's "recognition" that Native Hawaiians have never relinquished claims to sovereignty and lands, and what will its effects be if the vague Akaka/Abercrombie bill were to become law? What claims of sovereignty will the federal government "recognize" as never relinquished? Sovereignty over the Islands? Sovereignty over federal or state or private property? And what lands are the "sovereign lands" to which claims have never been relinquished? Where can one go to see what those claims are? These are not rhetorical questions. They are valid and important questions about rights and duties. Sooner or later, they have to be answered if the Akaka/Abercrombie language is adopted. Yet the fact that they are left open in the bill means that if the bill were to become law, it could lead to completely unpredictable results that profoundly affect the interests of non-Native Hawaiians. Leaving non-Native Hawaiians to determine how profoundly the bill affects them after it becomes law is a recipe for conflict.

3. The bill is a mess and should not be rushed into law.

The bill would establish a federal policy of recognition of Native Hawaiian rights to self-determination. But there are myriad definitions of self-determination within the Native Hawaiian

community. As explained above, a right is simply a reasonable (and enforceable) expectation that others have a duty to behave in a particular way toward the holder of the right. The bill fails to indicate what scope of rights and duties the federal government would be committing itself to recognizing, and therefore what scope of duties it would impose. It would establish a Native Hawaiian governing body that can adopt its own laws, which would presumably spell out the rights to self-determination that the governing body claims. What limits are there on the scope of those laws. Can they conflict with state laws? For example, doesn't the lack of a requirement that the governing body control any land before adopting laws mean this mean that the governing body's law would apply on the state and federal lands of Hawaii? Would it apply on the private property of non-Native Hawaiians, or the private property of Native Hawaiians who do not wish to submit to the authority of the governing body? Can the governing body "govern" Native Hawaiians who don't want to be governed by it? The bill says that only those who want to participate will be involved in setting up the Native Hawaiian governing body and organic documents, but that the governing body may thereafter change the definition of who the governed "Native Hawaiians" are.

All we know is that the Secretary of the Interior will be the ultimate dictator of the answers to those questions. If the governing body does come to own land, will it be able to sell tobacco, liquor and other goods free of tax in competition with state-licensed vendors, as do American Indian tribes, for whom the Secretary of the Interior is also responsible? Will there be gambling casinos on Hawaiian soil, as there are in some states with American Indian reservations?

Akaka/Abercrombie is double-edged sword. On the one hand, the bill makes clear that Native Hawaiians who want to live within the Akaka/ Abercrombie structure of supervised sovereignty will have such rights to self-government as the Interior Secretary approves, but doesn't really say what those rights are. Thus, Native Hawaiians are being asked to support a bill for which they are given no frame of reference other than the American Indian model. On the other hand, non-Native Hawaiians are being asked to support a bill that would impose unidentified and unidentifiable duties on them. Ask the people living near Foxwoods, the world's largest casino complex, on the Mashantucket Pequot reservation in Connecticut what unexpected burdens they've had to shoulder as a result of 5,800 slot machines and 350 gaming tables in their midst.

We are told that this bill should be adopted now despite all its flaws because we may not have an opportunity to make progress on self-determination for Native Hawaiians at a later time if we don't set the policy in place now. That reasoning needs a lot more explanation than has been provided so far. What exactly does it mean? What is going to be different next year from this year? There has been no serious prediction of radical change in the Congress. Surely a good self-determination bill that has the support of the majority of Hawaii's voters will not create as much controversy inside the Beltway whenever it is put forward than a bad law will create if enacted now. *Maybe* there'll be a Republican president. *Maybe* one or more Justices will resign from the Supreme Court and the Republican president will get to appoint one or more replacements. So what? The Rice decision was not close: the Supreme Court ruled 7-2 against the State. It would have required three new judges who agreed with the State to reach a contrary opinion. Moreover, one of the justices who voted against the State was a Clinton appointee, and one of the two justices who voted in favor of the State was appointed by Republican President Ford. (It might also help to remember that Earl Warren, the most liberal Chief Justice on the Supreme Court in this century, if not since the birth of the Republic, was appointed by Republican President Eisenhower.) Indeed, there is language in the Rice decision indicating that even the present Court will question the constitutionality of Akaka/Abercrombie.

Clearly, federal action on self-determination for Native Hawaiians will affect not only those who submit to the governing body, but also those Native Hawaiians who don't submit and non-Native

Hawaiians who aren't eligible. All affected people should have an opportunity to understand the details of the bill and comment on it. Non-Native Hawaiians might well choose to refrain from entering into the debate, but they should not be discouraged from doing so.

A bad bill can be improved before it becomes law, if there is adequate time for redrafting. It can be improved by public debate, particularly inclusive public debate. It cannot be improved by enactment, in the same way that an egg once scrambled can't be unscrambled or milk once spilled can't be unspilled.

4. Conclusion

For many non-Native Hawaiians, respecting the deeply-felt wishes of Native Hawaiians is a very high-order value, one that stands above concerns over the actual language of Akaka/Abercrombie. If it were the case that most Native Hawaiians felt strongly that this bill would help them more than it hurts them, then it seems that large numbers of non-Native Hawaiians would be supportive of the bill despite its flaws. The great difficulty we face as a community with regard to Akaka/Abercrombie is that the bill pretends there is a consensus on the part of Native Hawaiians when there isn't; and without that consensus, it is not clear that the non-Native Hawaiian community will be willing to overlook the unattractive features of the bill. Many Native Hawaiians want no part of it. They are proud to be Americans, and think that they are better off as full members of American society. That is one pole of the spectrum of Native Hawaiian view of self-determination activities. The opposite pole, of course, calls for complete return of the islands to Native Hawaiians and the departure of all *haoles*. And there are plenty of positions staked out between those two poles. In non-Native Hawaiian communities, there is also a broad spectrum of opinions. Into this cacophonous debate, the Hawaiian Congressional delegation has tossed a vague and indefinite bill that neither satisfies the desires of the majority of Native Hawaiian sovereignty advocates, nor provides predictability in terms of the scope of its effect on the future of life in Hawaii. However, Akaka/Abercrombie is designed to meet the pragmatic concern voiced by those who fear the loss of state or federal funding of programs aimed at improving the health or welfare of Native Hawaiians. Such loss is highly unlikely to occur overnight; but it is likely to occur over time, at least to some extent, and Akaka/Abercrombie is certainly one way of setting out to provide an alternative to the at-risk programs. It exacts a price, though: acceptance of the bill's supervised sovereignty model will doubtless preclude the successful pursuit of any other self-determination model with the federal government. Indeed, for that reason among others, the bill may actually be attractive to those who would like to see closure of the self-determination issue without material disruption to the economic and political stability of the State. If the contingent of Native Hawaiians who are concerned enough about these programs is significant, and if the at-risk programs are for some reason better-protected by placeholder legislation than by the inertia that will naturally prevent their sudden disappearance even absent Akaka/Abercrombie, then there may be good reason for the bill to live, hopefully in revised form and without overselling.

There are a number of big issues for all Hawaiians that are probably beyond the scope of these hearings, but which Hawaii's Congressional delegation should also consider. What effect would the bill have on the future of race relations in the state? Will it satisfy the wishes of the Native Hawaiian community, or will it only inflame the sovereignty debate? If Native Hawaiians are disproportionately in need of health, economic and social assistance, what would the bill do to that race-neutral (and therefore constitutional) health, economic and social programs couldn't do? What effect will the bill (and its aftermath) have on tourism, the economy's life blood? What effect on the state's efforts to build a meaningful high-tech/biotech economic sector? Finally, is what Native Hawaiians and non-Native Hawaiians would have to do to assure continuity of funding for Native Hawaiian programs worth the price, or should alternatives to the programs, rather than alternatives to funding the programs, be sought?

August 23, 2000

E na 'Akua,
E na Aumakua,
E na Kupuna,
Na Po'e 'O Hawaii nei,
Aloha kakou.

Daniel Akaka,
Daniel Inouye,
Patsy Mink,
Government officials of the United States of America and its Agents. Aloha.

I don't know whether to laugh or cry about these proceedings that are being imposed upon us by the agents of the United States government. But we are here for the sole purpose of giving testimony to these proceedings and the manner which representatives of the United States have a process that they believe they are entitled to do for the sake of "people."

Daniel Akaka made a declaration that he upholds the Constitution of United States and swears allegiance to the United States of America. Maika'i, his privilege, his right. He is a Hawaiian, by blood and ancestry and a citizen of the United States of America.

Who I am, where I come from, will determine what will happen to "people" like me, now, today, on into the future. I am, "keiki 'o ka 'aina," "child of the land." I come from the Ahupua'a of Laiewai, the Ili of Okilehelehe, the 'Aina of Kulaulani and from Kupuna Kane, elder Kuanonoehu, and Kupuna Wahine, Make'ekapu. The iwi, bones of my ancestors are buried there. I have the knowledge of the Mo'okuauhau of the ancestors and the Mo'olelo, stories of the elders who lived on the land.

What significance has this got to do with these proceedings? Well, all of you who sit as representatives of a government who has a history of "colonizing" the "keiki 'o 'aina," "children of the land."

America and its agents does not come before the Hawaiian people with "clean hands." America's history of assimilation is to "take" the people of color and "civilize" them.

It happened in Hawaii and elsewhere, bring Christianity, educate and impose the conqueror's history and language, control the chiefs and lands and you have the whole nation.

The United States of America, the State of Hawaii are all under "disguise" of "the right to rule." **You don't.** America and its agents have been lying to the Hawaiian people for centuries.

Talk to the Hawaiian's about sovereignty, confederation, federation, independent nation, confuse them, so they will jump at the chance to be part of the United States.

"Ua mau ke ea i ka 'aina i ka pono," the life of the land is preserved in righteousness. How many of you in this audience live on your ancestral lands prior to the Mahele of 1850? How many of you grow taro? How many of you exercise "the Native tenant rights" of fishing, gathering, access and water rights?" There's your sovereignty. Go back to the lands of your ancestors. Trace your genealogies and find the lands of your ancestors and move on the land. If you cannot find those lands, then move on the ceded lands of Hawaii nei. These lands are held in trust for YOU, only two beneficiaries, Hawaiian's and the general public and we qualify in both.

Remember those famous words of the famous mele, "Kaulana Na Pua ao Hawaii, ku pa'a ma hope 'o ka 'aina," "famous are the flowers of Hawaii ever loyal to their land." And it goes on, "ai pohaku, 'aole kakau i ka pepa i ka enemi." "Better to eat stone then sign the paper of the enemy

Today is same as it was in 1893, the Overthrow, different faces, same players, the United States of America. Look at this book of over 40,000 signatures. Our Kupuna who objected to this process.

We, all who oppose this bill, "aole kakau i ka pepa i ka enemi." " Do not sign the paper of the enemy.

NO AKAKA, NO, NO, NO.

WE ARE NOT AMERICAN'S. HOW LONG WILL WE FIGHT AMERICA, THE OPRESSOR, FOREVER, AND EVER UNTIL WE EAT ALL OF THEM WHO SUBJUGATE US.

Dawn K. Wassen
P.O. Box 512 Lāhā, HI 96762
808 293 5533

Testimony Concerning
S.2899 and H.R.4904
known as
the AKAKA bill

Submitted August 23, 2000
for presentation
at the Oahu hearing
August 30, 2000

by Leona M. Atcherley
Task Force Coordinator
for

Ka na Ha
[The Life/Breath of the many
50% to 100% native Hawaiians
as defined in the Hawaiian Homes
Commission Act, 1920]

Before the Panel Consisting of

Senators Daniel K. Inouye
and Daniel K. Akaka
of the Select Committee on
Indian Affairs;

Representative Patsy Mink;
House Resource Committee Member,
Representative Neil Abercrombie,
along with non-voting Committee
Member, Eni Saleomavaega
of Samoa

Ka na Ha OPPOSES S.2899
and H.R.4904

HONORABLE U.S. SENATORS, and
HONORABLE U.S. REPRESENTATIVES:

There is no binding relationship between Congress and the NON-native
Hawaiians who have less than 50% part of the blood of their pre-contact
ancestors.

HEARING ON S.2899/H.R.2904
 August 30, 2000
 Page 2

There are a lot of artificial terms and statements used in federally funded assistance bills for NON-native Hawaiians that attempt to commit Congress to a so-called "relationship" with NON-native Hawaiians, even those with zero % Hawaiian blood.

The only "Hawaiians" who have a binding relationship with the United States, specifically with Congress, are the 50% to 100% blood quantum native Hawaiians. We are the only designated beneficiaries of the HHCA, 1920, and we are the only specific population who are directly entitled to 20% or more of the ceded lands trust per Section 5(f) of the Hawaii Statehood Admission Act.

Not only has the State of Hawaii been in breach of their trust obligations towards the 50% to 100% blood quantum native Hawaiians, but it has given our entitlements to the NON-native Hawaiians.

OHA was created to receive our ceded lands revenues, assets and properties; so we don't get a penny of it nor anything else. The power of those moneys are enjoyed by the State, by the OHA trustees and by the NON-native Hawaiians. And of course, that is illegal. Sections 4, 5 and 6 of Article XII of the State Constitution constitute a fraud perpetrated by the state on the innocent voters and against the native Hawaiian beneficiaries.

The Hawaii legislators, the governor and the Hawaii U.S. Senators have devised all kinds of illegal ways to convert NON-native Hawaiian heirs of deceased native Hawaiians into permanent occupants/lessees of Hawaiian Homestead Lands properties--while the waiting list of real native Hawaiians continues to grow.

WHY DOES CONGRESS HAVE A BINDING RELATIONSHIP WITH THE 50% TO 100% BLOOD QUANTUM native Hawaiians?

WHY ARE THE HAWAII U.S. SENATORS AND POSSIBLY THE HAWAII U.S. REPRESENTATIVES AS WELL, AND THE HAWAII GOVERNOR AND LEGISLATORS OPERATING ILLEGALLY TO ROB AND DISFRANCHISE THE

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THE 50% TO 100% BLOOD QUANTUM native Hawaiians?

The answer to both questions lies in the SAVINGS CLAUSE in both the HHCA, 1920, and the HAWAII STATEHOOD ADMISSION ACT, 1959, to wit: ANY ACT ON THE PART OF CONGRESS OR THE STATE OF HAWAII THAT IS IN CONFLICT WITH THE PROVISIONS OF THIS ACT ARE HEREBY NULL AND VOID.

Different tricks were inserted in the Statehood Admission Act by ^{the} then governor, Burns, and his cohorts, one of them to confound the dictates of the SAVINGS CLAUSE which could not be detached from the Hawaiian Homes Commission Act [HHCA, 1920, as amended] to wit: . . . that the state could change the provisions of the Act --with the approval of Congress!!! We could yell foul on that one because the terms made the entire HHCA, 1920 part of the Admission Act. But darn if the State did not manage to hide the SAVINGS CLAUSE in later reprints of its Revised Laws. So now the State could pretend and behave as though turning over Homestead Lands to NON-native Hawaiians is perfectly Legit. NOT!

The U.S. Supreme Court, in Rice v. Cayetano also states that all ceded lands revenues, assets and/or properties designed for OHA are to be used solely for the benefit of the 50% to 100% blood quantum native Hawaiians.

The U.S. Ninth Circuit Court has declared, at least three times, that any native Hawaiian can sue any government ~~or~~ administrative official for breach of trust and/or civil rights violations against the 50% to 100% blood quantum native Hawaiians.

SO WHAT IS THIS "AKAKA' BILL ALL ABOUT?

1. Getting the votes of the NON-native Hawaiians who effectively outnumber the native Hawaiians.

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2. Federal taxpayers' moneys to create and support a NON-native Hawaiian "nation." Put this matter up to the voters of the 50 States of America and the answer will be a whopping "No!"

There is no way that Congress can legally allow NON-native Hawaiians, however defined, to become direct or indirect lessees of Hawaiian Homestead lands--ever!

There is no way that Congress can legally allocate ceded lands and revenues to NON-native Hawaiians--ever!

When was the last time that Congress was slapped with one or more injunctions? That would be a great embarrassment, to say the least.

For all the foregoing reasons, KA NA HA is obliged to state, forthwith, that despite all the clever efforts and intentions put forth to design and fashion this so-called "AKAKA" bill, the facts are such that legally, politically and fiscally, S. 2899 should be heading for extinction rather than the race of the 50% to 100% blood quantum native Hawaiian people.

THE END

P.S.: Further appendices will be provided August 30, 2000.

KA NA Ha: APPENDIX "A", , page 1 of 1

APPENDIX "A"

STATEHOOD ADMISSION ACT, 1959, SECTION 5.(f): The lands granted to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or disposition of any such lands and the income therefrom, shall be held by said State as a public trust FOR THE SUPPORT OF THE PUBLIC SCHOOLS AND OTHER PUBLIC INSTITUTIONS, FOR THE BETTERMENT OF THE CONDITIONS OF native Hawaiians, AS DEFINED IN THE HAWAIIAN HOMES COMMISSION ACT, 1920, as amended, FOR THE DEVELOPMENT OF FARM AND HOME OWNERSHIP ON AS WIDESPREAD A BASIS AS POSSIBLE, FOR THE MAKING OF PUBLIC IMPROVEMENTS, and FOR THE PROVISION OF LANDS FOR PUBLIC USE. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such a manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.

SECTION 23. ALL ACTS OR PARTS OF ACTS IN CONFLICT WITH THE PROVISIONS OF THIS ACT, WHETHER PASSED BY THE LEGISLATURE OF SAID TERRITORY (STATE) OR BY CONGRESS, ARE HEREBY REPEALED.

HAWAIIAN HOMES COMMISSION ACT, 1920, as amended. TITLE 2, SECTION 201.
(a)(7) of the original Act: The term "native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

TITLE 4, SECTION 401. of the original Act: ALL ACTS OR PARTS OF ACTS, EITHER OF THE CONGRESS OF THE UNITED STATES OR OF THE TERRITORY (STATE) OF HAWAII, TO THE EXTENT THAT THEY ARE INCONSISTENT WITH THE PROVISIONS OF THIS ACT, ARE HEREBY REPEALED.

Honolulu, Hawaii
Wed August 30, 2000

Testimony before the
Senate Committee on Indian Affairs and
House Committee on Resources.

Your honor, Mr. Chairman,

I appreciate being allowed to testify today on this proposed legislation. I come at this legislation from a politically liberal position and a socially progressive angle. Thus, of course I am strongly opposed, for it does violence in the fight for equal rights in Hawaii.

Perhaps your honors are not aware that here in Hawaii we have an apartheid movement right in our midst. This movement goes under the happy little code name of "Sovereignty". This movement is racially divisive. It divides citizen against citizen, neighbour against neighbour, worker against worker, husband against wife and even, and this is real disgusting aspect of the movement, it divides parents from their children. I must say as a democrat, (and that is with a large "D" and a small "d"). I am very discouraged that Hawaii's Democratic congressional delegation would be entertaining such divisive legislation.

Our country has a tortured history when it comes to equal rights. We finally got it right in 1965 with the passage of the Voting Rights Act in which both Senator Inouye and Congresswoman Mink voted in favor. But this bill is a step backwards, it denies the basic right to vote to almost eighty percent of the citizens of Hawaii.

In July of this year I received at my request by mail from Senator Akaka a copy of Senate Bill 2899. With it came a cover letter. The first sentence of the letter said, "Thank you for contacting me to request a copy of S. 2899, a measure to clarify the political relationship between Native Hawaiians and the United States".

Your honor, with all do respect, we do not need to clarify the political relationship between Americans of native Hawaiian ancestry, Americans of Hawaiian ancestry, Americans of part Hawaiian ancestry, Americans of semi-Hawaiian ancestry, or even Americans of "wannabe" Hawaiian ancestry. The political relationship was completely, absolutely and totally clarified by the Organic Act of 1900, when the 56th Congress made the new Americans of Hawaiian ancestry perfect equal citizens. I suspect the Congress could have Indianized and tribalized Americans of Hawaiian ancestry at that time, but they didn't at the request of the new Americans of Hawaiian ancestry. The new Americans made it ^{clear} that they were not Indians and that they could handle the privileges and responsibilities of being normal citizens in a free country. To try to Indianize Americans of Hawaiian ancestry now, a hundred years later is bizarre. Americans of Hawaiian ancestry have not been tribal since King Kamehameha the Great of the Big Island of Hawaii showed Oahuans the "Aloha Spirit" by shoving them off the Nuuanu Pali in 1795. Oh, and by the way you honor, Big Islanders have never apologized to us Oahuans for the overthrow of our (Oahu) island government.

In reading this bill I've noticed the use of the words "aboriginal" and "indigenous". Let me point this out your honors, Americans of Hawaiian ancestry are neither "aboriginal" or "indigenous" today. They are descendants of "aboriginal" and "indigenous" people and in most cases they are part descendants. I'm so tired of being told that Americans of Hawaiians ancestry are somehow politically different from their fellow citizens. They are not. For one hundred years and roughly one hundred elections we have shared the voting booth, and we should continue to do so. This bill segregates the voting booth and sets up an old fashion Union of South Africa political system.

If we Indianize Americans of Hawaiian ancestry, what's next? Are we going to Indianize Americans of Missionary ancestry? Are we going to organize a tribe for the Castles, the Cookes, the Alexanders and the Baldwins? I think not.

The Rice vs Cayetano decision is clear, crystal if you will. The United States Supreme Court specifically stated that "Native" Hawaiian is a racial classification, period, end of story. No amount of congressional action can change that fact. Therefore all government programmes, Federal, State and City are now presumed to be unconstitutional, period. Congress can not trump the supreme Court on constitutional questions with a simple statutory law. It would take a constitutional amendment. Is the congress really willing to go down that road? Is the congress really going to set up an "Apartheid State" in the "Land of Aloha"?

Finally, The Democratic Party is the party of equal rights. The Republican Party is the party of race rights. If the Republicans want to suport this kind of legislation, well fine and dandy. But please, please your honors as Democrats I beg of you vote against this racial nonsense.

Thank you.

Patrick Barrett



KANAKA MAOLI TRIBUNAL KŌMIKE

3333 Ka'ohinani Drive • Honolulu, Hawai'i 96817 • Tel (808)595-6691 • Fax (808)595-0156

DATE: August 30, 2000

TO: Chairmen and Members of the US Senate Committee on Indian Affairs
and the US House Committee on Resources

FROM: Kekuni Blaisdell
3333 Ka'ohinani Drive, Honolulu, HI 96817
PH 595-6691, FX 595-0156

SUBJECT: Testimony on S 2899 and HR 4904: Policy of the US Regarding the US'
Relationship with Native Hawaiians and for Other Purposes, presented
at Hearing on August 30, 2000, at Neal Blaisdell Center, Honolulu, HI.

Dear Msrrs. Chairmen and Other Members of the US Senate Committee on Indian Affairs
and the US House Committee on Resources:

We of the Kanaka Maoli Tribunal Kōmike mahalo (thank) you for this opportunity to express our rejection of S 2899 and HR 4904, Policy of the US Regarding the US' Relationship with Native Hawaiians and for Other Purposes, also known as the Akaka Trust Recognition Bill, introduced in the US Congress July 20, 2000, and heard at hearings in Honolulu, August 28 to September 1, 2000 .

After summarizing the three main reasons for our rejection of the Akaka legislation, we conclude with our preferred alternative recommendations for peaceful and pono (true, right, just) exercise of our Kanaka Maoli inherent sovereignty, pursuit of our Kanaka Maoli self-determination and US recognition of our restored Kanaka Maoli nation, as provided by your US Constitution, international law and our Kanaka Maoli law.

I. Unstated Racist Purpose and US Global Domination. Our first reason for rejecting the Akaka Bill is that because of the bill's unstated purpose, we Kānaka Maoli are being rushed into further US colonial subordination, rather than freedom and equality with the US, as the distinct Kanaka Maoli people and nation of our homeland Ka Pae'aina o Ka Moananui (The Hawaiian Archipelago).

The alleged, but unspecified, purpose of the bill, according to its authors, is to "protect" US Federal programs and other agencies, such as the Ali'i Trusts, now attempting to meet Kanaka Maoli needs, as in health, education and housing, from being judged "race-based" violations of the Fifteenth Amendment of the US Constitution. This was the ruling of the US Supreme Court on February 23, 2000., when the court struck down Kanaka Maoli-only voting for State of Hawai'i Office of Hawaiian Affairs trustees.

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Such hurried protection is sought by calling for US formal recognition of a US trust government-to-government relationship to our Kānaka Maoli people, similar to that of "quasi-sovereign" American Indians and Alaska Natives, since such a relationship has been ruled by US courts to be political, but not race-based, and therefore, constitutional.

However, the irony is that this proposed trust relationship is in itself racist, for under Federal Indian Control Law, it will thereby subjugate us Kānaka Maoli as a people to permanent Federal wardship, in addition to State of Hawai'i wardship, as a "domestic dependent nation," under the "plenary power of Congress." We Kānaka Maoli will be reduced from current second-class status to that of a third-class "quasi-sovereign" with a puppet government under the US Interior and Justice Departments.

Should this bill become US law, the Kanaka Maoli sovereignty movement will be effectively destroyed. The US will be able to announce to the world family of nations that we Kānaka Maoli have freely chosen to become "Native Americans." This will be construed to mean that we Kānaka Maoli have thereby directly relinquished our inherent sovereignty and right to self-determination.

A second, unstated purpose of the Akaka Bill is that the US will then be able to exercise undisputed jurisdiction and claim title over our homeland of Ka Pae'aina to assure US domination of the Pacific Basin and Rim.

This US imperialistic policy, formulated as early as 1873 by US spy Gen. John Schofield and US navy strategist Capt. Alfred Mahan, and overtly implemented by US Assistant Secretary of the Navy Theodore Roosevelt and US Secretary of State James Blaine at the time of the US armed invasion of our homeland in 1893, is now deemed officially essential for US global neocolonial military and economic "security."

Because we Kānaka Maoli have been colonized by the US for more than 200 years, it is only in modern times, such as during the August 1993 Kanaka Maoli Tribunal, that we have learned that our grave Kanaka Maoli health, socio-economic and cultural plight is a result of two centuries of US colonialism, as detailed in the attached Kanaka Maoli Tribunal *Mana'o* Report.

Current US Federal programs and funds are meager, promote colonial dependency and are now being used to woo Kanaka Maoli support for the Akaka legislation.

Moreover, these Federally-funded programs are negligible compared to the resources rightfully due us colonized Kānaka Maoli with the right to political equality, as a separate people and nation, under the UN Charter, Chapter XI, Article 73, pursuing decolonization, as provided by UN General Assembly Resolutions (UNGAR) 742, 1514, 1541 and 2625.

As recorded in the attached 1993 Kanaka Maoli Tribunal *Mana'o* Report, under these UN provisions, the colonizing US owes us Kanaka Maoli people and nation reparations for

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damages, return of our stolen national lands, payment of back-rent for US use of our lands and return of our jurisdiction over all of our Ka Pae'aina territory, as a start toward full restitution for more than 200 years of US wrongs committed against us, including 102 years of belligerent military occupation. (See below under VI. Recommendations.)

Accordingly, we are determined to protect these fundamental rights and assets inherited from our ancestors and not exchange them for mere "protection" of token "entitlements" under the deceptive guise of promised "right to self-determination" by the US colonial establishment.

II. Anti-democratic Colonial Imposition Process. The second reason we reject the Akaka trust recognition bill is because it results from a top-down, anti-democratic process initiated and now rushed by the US Hawai'i congressional delegation/Native Hawaiian Task Force beginning in March 2000.

Since we Kanaka Maoli people did not initiate this process, we do not have full input in it, and we do not have final consent on the outcome, the process is a blatant violation of our inherent Kanaka Maoli sovereignty and right to self-determination.

We Kanaka Maoli are also disappointed that in spite of our direct appeals to Sen. Daniel Akaka with our objections on April 24 and May 31, 2000, the Hawai'i Congressional Native Hawaiian Task Force has persisted in pushing this imposed pre-determined puppet political structure on us Kanaka Maoli people and nation.

We need to be cognizant that a US government official, such as Senator Akaka, even though he be of Kanaka Maoli ancestry, as well as the other non-Kanaka Maoli US Congresspersons not of Kanaka Maoli ancestry, cannot represent us Kanaka Maoli people, because they represent a nation foreign to our colonized Kanaka Maoli people and nation.

Similarly, State of Hawai'i officials, such as the OHA trustees, who testify for the Akaka Bill, although they may be of Kanaka Maoli ancestry, cannot represent us Kanaka Maoli, because they, too, represent the foreign colonial establishment.

While Senators Inouye and Akaka claim, in the August 20, 2000 *Sunday Advertiser*, that their Native Hawaiian Task Force's Native Hawaiian Community Working Group (NHCWG) "reflects a cross-section of the Native Hawaiian community" and that these senators "made every effort to ensure that information regarding the drafting of legislation has been open, public and available to the people," these statements are refuted by the following evidence:

Most of the 25 members of the NHCWG are linked to colonial government programs and all members present at the first public meeting with the Task Force in April 2000, dutifully agreed to assist in the proposed legislation in advance. Some neighbor island NHCWG members later complained that they were not provided with travel funds to meet weekly in Honolulu, and some NHCWG members openly stated that no travel funds were available to meet with neighbor island Kanaka Maoli community people.

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Some NHCWG members have quietly admitted ambivalence and refused to participate fully, such as in these hearings. Non-members were not regularly allowed to speak at NHCWG meetings. NHCWG meetings' records with recommendations were not distributed in Kanaka Maoli communities for input and review.

Some NHCWG members complained that they never had any exchange or communication with the other four working groups, all of whom were government officials or non-Kanaka Maoli consultants. No reports of the five working groups have been officially released for public review by our Kanaka Maoli people. Only one of the working groups, the NHCWG, was all-Kanaka Maoli and most of its members were insiders.

The report of the December 1999 "Reconciliation" Hearings, promised by the Department of Interior's John Berry and Department of Justice's Mark Van Norman for review by the Kanaka Maoli community by February 2000, was finally released to us Kanaka Maoli people on August 23, on the eve of these August 28 to September 1 Akaka Bill Hearings.

The report's deceptive title, *From Mauka to Makai: The River of Justice Must Flow Freely*, cannot hide the late, but propitious, timing and content of the Interior/Justice report. The report contains much of the same language and proposed structure as the Akaka Bill. Thus, it is clearly a product of the same colonial, interagency, top-down, unilateral process for an imposed pre-determined puppet government on our Kanaka Maoli people for the US to maintain control of our people and our territory for US global domination.

III. Akaka Bill's Distortions and Puppet Government. The third reason for our rejection of the Akaka Bill is the content of the legislation, with a process for development of a unilaterally imposed, subordinate political structure for our Kanaka Maoli people and nation, that is racist and demeaning with numerous distortions, misrepresentations and contradictions.

Following are some specific examples of such unacceptable defects in order of numbered sections and paragraphs.

Title. We reject the title of the bill for it reflects the unilateral action of the US Congress in predetermining and imposing a subordinate relationship of our Kanaka Maoli people and nation to the US, when we are a separate people and nation with a right to equality.

Section 1. Findings.

(1) (2). We reject the finding of the US Congress that the US Constitution vests the US Congress with the authority to address the conditions of us Kanaka Maoli as "indigenous, native people of the US."

We Kanaka Maoli are a separate people and nation with our own cosmology, history, culture, language, laws, institutions and national territory. In 1893, our homeland was unlawfully invaded by US armed forces and since 1898, we have been unlawfully occupied by the US, in violation of treaties, international law, and Kanaka Maoli law, as detailed in the 1993 Kanaka Maoli Tribunal Report and acknowledged in the 1993 US Apology Resolution.

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Earlier, in 1946, the UN also recognized our separate status when the US accepted and acknowledged as "a sacred trust," Hawai'i's inscription on the UN List of Non-Self-Governing Territories, as recorded in UN General Assembly Resolution 66. Therefore, the US Constitution, as an instrument of a nation foreign to us Kānaka Maoli people and nation, has no lawful authority over us.

Moreover, the US Constitution makes no reference to "indigenous, native peoples of the US" nor to us Kānaka Maoli and our homeland, as alleged in the Akaka Bill. We Kānaka Maoli people have previously and repeatedly asserted that we are indigenous to our homeland of Ka Pae'āina, but **not** to the US.

(3) We reject the Akaka bill's clause referring to the US's "special trust relationship to promote the welfare of...Native Hawaiians." For the bill does not state that this "trust" is a unilaterally imposed, ambiguous, and continually abused series of alleged and implied, but not clearly specified, "trusts," since 1898 and 1921, with various "trustees" and varying "beneficiaries," and without initiation, input nor explicitly informed consent by our Kanaka Maoli people and nation.

(4) We reject the clause referring to the five treaties between the US and the Hawaiian Kingdom from 1826 to 1887, because:

- No reference is made to the US's repeated violation of these treaties, international law, Kanaka Maoli law, and the US Constitution as "the supreme law of the land," as specified in the Kanaka Maoli Tribunal *Mana'o* Report and, in part, in the US Apology Resolution.
- No reference is made to proper US redress for these US violations. (See below under IV. Recommendations.)

(5), (6), (7) (8) We reject the four clauses referring to the US Hawaiian Homes Commission Act (HHCA), initially enacted in 1921, because of inaccuracies and the following major omissions:

- No reference is made to the legislation's imposed racist blood-quantum definition of "native Hawaiian" which has continued to divide our Kanaka Maoli people and nation.
- No reference is made to the HHCA's exclusion of desirable Kanaka Maoli crown and government sugar lands for our people because most of these lands were reserved for white settlers;
- No reference is made to the allocation of mostly arid lands for our Kanaka Maoli people in our homeland;
- No reference is made to the assignment, after 70 years, of less than 30% of the separated HHCA lands to less than 7,000 eligible Kanaka Maoli, while 20,000 eligible Kānaka Maoli remain on the waiting list; and more than 60% of the lands were assigned to non-eligible non-Kānaka Maoli, including US, Territorial and State agencies, the military, corporations and other private parties.
- No reference is made to the failure, during the first 70 years, of the colonial US, Territorial and State governments to provide adequate funds to administer the Hawaiian Homes Lands rehabilitation program.

(9), (10) (11) We reject the three clauses referring to the US 1993 Apology Resolution (PL 103-150) for the following major omissions:

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- No reference is made to the Apology Resolution's 6th and 8th whereas clauses concerning the 1893 US's conspiracy, armed invasion and recognition of the unlawful usurpers' Provisional Government, "in violation of treaties between the two nations and international law."
- No reference is made to the 32nd clause that "the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land."
- No reference is made to the 34th clause that "the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language and social institutions."
- No reference is made to the December 1999 "Reconciliation" Hearings, the majority of voices for Kanaka Maoli independence, the calls for the US President and US State Department Officials to meet with our Kanaka Maoli people and nation, the need to invoke international law and Kanaka Maoli law, and oversight by the international community in these negotiations, and the failure of release of the Hearings Report in February 2000 for review by our Kanaka Maoli people well in advance of any proposed "reconciliation" legislation. (See below IV. Recommendations.)

(12) We reject the denigrating clause referring to us Kānaka Maoli as only "a distinct native community," and giving expression to our "rights as a native people to self-determination and self-governance...through their participation in the Office of Hawaiian Affairs."

- No reference is made to us Kānaka Maoli as a distinct people and nation with our own cosmology, history, culture, language, laws, institutions and national territory.
- No reference is made to the US's suppression of our Kanaka Maoli expression of our inherent sovereignty and self-determination, acknowledged in the 1993 Apology Resolution.
- No reference is made to the US and State of Hawai'i's attempts to co-opt our Kanaka Maoli movement by creation of the puppet State of Hawai'i Office of Hawaiian Affairs (OHA).
- No reference is made to our Kanaka Maoli people's repeated rejections of OHA's attempts, as a state agency, to represent our people as a nation, to be an expression of our political self-determination, or to represent us Kanaka Maoli in control of our national lands.

(13) We reject the clause concerning US and State health, social, educational and economic Kanaka Maoli programs because:

- No reference is made to the programs' meagerness and inadequacy to meet our grave, persistent, and in some cases, worsening, Kanaka Maoli needs.
- No reference is made to the colonial government programs' promoting Kanaka Maoli dependency, rather than self-sufficiency.
- No reference is made to the essential role of our Kanaka Maoli sacred environment in our health and, therefore, the necessity for the return of all of our national territory for our healing and recovery as a restored nation.

(15), (16) We reject the clauses that we Kanaka Maoli merely "wish" and "desire" to preserve, develop and transmit to future generations our ancestral lands and political and cultural identity....and "to achieve greater self-determination" over our affairs...."within the framework of Federal law...to reorganize a Native Hawaiian Governing Body...."

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Rather, we Kānaka Maoli are determined to pursue authentic self-determination under international law and Kanaka Maoli law, with full restoration of our sovereign independent nation and return of jurisdiction over our entire Ka Pae'āina as our national territory. (See IV. Recommendations below.)

(17) (18) We Kānaka Maoli reject these clauses that refer to us as "native peoples of the US"; and that the US Congress has identified us as "a distinct indigenous group within the scope of its Indian affairs power." We are not American Indians. We reject US Congress plenary power over us as a separate people and nation.

(19) We Kānaka Maoli resent being referred to as "once sovereign" and, therefore, "with whom the US has a political and legal relationship; and the special trust relationship of American Indians, Alaska Natives and Native Hawaiians to the US arises out of their status as aboriginal, indigenous, native people of the US." We have never relinquished our inherent sovereignty and will not via this bill. We are not indigenous to the US.

Our Kanaka Maoli political status as a separate independent sovereign nation predates 15th century western colonialism and the 1648 Peace of Westphalia creation of modern nation states.

Prior to the US armed invasion of 1893, our Kanaka Maoli nation was a recognized member of the world family of nations with 25 treaties with other nations and 91 consulates abroad. Thus, the historical and lawful basis for our nationhood, inherent sovereignty and right to self-determination predates the US's official colonization of our homeland in 1898 and extends beyond our identification only as an indigenous people in our homeland.

Section 2. Definitions.

(5) (6) We reject being termed "indigenous, native people of the US." or being called "Native Hawaiian," defined as "descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawai'i on January 1, 1893...."

We are none of the above. We are Kānaka Maoli, also known as Tangata Maori in Aotearoa and Taata Maohi in Tahiti and Rapa Nui, meaning the true, real, genuine people arising from, and being part of, our sacred environment. Since time immemorial, beginning with the mating of sky father Wākea with earth mother Papa, we have come from, been part of and belong to, Ka Moananui, the Pacific Ocean, its countless islands and its heavens. Since about 100 AD, in the western calendar, we Kānaka Maoli in the north central Pacific, have called our homeland Ka Pae'āina, which extends from the ocean floor volcano island Lo'ihī, southeast of the island of Hawai'i, northwest 3,600 miles to Kānemiloha'i, known to westerners as Kure atoll.

(7) to (11) We Kānaka Maoli also reject the entities, terms and definitions of "Native Hawaiian Governing Body," "Native Hawaiian Interim Governing Council," "Roll" and "Task Force," since they are imposed on us, in violation of our inherent sovereignty and right to self-determination, and are not rooted in our cultural traditions embedded in Kanaka Maoli law.

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Section 3. United States Policy.

(1) to (5) We Kānaka Maoli reject these US affirmations of policy since they are unilaterally imposed, and, therefore, violate our Kānaka Maoli inherent sovereignty and right to self-determination as a separate people and nation.

Moreover, we Kānaka Maoli cite the contradictions in the US Congress's declaring our Kānaka Maoli "inherent right of self-determination" while simultaneously violating that right by unilaterally imposing a pre-determined process and puppet governing structure, applying anti-self-determination terms, such as "autonomy" and "self-governance," and using undefined terms, such as, "reconciliation," rather than standardly defined terms in international law, such as "justice," "redress" and "restitution," as applied in the 1993 Kānaka Maoli Tribunal Report. (See attachment.)

We Kānaka Maoli reject the following Sections 4 to 7 which unilaterally impose a puppet Native Hawaiian "self-governance" structure under and within the US Federal Government, as violations of our Kānaka Maoli inherent sovereignty and right to self-determination:

Sec. 4. Establishment of the Office of Special Trustee for Native Hawaiian Affairs.

Sec. 5. Designation of Department of Justice Representative.

Sec. 6. Native Hawaiian Interagency Task Force.

Sec. 7. Process for the Development of a Roll for the Organization of a Native Hawaiian Interim Governing Council, for the Organization of a Native Hawaiian Interim Governing Council and a Native Hawaiian Governing Body and for the Recognition of the Native Hawaiian Governing Body.

Sec. 9. Reaffirmation of Delegation of Federal Authority; Negotiations.

We Kānaka Maoli reject the US authorization to negotiate and enter into an agreement with the State of Hawai'i and the Native Hawaiian Governing Body regarding the transfer of lands, resources and assets dedicated to Native Hawaiian use under existing law, as another violation of our Kānaka Maoli inherent sovereignty and right to self-determination.

It is evident that under existing US and State of Hawai'i law, the unlawful State of Hawai'i government, the puppet State Office of Hawaiian Affairs and the puppet State Department of Hawaiian Home Lands will remain. Therefore, nothing will change except the addition of a newly created puppet, the proposed Native Hawaiian Governing Body. Its relationship to the other Native Hawaiian entities would presumably need to await new colonial laws.

Sec. 10. Disclaimer.

We Kānaka Maoli reject this disclaimer as another evidence of colonial contradictory double talk, as in the 1993 US Apology Resolution.

Sec. 11. Regulations.

We Kānaka Maoli reject the US Secretary of the Interior's being authorized to make such rules and regulations and delegations of authority as the Secretary deems necessary to carry out the provisions of this Act, as violations of our Kānaka Maoli inherent sovereignty and right to self-determination.

IV. Pono Recommendations. As a consequence of the above, we, of the Kanaka Maoli Tribunal Kōmike submit this alternative pono proposal for the US's recognition of our Kanaka Maoli inherent sovereignty and right to self-determination as a separate and distinct people and nation, since time immemorial, now in the process of restoring a suitable government, based on our cultural traditions, since the US's unlawful colonization, beginning in 1790, and unlawful belligerent occupation of our homeland since 1893-1898.

Since US Congress members have a duty to uphold the US Constitution, we call upon you to uphold your US Constitution especially with respect to:

Article I: "To define and punish...offenses against the law of nations," that is, international law; and

Article VI: "This Constitution...and all treaties...shall be the supreme law of the land."

In accordance with the foregoing account and principles, we Kanaka Maoli people and nation call upon the US Congress to replace the Akaka Bill with legislation for the US President and the US Secretary and Department of State, on behalf of the US people, to:

1. Comply with the UN Charter, Chapter XI, Article 73, when the US, in 1946, in UN General Assembly Resolution 66, as the colonial administering authority of our homeland Ka Pae'āina Hawai'i, a non-self-governing territory (colony), agreed to:

- "...recognize the principle that the interests of the (colonized) inhabitants (not the US) are paramount and
- "accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security..., the well-being of the (colonized) inhabitants...
- "to ensure with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment, and their protection against abuses;
- "to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions;
- "to further international peace and security;
- "to promote constructive measures of development, to encourage research, and to cooperate with one another and...with specialized international bodies with a view to the practical achievement of the social, economic and scientific purposes set forth in this Article..."

2. Acknowledge the 1998 UN Human Rights Commission's Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations, by Prof. Miguel Alfonso Martinez, which states that "the case of Hawai'i could be re-entered on the list of non-self-governing territories of the UN and resubmitted to the bodies of the Organization competent in the field of decolonization."

3. Abide by UNGAR 742 (1953), UNGAR 1514 (1960), UNGAR 1541 (1960) and UNGAR 2625 (1970) which provide a process for true and full self-determination of our Kanaka Maoli people through peaceful decolonization with absolute equality of political power (UNGAR 742), cessation of all repression (UNGAR 1514), international technical and financial assistance and oversight (UNGAR 2625) with three main options (UNGAR 1514): independence, free association or integration.

Page 10

4. Begin negotiations with our Kanaka Maoli people and nation on the basis of absolute political equality and mutual consent, as provided by UNGAR 742 (1953). Use the following recommendations of the 1993 Kanaka Maoli Tribunal as an initial guide:

a. The US and international community recognize the inherent sovereignty and right to self-determination of the Kanaka Maoli people and nation under provision of UNGAR 1514 (1960), the International Covenant on Civil and Political Rights (1970) and the International Covenant on Economic, Social and Cultural Rights (1970), among other elements of international law and Kanaka Maoli law, and as acknowledged by the US Apology Resolution (US PI.103-150), whereas clause 34.

b. The US and international community recognize the right of our colonized Kanaka Maoli people to decolonization as provided by UNGAR 742 (1953), UNGAR 1514 (1960), UNGAR 1541 (1960) and UNGAR 2625 (1970), as stated above under 3, and in accord with the US Constitution and US Apology Resolution.

c. The US return all lands and jurisdiction over all lands claimed by Kānaka Maoli to the Kanaka Maoli people without delay, in accordance with the International Law of Restitution and the Apology Resolution, Section 1.

d. The US immediately suspend blood quantum standards of identification of Kānaka Maoli, as provided by the 1948 Genocide Convention (See below.) Kānaka Maoli determine composition of their nation's citizenry free from external interference.

e. All other wrongs committed by the US against Kānaka Maoli be rectified in a manner deemed satisfactory to the Kanaka Maoli people themselves.

f. The US, in negotiations with the Kanaka Maoli people, observe the provisions of the UN Declaration on the Rights of Indigenous Peoples as the minimum standards to be followed.

g. The US, in negotiations with the Kanaka Maoli people and nation, observe the provisions of the 1948 Convention on Punishment and Prevention of the Crime of Genocide.

5. The US begin negotiations with the Kanaka Maoli people and nation on US Federal programs meeting Kanaka Maoli immediate health, social, educational and housing needs, to be considered as beginning reparations for US colonial domination, exploitation and subjugation.

Mahalo for the opportunity to present this testimony with recommendations for pono (just) alternative legislation.

Sincerely, *Kekuni*

Kekuni Blaisdell, Convenor

Attachment

February 1994
 Edited by Kālanī Minton

Ka Ho'okolokolonui Kānaka Maoli

1993 The Peoples' International Tribunal Hawai'i MANA'O

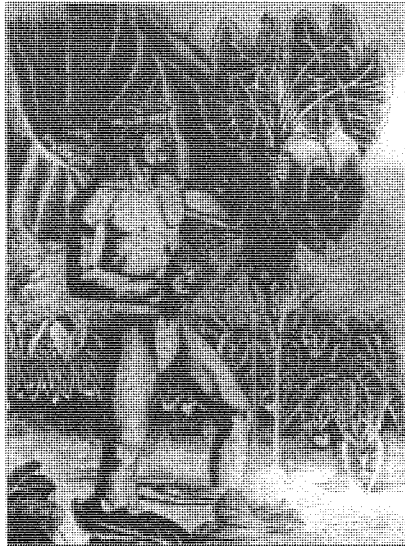


"My grandfather always told me to keep my mind and my heart strong with much *aloha*, because our ancestors believe in the tide changing. Because so much has been taken away, I know one day the tide will change and all that was wrong will be made right."

MARY ANN BENNETT, Tribunal Witness

"Admit you're wrong, apologize for the pain and destruction of our people, and return all—nothing less—that was stolen from us."

NANI ROGERS, Tribunal Witness



"We've got to exercise our rights to these lands, stay on them and use them. Once we get off, we're recognizing U.S. jurisdiction. We're not trespassing. They're trespassing."

MCNAMI GOMES, Tribunal Witness

"With the Kānaka Maoli, food and proper nutrients are very important. Papa, our earth mother, gives us the food that springs from her bosom. Wākea, our sky father, gives nutrients to us through the power of the sun, the wind, and the rain. Hāloa, the elder sibling of the Kānaka Maoli, who was buried in the ground and sprouted up as the first *kalo* plant, is sacred as our staple food, *poi*. It is this Hāloa with the earth mother and the sky father who nurture our people. In a sense—in a true sense of *ʻohana* and *haʻahaʻa*, or humility, the Kānaka Maoli have over the years treasured the *loʻi kūlo* and respected it as the giver of life for all generations of the nation of Hawaiʻi."

KU'UMEALOHA GOMES, Tribunal Witness

Mahalo Nui Loa to our Sponsors

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Special Mahalo to Leo Akana, Victoria Kneubuhl, Dallas Vogeler, & cast members of "The Military Tribunal of 1895: Trial of a Queen."

Mahalo kākou to all island coordinators and their committees; volunteer staff; organizers of information, logistics and transportation; food providers; lei makers; musicians, chanters, *kumu hula* and *hālau*; international and local supporters; sound, video and media; and all the judges, prosecutor advocates, international witnesses and observers, and participants who helped to bring the Tribunal to life.

Aloha piha to Alejandro Molina, Marion Kelly, Ulla Hasager, Miriam Anne Frank, Mahmed Ali, Mary Choy, Kihē Niheu, and all members of the Tribunal Kōmike, Ka Lāhui, and to all the hundreds of contributors.



"There is still time to save our heritage...never cease to act because you fear you may fail."
 "...the voice of the people is the voice of God."

QUEEN LILI'UOKALANI

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This publication was prepared by Ulla Hasager, Iokepa Campton, Mona Bernardino, Haunani Bernardino, Hiko Hanapi [cover], Kekuni Blaisdell, Nālani Minton [editor], Teresa Black [art editor], with special thanks to Honolulu Publishing Co. and Rudolf Helder.

Ea

This publication contains the voices of Kānaka Maoli speaking for ourselves. All over the earth those who suffer most give voice to what must change for all of humanity to survive. As with the millions of other indigenous peoples facing possible extinction, we speak with the sacred responsibility, urgency and purpose of those who live close to the earth.

The Tribunal testimonies included here are taken from over 6 volumes of documentation, invaluable in their entirety. They represent the far ranging damage done and our assertion of native intelligence. Following the wisdom of our own ways gives direction to the righting of wrongs and the creation of a future that is pono.

To gain sovereignty we must be self-determined. Our survival relies on self-sufficiency. We represent thousands of years of developing correct response and sensitive maximization in island living. The living memory of simple mastery of practical life is in our blood. We must continue to live with common sense as common knowledge.

Within our concepts of *ahupua'a*, *kanawai*, *mālama* and *pono* are the moral and spiritual laws that arise from the natural life of the land. Western political thought can never define us. We come from higher laws than those which create impoverishment through majority rule.

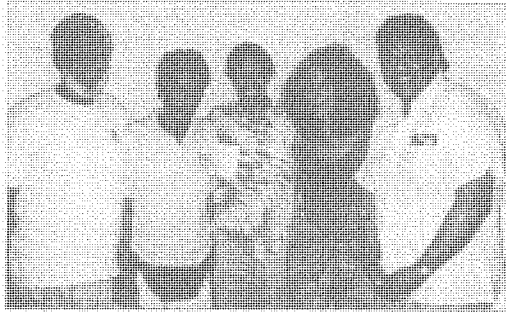
We come from *i ke kahi i ke kahi e aloha mau*—the cosmological law of one. Our concepts reflect each person's responsibility for upholding right relationship on every level of community life and creation. Our concepts provide access to everyone what is needed to sustain life. There is greatness in alliance for the common good. We need not mimic any other time or mind to bring back the wisdom of caring, feeling and honor. The answers and solutions for us are in continuing the values that maintain harmonious life.

The coercion, intimidation, domination and exploitation of colonial amoralism must end. The continuation of the peoples and places of the earth who are bound by laws of renewal is imperative.

MĀLANI MINTON, EDITOR

"Real liberation liberates the oppressor and the oppressed."

CHANDIE



From left to right, Puhipau, Kihei Niheu, Kekuni Blaisdell, Joan Lander and Alejandro Molina.

Nā Maka o ka 'Āina

By Puhipau and Joan Lander

In August, Nā Maka o ka 'Āina spent twelve days capturing on tape the proceedings of the People's International Tribunal Hawai'i 1993 in which the United States was put on trial for crimes, including genocide and ethnocide, against the Hawaiian people.

The Tribunal traveled to five islands and was hosted by Hawaiians who have taken a stand on the land and who, in some cases, were facing eviction and arrest.

On Maui, the international guests heard Hawaiian chants echoing off the steep valley walls of 'Āo Valley and the pleas of those trying to save the burial grounds of their kupuna at Waihe'e. At Kahikinui, the prayers of those occupying the land were caught up in the swirling winds from Haleakalā.

On Moloka'i the Tribunal visited a restored fishpond and heard of the efforts to stave off development from people with "Kingdom of Hawai'i" license plates on their vehicles.

Beneath a United Nations flag at Anahola, Kaua'i, the Tribunal was treated to hospitality from Hawaiians who are facing arrest daily for living on their land and for trying to protect the island from the ravages of Star Wars testing.

The homeless Hawaiians living under the "affordable housing" tarps at Onekahakaha Beach Park welcomed the Tribunal to the island of Hawai'i, while the families of South Point and Honokohau in Kona—all threatened with eviction—spread before their inter-

national guests not only the food of the land but their stories of oppression and dispossession.

This review of the contemporary Hawaiian situation was given a new twist by the presence of the international jurists, lawyers, and educators who formed the Tribunal. These experts from Japan, Aotearoa (New Zealand), Jordan, Korea, Africa, the U.S., Puerto Rico, and the Cree, Shawnee, Cherokee, and Creek nations provided unique points of view and brought to the proceedings a familiarity with new conventions and agreements that are changing the dynamics of international law.

During those days of testimony, the damage done to the Hawaiian people by the U.S. and its subordinate, the State of Hawai'i, was extensively outlined through the words and personal experiences of literally hundreds of Hawaiians. In addition, historians and other specialists gave well-researched insights into the workings of colonialism, capitalism, militarism, and racism in these Islands.

At the end of the Tribunal, an international panel of jurists, consisting of recognized experts in international, constitutional, and indigenous law, came up with an interim report that essentially confirmed the fact that the rights of Kānaka Maoli to their sovereignty have never been extinguished.

See back cover for further information on ordering 6-volume set of Tribunal documentation.

Tribunal Update and Beyond

By KEKUNI BLAISDELL,
Convenor

It was a daring, historical world event. On August 12-21, 1993, for the first time in Ka Pae 'āina the United States was brought to trial and convicted before a court of the international civil society for its crimes against our Kānaka Maoli people. The Tribunal convened during the centennial of the U.S. armed invasion of our once independent island nation. It was 1993, the United Nations International Year for the World's Indigenous Peoples.

The idea for a 1993 Tribunal was first proposed in 1991 by the late Kawaipuna Prejean, roving international envoy for Kānaka Maoli sovereignty organizations. Kawaipuna's



Kawaipuna Prejean.

death in April 1992 sparked the formation of a Tribunal Kānaka Maoli Kōmike. More than 60 organizations and 500 individuals became sponsors.

U.S. president William Clinton and other U.S. and State of Hawai'i officials did not respond to the Tribunal Kōmike's invitation to provide legal defense or otherwise participate. At each Tribunal session, a reserved chair labeled "U.S. Representative" remained empty.

Also for the first time the judges' decisions were based on *nā kānāwai* Kānaka Maoli—Kānaka Maoli tradi-

tional law—as well as on Western law.

A further distinction was that Neighbor Island Kānaka Maoli insisted that Tribunal sessions be held at land struggle sites on each of their islands. These taro-roots Kānaka Maoli formed their own Kōmike on each of the five main islands, hosted the visiting off-islanders, conducted ceremonies, and presented witnesses and testimonies with their unique, local style and concerns.

Chief prosecutor-advocate Glenn Morris, in his summation to the Tribunal, asserted that the persistent agony of the Kānaka Maoli was "no accident, not the result of negligence nor ignorance, but a sequence of knowing and intentional acts with predictable, premeditated devastation of the Kānaka Maoli nation."

The Tribunal's findings and recommendations are being prepared for distribution as an official report to the

United Nations, the International Court of Justice, the Organization of American States, the Nuclear Free and Independent Pacific, the U.S., and other nation states. A one-hour video and this publication are being readied for even broader circulation in schools, in churches, and to the communications media. This documentation will be the ready reference for an investigation team to Ka Pae'āina from the U.N. Working Group on Indigenous Peoples based in Geneva and materials will be archived as a permanent reference for research and publication.

Kekuni Blaisdell is the convenor of the Peoples' International Tribunal Hawai'i 1993, co-founder of the Pro-Hawaiian Sovereignty Working Group and Ka Pōkaiukau, a coalition of Kānaka Maoli independence groups. Kekuni testified for the Kānaka Maoli in the 1992 San Francisco Tribunal on Indigenous Peoples and Oppressed Nations.



Alejandro L. Molina speaking.

Commentary

By ALEJANDRO L. MOLINA, Coordinator

New forms of struggle and unprecedented unity have been shown by the Tribunal and its committees on five islands, demonstrating the breadth and width of struggle. But the Tribunal is not here to rescue—we can only do that ourselves.

Some of the roads are to continue the struggle in the form of books and videos from the Tribunal. Continue to work in the new ways we have learned. Don't leave bff here. If you work at the international level, then continue to work at the international level. If you do land occupations, then continue land occupations. If you are involved in other forms of rescuing your sovereignty, of struggling for independence, then continue. There are no saviors, except ourselves.

Alejandro L. Molina was the coordinator of the Hawai'i Tribunal and director of the 1992 San Francisco International Tribunal on the Indigenous Peoples and Oppressed Nations in the U.S.A. Molina is also co-producer of the video "USA on Trial" and actively works with the Puerto Rican independent movement and freedom for Puerto Rican political prisoners and prisoners of war.

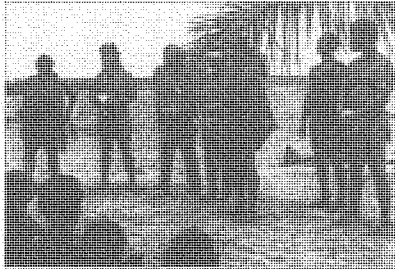
Kānaka Maoli Law

Excerpted from Tribunal Interim Report

We have found Indigenous Hawaiian understanding of law to be an indispensable and powerful background for this verdict, and we believe that law experience and wisdom of Indigenous peoples generally is helping the democratic movement of peoples. It is the considered view of the Tribunal that a further conception of the term "law," which recognizes the validity of indigenous legal processes, is required if the international community is to end the oppression of indigenous peoples.

The testimony of many witnesses referred to the basic law of *Kapu* which defined, among other things, the sacredness of land and the special sanctity of burial sites and *heiau* (temples) and the means by which they could be protected. Other testimony explained the application of concepts such as *mālama* (to care for, protect) and *nā kānawai* (fair distribution laws relating to water and other resources). This, and other evidence, clearly established the existence of a complex system of laws within Hawaiian society.

The observance and implementation of various laws was an inherent part of the social behaviors determined by,



The Pal 'Ohana.

and expected within, the total collective. Many examples of sanctions imposed for their breach were placed before the Tribunal, including instances of immediate dispatch of persons for the wrongful taking of fish or other food resources. The weight of evidence produced leads us to make the following statements of fact:

- a) A clearly identifiable legal process operated as an integral and interrelated part of Kānaka Maoli life.
- b) Legal philosophies still operate in the relationship and attitudes of Kānaka Maoli to their land and natural resources.
- c) Assertion by the United States that indigenous rights (and law) were extinguished by annexation did not make it so in the *mana'o* (thoughts) of the people.

A Concept of Self-Determination

Two particular Kānaka Maoli legal concepts were helpful to the Tribunal in determining whether there was a recognition by them of a right of self-determination.

At a fundamental level, *ea* is life, (breath, spirit, birthright by existence). The sanctity of life places upon the people an obligation to protect and maintain the state of *pono* (balance, right relationship) within which it exists. This obligation is a supreme sovereign duty.

The second concept is that of *mālama*, or responsibility to care for and protect the land and people. Kānaka Maoli regarded themselves as a nation capable of exercising the most basic powers of sovereignty: the right and ability to defend and protect the people and the sacred lands on which they lived. The nature and extent of this power was definable only by the Kānaka Maoli. It grew from the complex lineages, religion, and law. As such, the right and powers of sovereignty and self-determination were not able to be extinguished by human acts of cession, annexation or conquest.

In honor of all those continuing rightful land occupations:

"The defense of the nation is in the spirit of the people."

GEORGE HALE

- Jan. 1994: Marie Beltran and her family are evicted from the Mokualea beach where they have been living since June.
- Dec. 1993: Hawaiian land activists Michael Grace, Sandra Field Grace and Henry Smith were jailed for occupying Department of Hawaiian Homes claimed land at Aiehola, Kauai.
- Aug./Sept./Oct. 1993: More than 20 Native Hawaiians were arrested for trespassing three times in trying to rebuild a pavilion on Department of Hawaiian Homes claimed land at Puhi Bay in Hilo, and for trespassing at Kōhō Shopping Plaza.
- May 1993: Members of the 'Ohana Council occupy land next to the Makapu'u Beach Park on Oahu with the intent of building a Hawaiian fishing village. More than 60 families camped out on the property claimed by the Department of Hawaiian Home Lands. The people are to relocate to Waimānalo property under an agreement reached with the state Department of Land and Natural Resources.
- April 1993: Thirty members of the 'Ohana Council of the Hawaiian Kingdom occupy Coast Guard property at 'Upolu near the northernmost tip of the Big Island.
- Dec. 1991: Eight Hawaiian families on beachfront property at Me'ealea Beach, Maui, ignore eviction warnings.
- July 1991: The occupation of Anahola Beach by Hawaiian activists ends when 14 people are arrested and their structures demolished.
- Feb. 1990: The State evicts a half-dozen "squatters" from a parcel in Waimānalo.
- May 1989: The City clears Waimānalo District Park of 13 people. Some of those evicted were among the homeless beach people relocated from Waimānalo Beach Park in 1985.
- July 1987: Forty-seven people are arrested, after a 40-day occupation of the Makapu'u Lighthouse, when the State receives reports of guns and drugs on the hilltop.
- July 1985: "Beach people" at the City's temporary Mākahe camp are told to leave. The campers include people evicted from Leeward beaches months earlier.
- May/June 1985: The City moves to remove "beach people" living at Makapu'u and Waimānalo.
- Jan. 1983: Six Native Hawaiians are arrested at the Wai'anee Coast's Mākahe Beach after the State bans their beach dwellings.
- June 1980: Twenty-five Hawaiian activists are evicted from Kūka'i'moku Village, a makeshift settlement in Kona.
- Jan. 1980: Bulldozers smash shoreline shanties erected on San Island when 42 people defy a court order to clear the area.

Nā 'Ōlelo Ho'āhewa (Charges)

- 1 *Nā kaomi kū'oko'a* (Impermissible interference in the internal affairs of a sovereign people & nation)
- 2 *Ke kākua 'ana i nā kaomi kū'oko'a* (Aiding & abetting a foreign coup d'état against the government of a sovereign people & nation)
- 3 *Ka 'aihue 'ana i ka Lāhui Kānaka Maoli* (Annexation of a sovereign people, their nation & territory without their free & informed consent)
- 4 *Ka 'aihue ho'ohuipū 'ana i ka Lāhui Kānaka Maoli* (Incorporation of a people, their nation & their territory without their free & informed consent)
- 5 *Ka 'aihue i ka 'āina mā o ka Pae'āina Kānaka Maoli* (Illegal appropriation of the lands, waters & natural resources of the Kānaka Maoli)
- 6 *Ka hana 'ino i ka Lāhui Kānaka Maoli* (Economic colonization and dispossession of the Kānaka Maoli)
- 7 *Ka pepehi a ke kū'ē i nā mea pono Kānaka Maoli* (Acts of genocide & ethnocide against the Kānaka Maoli)
- 8 *Nā hana 'ino i ka 'āina mā o ka Pae'āina Kānaka Maoli* (Destruction of the environment of Ka Pae'āina)
- 9 *Nā hewa i nā kahu'ia* (Violation of International & Domestic Trust Responsibility)

Nā 'Ōlelo Ho'oholo (Recognitions & Findings)

The Kānaka Maoli, as these findings demonstrate, are an extraordinarily oppressed and threatened group, whose experience with rule by the United States since contact in the late 18th century has been one long litany of horror and illegality that stretches into the present day. As the evidence before the Tribunal abundantly establishes, the U.S. government's approach to the Kānaka Maoli people and their nation and culture was one of flagrant abuse and imperial arrogance. The practices arising from this approach have resulted in the severe abuse of widely ratified treaties, including the United Nations Charter, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and The Genocide Convention.

The Tribunal finds that

- 1 The United States violated *nā kānāwai* (Kānaka Maoli law) and elements of customary international law, as well as its own Declaration of Independence
- 2 The United States accelerated its interventions in the internal affairs of Ka Lāhui Kānaka Maoli, abridging and impairing its sovereign functioning and right to self-determination. The U.S. also violated the terms of at least three ratified and binding treaties: the 1826 Convention Between Commodore A.P. Catesby Jones of the U.S. and Kauikēaouli (Kamehameha III), the 1850 Treaty of Friendship, Commerce and Navigation between Kamehameha III and the U.S., and the 1875 Treaty of Reciprocity between the Hawaiian Islands and the U.S.
- 3 In 1893, the U.S. openly supported a coup d'état conducted by alien immigrants against the legitimate government of Ka Lāhui Kānaka Maoli. Thereafter, for a period of five years, the U.S. openly supported the usurping regime by use of armed force against the indigenous population of Hawai'i. In 1898, the U.S. annexed Ka Pae'āina o Hawai'i (the Hawaiian Archipelago), neither obtaining the consent nor consulting the Kānaka Maoli.
- 4 Following annexation, the United States forcibly subordinated, degraded and systematically dispossessed the Kānaka Maoli and incorporated Hawai'i into the Union as a

state

- 5 Under provision of Article 20 of the Charter of the Organization of American States, all U.S. assertions of jurisdiction and property title in the Hawaiian Islands are legally invalid
- 6 Kānaka Maoli sovereignty has not been extinguished by the illegal actions of the United States. The overthrow of 1893 and purported annexation of 1898 merely changed the nature of the operative state but did not remove the inherent right of the people to sovereignty
- 7 The Kānaka Maoli are morally and legally entitled to reassert their right to self-determination under provision of U.N. General Assembly Resolution 1514
- 8 Blood quantum is ethnocidal and is contrary to the virtual entirety of the International Convention on the Elimination of All Forms of Racial Discrimination
- 9 The Kānaka Maoli have been subjected to ongoing processes of genocide, both physical and cultural, at the hands of the U.S. government and the government of the State of Hawai'i, which violates *nā kānāwai*, as well as the 1948 Convention for Prevention and Punishment of the Crime of Genocide
- 10 The Kānaka Maoli have exhausted all existing peaceful avenues for rectifying the multiplicity of wrongs done to them. Consequently, they are entitled, on an urgent basis to explore potentially more productive approaches, such as mediated negotiations with the U.S. Department of State

Nā 'Ōlelo Ho'oleale (Recommendations)

The Tribunal recommends that

- 1 The U.S. and the world recognize the sovereignty and right to self-determination of Lāhui Kānaka Maoli under provision of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, among other elements of international law
- 2 The U.S. and the world should acknowledge the right of Lāhui Kānaka Maoli to decolonization under provision of United Nations Resolution 1514
- 3 Kānaka Maoli lands, including all ceded lands, Hawaiian Home lands, and all other lands to which they have a claim, should be returned to the control of Lāhui Kānaka Maoli without delay. Land restoration should be construed as including restoration of water rights
- 4 Jurisdiction over restored lands should be transferred to Lāhui Kānaka Maoli at the time of restoration
- 5 Blood quantum standards of identification should be immediately suspended. Lāhui Kānaka Maoli itself should determine the composition of its citizenry, free from external interference
- 6 All other wrongs suffered by the Kānaka Maoli at the hands of the United States and its subsidiaries should be rectified in a manner deemed satisfactory to the people themselves
- 7 The United States, in negotiations and other interactions with Lāhui Kānaka Maoli, should observe the provisions of the United Nations Declaration on the Rights of Indigenous Peoples as the minimum standards to be followed
- 8 The United States should immediately effect a valid ratification of and adherence to the 1948 Convention on Punishment and Prevention of the Crime of Genocide

Judges

Ka Ho'okolokoloni Kānaka Maoli was privileged to benefit from the edifying assembly of judges and prosecutors who worked on behalf of indigenous peoples' rights and human rights internationally. Their presence, experience and wisdom lent dignity, honor and graciousness to the proceedings.

Milner S. Ball, Caldwell Professor of Constitutional Law at the University of Georgia; author of Constitution, Court, Indian Tribes, and Whose World and How?

"In terms of land, water, and natural resources, would it not be possible to say that we ought to focus on the language and concepts of the Kānaka Maoli, and not necessarily Western concepts, in order to understand the crimes that have been visited upon these people? And is it not the case that taking the waters is also an attempt to take law and the gods, as well as the physical thing called water?"

Hyun-Kyung Chung, Assistant Professor of Theology from Ewha Women's University, Seoul, Korea; Research Associate and Visiting Lecturer at Harvard Divinity School; author of Struggle to Be the Sun Again, "Gospel and Culture."

"I want to share my deepest appreciation with you. I want to talk to you as your comrade, as your companion, not as a judge. Throughout this experience, I'm

touched by your power, your wisdom, your aloha. I'm moved by your beauty and legacy.

"People who can reverse these five hundred years of colonialism and crime are the people who know what it means to have their heart broken, what it means to live with broken-heartedness on a daily basis. People from broken-heartedness will change the world."

Ward Churchill, (Creek/Cherokee Mitis), Rapporteur, Associate Professor of American Indian Studies at the University of Colorado at Boulder; Co-director of the American Indian Movement of Colorado; author of Struggle for the Land.

"Your freedom is my freedom.

As we went from place to place in the islands, I kept hearing this chant, *E kū mau mau*. It will symbolize the experience of this Tribunal for me. As it was explained to me, '*E kū mau mau*' was a chant that accompanied the people when they went to the mountains for a tree to make a canoe. As they carried the tree down, they would chant to get the job done—a struggle. It had to do with the life of the people; it had to do with unity; it had to do with working together.

"We have been a process not of a normal judicial process. We have been in a process of struggle, of working together, of forging a unity, of creating a vehicle that will carry us on that wave that the prosecutor, Glenn Morris, was referring to, that wave that will lead to the sovereignty and self-determination of the Kānaka Maoli people. And on that wave, in this canoe that this

Tribunal is in some small part creating. Is a wave to liberation for all the other peoples who are in the same conditions, who suffer the same oppression, who are victims of the same process throughout the world.

"We must work together. We must create that canoe. We must forge our unity. We must be successful in our struggle and therefore we will. I say to you what was said to me, *E kū mau mau*."

Richard Falk, Albert G. Milbank Professor of International Law and Practices and Fellow of the Center of International Studies at Princeton University; author of Human Rights and State Sovereignty, The End of World Order, A Study of Future Worlds, Explorations on the Edge of Time.

"As a professor of international law, I believe that we must struggle to make international law work on behalf of the victims of state politics and oppressive structures in the world. And it is partly to liberate international law that this Tribunal is so important. We must join in solidarity with those who are victimized by the current structures of power."

Lennox Hinds, Professor of Law at Rutgers University; past Director of the National Conference of Black Lawyers; Counsel to the African National Congress (ANC) in the United States; author of Illusions of Justice.

"I am happy that I was asked to join with you in a role that I have not played before. I am a trial lawyer. My skills have always been as an advocate representing the oppressed. I found myself in a unique and, I must confess, quite exhilarating role of being a judge of one of our common oppressors. But when I heard testimony of individuals who were resisting and putting everything that they owned on the line, I was reminded of what Frederick Douglas, the former slave, said: 'Those who demand a change but deprecate agitation are like individuals who want the mountain without the cliffs, who want the sea without



the roaring waves, who want rain without thunder and lightning. The limits of tyrants are prescribed only by the endurance of those they oppress. Power concedes nothing without a demand. It never has and it never will. I am honored that you have given me this opportunity to be with you in the eye of the storm."

Te Moana Nui a Kiwa Jackson (Ngati Kahungunu and Ngati Porou Maori), *Chair, Director of Maori Legal Service, Wellington, Aotearoa ("New Zealand"); author of The Treaty and the Word: The Colonization of Maori Philosophy.*

"The other night when we were at Ka'ū, I was shown the canoe mooring holes which had been carved in the rock which, in the period when our people believed time was just a dream, my ancestors moored their canoes there before they sailed across to the colder part of the Pacific Ocean where I grew up. Also, when I was at Ka'ū, above the horizon was the constellation which our people call Matari'i. That name is only given to certain people in our tradition, those whom it is believed will have the strength and courage to dream. So my granddaughter has the name Matari'i. I hope one day I can bring her here. I would like to come back and be part of your struggle again."

Asma Khader, *Attorney, Educator, Journalist; member of the Palestinian Rights Society and the National Committee for the Protection of Children (Amman, Jordan); winner of the 1990 Human Rights Watch Award.*

"We are struggling against the same enemy. Like you, my Palestinian people lost their land. But they are fighting, struggling, paying [with] their blood and their lives because they are very sure the future is for justice, love, happiness, and development in our own way. Together we can face this huge military, economic enemy. We can win our future. I will go back with very rich information and feelings and share these with my people so we can stand with you. You are with us forever."

Oda Makoto, *Novelist and Literary Critic; Visiting Professor of Comparative Studies at the State University of New York, Stony Brook; member of the Permanent People's Tribunal; author of The Notebook of the Day After Tomorrow, Hiroshima.*

"The future is up to the people's power. All these things we can accomplish through the power of

people. We don't have any military power or police powers. We cannot arrest President Clinton or the prime ministers of any country. But the power of the people can do that. So, you work, you fight, you make a movement [in] which, in a small part, I want to share."

Sharon Venne (Cree), *Lawyer; human rights advocate at the United Nations; Rockefeller Fellow on indigenous legal systems; author of "The New Language of Assimilation: A Brief Analysis of ILO 169" and other essays.*

"Hai hai. My name is Old Woman Bear. I'm Cree. And I came because the Creator looks at all of us and our land in the same way. A prophecy that comes from my people, the Crees who live in northern Canada: My people always had to struggle to maintain their relationship with the land. And they said that in the future there would be a turning point for the indigenous peoples when grandmother touched mother. And one day we heard that the United States brought a rock from the moon to the earth. And mother and grandmother touched. It's ironic to us that the most oppressive government of indigenous peoples brought the stone which was the beginning of the end of them. Now we know that the strength of the indigenous peoples is rising and that from that strength we will break the back of the neo-colonialist. What you see around you will crumble into the sea from which they came. And indigenous peoples again will live with happiness and truth for the children yet unborn."



Prosecutor Advocates

The advocate-prosecutor team consisted of Glenn Morris, Maivan Clech Lam, and José Morin.

Glenn Morris, *Shawnee attorney and Director of the Fourth World Center for the Study of Indigenous Law and Politics, University of Colorado at Denver, Director AIM, Denver chapter.*

"The sovereignty and self determination of the Kānaka Maoli does not come from the Hawaiian Homes Commission, the Office of Hawaiian Affairs, or the United States Department of Interior. Nor does it come from a misguided or even malicious proposal of the State for an appointed Hawaiian Sovereignty Commission.

"Kānaka Maoli sovereignty and self-determination flow from the *maka'ānana*, literally 'the eyes of the land,' from the people. It comes from the understanding that the 'āina, the land, is here for the use of all and the common good. It comes from the respect for the older brother, the taro, which gives the meaning to life. It comes from the principle that all decisions must be made keeping in mind the effects of those decisions on the generations before them and after them. It comes from the ethic that you don't invade what supports the life of another.

"And not surprisingly, those laws of the *kānāwai* came into direct conflict with those imposed by the invaders. The legitimacy of the right of the Kānaka Maoli to self-determination and sovereignty is not dependent on its recognition by any other sovereign power. It is inherent in the people. It can only be relinquished by the people voluntarily, which the Kānaka Maoli have never done.

"Because even before the strangers arrived, even before

there was a Jesus for the missionaries to pray to, even before there was a dollar for the corporations to worship, there was "I ke kahi i ke kahi," the oneness, the interrelatedness of the Kānaka Maoli vision. There was pono, there was balance. There was the *kānāwai*, the law. That existed, that was legitimate.

"We therefore ask that you acknowledge and reaffirm the inherent authority, the sovereign authority of the Kānaka Maoli people. And that you recognize and affirm the right of the Kānaka Maoli to free and unencumbered right to the exercise of their self-determination. This means, among other things, the recognition of the legitimacy and the primacy of Kānaka Maoli law, traditions and values in the territory of Ka Pae'āina.

"I am reminded of the speech given by the greatest Shawnee leader who ever lived, Tecumseh, when the United States showed up wanting more land. And he turned to his people and he said, 'They want our land, they want just a little more land. I'm asking you, will you give up your crops, will you give up your children, will you give up the water, will you give up the sky, will you give up the deer and the eagles and the buffalo?'

"I know that when they ask for one more inch of land, you will answer with me never, never, never, never."

Maivan Clech Lam, Vietnamese attorney and Professor of Law at City University of New York, Rockefeller Fellow at University of Colorado at Boulder, author of "Indigenous Hawaiian Options for Self-Determination Under U.S. and International Law."

"Those communities of people who have resisted predatory capitalism and industrial society represented in superpowers, like the United States and Japan, have something to offer all of us who may have forgotten ways of relating to one another and to our common earth. We now need to resurrect and reconstruct a world that is human for all of us, is natural for all of us."

José Morin, Puerto Rican attorney and Executive Director of the North Star Foundation in New York, previously with the Center for Constitutional Rights.

"You have brought the judges to your community, to the grassroots, and that is significant. The judges now see and hear for them-

selves your lives, your experience, and hardship, and your pain. These Tribunals will never be conducted the same way again. Tribunals are going to be much more sensitive to the needs of the people who really suffer, particularly as they pertain to indigenous peoples. So you have accomplished something here and I want to publicly recognize that."

"This is also an international struggle. You are engaged in organizing yourselves around these issues, perhaps in ways that you have not done before. That is an advancement. That struggle, that unity building, that organizing will continue long after we are gone. In your unity you will be able to achieve critical change."

"From the Puerto Rican independence movement and on behalf of the 1898-group of island nations that were invaded by the U.S., 'You are not alone, and for that, and to 1998, we work together.'"

Witnesses

Angel Santos, Chamoru (Guam). Founding member of the Chamoru Nation, Santos has been at the forefront of the Chamoru struggle for sovereignty, participating in the drafting of their Constitution, the proclamation of the Chamoru Nation on July 21, 1991, and the re-occupation of Chamoru lands in defiance of U.S. courts.

Victoria Tauli-Corpus, Philippines. Chairperson of Cordillera Peoples Alliance, head of Cordillera Women's Education and Resource Center. Convenor of the Asian Indigenous Women's network, represented the Cordillera indigenous peoples at various national and international conferences. Past officer of GABRIELA.

Caroline Sinavaiana, U.S.-occupied Samoa. Ph.D. Environmentalist, cultural worker, poet, educator. Founder of Le Vaomatua, the Environmental Conservation Society of Amerika Samoa. Founding member of Samoan/Pacific Studies Program and Amerika Samoa Community College, Director of Pacific Asia Institute for the Arts and Human Sciences.

Bobby Castillo, Cheraqchua Apache/Chicano. Lecturer, International Spokesperson for Leonard Peltier. Castillo has been instrumental in gathering support across Europe and the U.S. for Native American political prisoner Leonard Peltier. As part of the Northern California American Struggle for Sovereignty, he is presently engaged in developing Bay Area Native American educational self-help projects.

Lopeti Senituli, Tonga. Secretariat, Nuclear Free and Independent Pacific, Director, Pacific Concerns Resource

Center

Marcus V. Lopez, Tongva Nation. Tribal Society, KPFK American Indian Airways, 90.7 FM, L.A. - Red Nations Movement newspaper, L.A.

Teodoro Anderson Diaz, Puerto Rico.

Observers

Shunji Arakawa, NFIP, Japan.

Chemo Soto Candelaria

Andrea Carmen, International Indian Treaty Council (IITC).

Robert Cruz, IITC, Arizona.

Christina Rodriguez, de La Mar, First Daughters.

Vincenta (Girle) de Guzman, Esq., Philippines.

Richard Eng, California.

Julia Matsui Estrella, PACTS, California.

Rev. Anke Flohr, Lutheran, Germany.

Ulla Hasager, IWGIA, Denmark.

Aroha Henare, Aotearoa.

Cynthia N. Ikuta, U. Church of Christ, Ohio.

Pamela Long, California.

Lehua Lopez, Native Lands Inst., New Mexico.

Tom Lubben, Esq., Native Lands Inst., New Mexico.

Eric Mar, California.

William Means, IITC.

Hine Wirangi Kohu Morgan, IITC.

Leo Oso, Red Nations Movement, L.A.

Steve Tatani, Kurds.

John E. Thorne, Esq., IITC, Washington.

Sammy Tonestta, Nat'l Council of Churches, New York.

Prof. Donna Winslow, Front de Liberation Nationale Kanak Socialiste, Quebec.

Narrative of the Tribunal

Ka Ho'okolo-kolonui Kānaka Maoli judges heard 147 testimonies in seven days on five different islands, and received additional written and video testimonies.

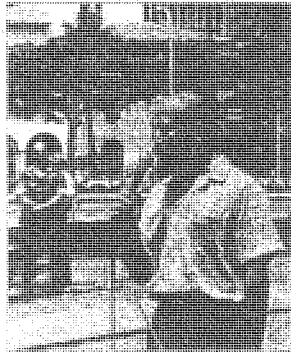
The Tribunal opened with a press conference at the 'Iolani Palace grounds in Honolulu on August 12. Presented were the judges, prosecutor advocates, and special invited witnesses from other Island nations subjugated by the U.S. A rally followed protesting the forced annexation of Hawai'i to the United States, 95 years earlier on August 12, 1898.

Angel Santos, spokesman for the Chamoru Nation Traditional Council explained that Guam is still on the United Nations list of Non-Self-Governing territories.

"The U.S. has brainwashed our people. For the colonizer to control the colonized, the colonizer must destroy the identity, the language and the culture of the people. Today, I stand before you with a haircut that reflects the true identity of our people. I will no longer be a slave in my own land. This is a statement to the world. We must free our people from the bondage of colonial slavery which is still in place in Guam."

The next day, August 13, opening ceremonies began with *oli kāhea* (chants) from the O'ahu districts conducted by Pūnahele Lerma mā; 'awa served by Kūnani Nihipali mā to the distinguished judges, prosecutors and special witnesses; and dance by Kaha'i Topolinski's Ka Pā Hula Hālau and Nā Maori from Aotearoa. This was followed by viewing of "An Act of War," a video by Nā Maka O Ka 'Āina and the UH Center for Hawaiian Studies on two centuries of U.S. colonialism.

On August 14, kumu hula John Ka'imikaua and Hālau 'o Kūkūnao-kalā's *ho'okupu* of hula and chant depicted a prophecy of the rise of the *maka'āinana*. Coordinator Alejandro Molina performed a libation ceremony commemorating the ancestors of people who have died in struggles for justice. In the evening, Dallas Voegler and Victoria Kneubuhl's historic drama, "The Military Tribunal of 1895: Trial of a Queen," was performed before a full house with Leo Akana as Lili'uokalani.



Angel Santos, Chamoru Nation, Guam.

O'ahu, August 13-14

LILIKALA KAME'ELEIHIWA

There was no ownership of land in traditional Hawai'i. It's like owning the air or water. We are the stewards. We have the opportunity and the responsibility to take care of the land and to take care of the water and the ocean. But you can't own it. It doesn't make sense [in our traditions].

When Kamehameha IV came to the throne in 1854, he said foreigners were allowed to come so long as they respected the laws of the land and the people. If they came to take away the land, if they came to exploit the people, then they were not welcome.

BARRY NAKAMURA

Traditional water systems were ingenious in that the streams were engineered by native Hawaiians over the centuries so that the water from the valleys was directed to spread over the lands and to water the taro pond fields. After the water passed through

these taro fields, they entered huge inland fishponds, extending a mile inland from shore. The fresh water coming down from the mountains, fed into these 'auwai, or irrigation channels, and brought down vegetable matter for the fish to feed on.

Under our modern system, we tend to centralize water into concrete channels and flush the water into the sea, [destroying reefs and marine life, robbing the land of natural irrigation.]

MARION KELLY

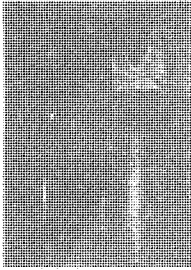
The *ahupua'a* land system is a [division] of land that goes from the top of the mountains, down through the valley, to the ocean and beyond. It gives use rights and resource rights to all the people there. The various environments—the near-shore, the shoreline, the area just behind the shoreline and on up into the mountains with the mountain stream—this is the usual *ahupua'a*. It provides access to all the various things that grow

at these different elevations and to ocean resources. And so the people share back and forth. This is the body of the social, cultural dimension of Hawaiian life.

The Hawaiian system of land tenure is a system of use rights. Everyone who was alive had rights to use the resources of the land and the sea. Otherwise, how could you keep yourself alive? We are the keepers of the land. We take care of it. And we have to take care of it well, otherwise we have famines. Otherwise we have pestilences. So we are careful about how we care for the land, *mālama 'āina*.

JON OSORIO

Hawaiians have always been under suspicion. Not just during the Kingdom, not just at the overthrow, but during the Territory as well, of being not up to self-rule, despite the fact that we ruled ourselves more than adequately for over two thousand years.



In 1896, H.E. Chamberlain wrote in his *The Constitutional History of Hawai'i*, "There had been no formal demand for the first Hawaiian constitution." I want you to remember that. There had been no formal demand on the part of the people for the first Hawaiian constitution of 1840.

Land laws written in 1895 essentially entitled any corporation or any person with money to lease enormous quantities of land. More than a thousand acres of land, for leases of up to 99 years and then, upon renegotiation of those leases, for 999 years. Those were the laws of the Republic of Hawai'i. By the time of the overthrow, 80 to 85 percent of all lands was either owned or leased by foreigners.

JOHN KELLY

The Ala Wai canal, which was dredged two-and-a-half miles long, 250 feet wide, and 28 feet deep by Dillingham, destroyed six square miles of highly fertile land, 38 major fishponds, and evicted thousands. This is the all too familiar story of development:

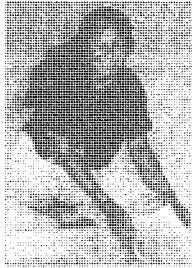
Today, of the 1.1 million residents in Hawai'i, just 80 major land owners control 95 percent of all the land. Of those 80 major landowners, two of them and the (State and) Federal government own 53 percent of the land. Sixty-five to 70 percent of all those big

hotels in Waikiki are owned by Japan.

MILLIAN TRASK

(Millian Trask, Counsel to the Nation, *Kia'ina* [governor] of Ka Lāhui Hawai'i), a native initiative for sovereignty with 24,000 citizens, has an extensive legal background in Native Hawaiian land trusts.)

There are three classes of native Americans not allowed access to the Federal courts: children, retarded adults, and Native Hawaiians. The[se] three classes of American citizens are not allowed into the U.S. Federal courts to bring breach of trust suits for col-



lective entitlement.

The 1990 Hawaiian Judicial Relief Act was the State's response to seven years of our efforts to obtain legislation for our right to sue in State court. The Act allows Hawaiians the right to go into the State court to sue to protect their assets but it prevents us from winning. It provides that any successful plaintiff cannot receive an award of either money or land. And the court is specifically directed to return their winning proceeds to their trustee, the State of Hawai'i. This is the kind of outrage that has occurred. When Talk Radio asked the Governor to comment, his response was, "I told them I would give them the right to sue, but I never told them I would give them the right to win."

Even in the Māhele there is clear language: "subject to the right of the native tenant." In the Kuleana Act, which gives out little house lots, it doesn't extinguish aboriginal title, collective title, or title of native tenants.

In the Newlands Resolution and Organic Act, the land laws continue to the extent that they are not extinguished or in any way explicitly controverted by the Congress. So not only do the inherent rights to land remain, the native title remains.

There's a pattern of resistance and opposition that emerges immediately after the overthrow. We talked already about the resolution from Kānaka Maoli to Congress saying "we don't want to be annexed and we don't want to be a state." That's three years after the overthrow.

Congress decided that a vote on annexation by the people of Hawai'i was not required by the U.S. Constitution and would undoubtedly undo the overthrow of the monarchy and, therefore, could not be allowed.

The rights and sovereignty of the native people of Hawai'i were ignored.

Pono is right relationship. It's something that you manifest with the gesture of your life more than a treaty or a treaty. You know if you live righteously, if you walk on the earth righteously. So it's more a question of how you perform and live your life. Is it manifested by your conduct? In Western ways, you talk justice, you go to court for justice. But people live all kinds of ways that are hurtful to others and the earth. They don't see that they're doing something that is unjust.

DONNA WONG

Can't get agricultural lands redesignated to urban? Pass a state law allowing

golf courses on agricultural land. Can't build your corporate retreats or industrial strip mines on conservation land? Pass state regulations allowing subzones. Can't build a Federal pork-barrel highway because of national environmental or cultural laws? Get your Congressional delegation to pass a law to break that law.

At the height of the golf course frenzy, 102 golf courses were proposed in addition to those 65 already existing. Each 18-hole golf course requires 100 to 250 acres. Golf courses use between 500,000 and 1 million gallons of water a day.

Among the most flagrant polluters in the nation... is Hawaiian Western Steel, which melts scrap metal and cars. These contain high levels of lead. A drainage ditch receives runoff from the plant on its way to the ocean. Nearby residents fishing at the mouth of this ditch are unaware that the fish they are catching have been heavily contaminated with lead.

Offshore water quality is nothing more than an afterthought. The idea that Hawai'i can surround itself with a sea of sewage and escape any consequence is preposterous.

BILL DOUGHERTY

Our Board of Water Supply has been testing 14 wells for 6 pesticides for the last 5 years, and that's all. Yet we have more than 100 wells and more than 40 pesticides have been detected. Although the use of DBCP and EDS has stopped, the levels are still growing because the pesticides on the top filter down through the earth to where we pick up our ground water. The half life of DBCP and EDS, according to our Department of Health, is 120 years. This means that in 120 years, that level is only half gone.

ANNA MARIE CASTRO

When I went down to

the tax map office, they had told me that our land has been condemned—today in Kapa'a, Kailua, O'ahu, there's a dump. And that dump area is now the place that used to be my family's taro land. Because of the government condemning this land, my family is now deprived of feeding generations. And it has deprived my family today of our taro. I'm sure that this happened not only to my family, but to many others.

ERIC SEITZ

The U.S. military always has done whatever it needed to dominate and exploit these islands for its larger purposes. Need a Naval base? Take an important fishing area. Need a place for bombing practice? Take a whole island. Need to practice artillery fire? Take one, two or three valleys. No environmental impact studies, of course. No concerns about dislocating the native peoples or about dropping artillery shells on people's farms and houses.

By the 1960s, the military controlled more land in Hawai'i than any other landowner (other than the State). Over 24 percent of the land on O'ahu was either owned outright or controlled on long-term leases by the military. H-1, H-3 were military highways. They were built for the convenience and for the purposes of the military.

MAHEALANI CYPHER

United States Interstate H-3 has a 30-year history of destruction of our land, water, and cultural resources. At \$100 million per mile, it is the most costly highway project in the history of the United States.

As a result of this project and the actions of the United States and the State of Hawai'i, the following rights have been denied or seriously undermined: the

right to worship ancestral gods, to visit our *heiau* and other sacred places; the right to protect and preserve the *hwi* and burial places of our ancestors; the right to free-running water in our streams for cultural use, for fishponds and needed irrigation, because they have diverted the water from the stream for the construction of this road; the right to gather greens, medicinal plants, and other products from our forests and uplands; the right to educate our people about our history and sacred places through their denial of our access and the destruction of our cultural, historical, and sacred sites. It is ethnocide.

RAYMOND KAMAKA

Taro farmer Raymond Kamaka and *ohana* from Waikāne Valley testified. He was to begin a jail sentence shortly after the Tribunal.

From 1942 to 1976, the U.S. Government leased 1,061 acres in Waikāne Valley, 187.4 of those acres from the Kamaka family, for military training. Waikāne is of cultural, religious, and historical significance; its taro *lo'i* are on the National Register of Historic Sites.

The U.S. Government promised to restore the land to its original condition and remove all ammunition and unexploded ordnance. Now the U.S. claims that it is too expensive—\$7 million—to clean up. The military won the right in federal court to condemn all 187.4 acres of the Kamaka land and offered the family only \$735,000, a ridiculously low sum considering real estate prices in Hawai'i today. The Kamaka *ohana* is being forced to give up their ancestral homelands. When Raymond Kamaka listed the U.S. and State of Hawai'i on his IRS forms, he was found guilty of tax fraud.

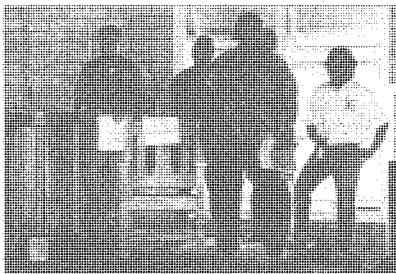
On September 8, 1993, Kamaka was taken to Pleasonton Prison in Northern

California.

At the Tribunal, Kamaka testified:

"Today I stand alone with my family, one person against the feds, against the government here. They lock me up for two years as a political prisoner. They used my land for bombing so that

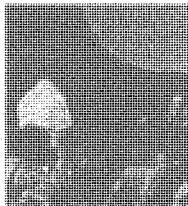
they could take the land away from another Kānaka Maoli. We are all farmers, taro patches. We come from the *āina*—and nobody is going to tell me I must get out of my land."



Raymond Kamaka and supporters.

Mauli, August 15

On August 15, about fifty people, judges, international witnesses and observers and staff, traveled to Maui. The welcoming ceremonies were influenced by the news of the death the day before of one of the leading Kānaka Maoli of Maui and planned partici-



Kanaka Maoli.

pants in the Tribunal: Parley Kanaka'ole.

Nā kumu hula Roselle Bailey and Frank Hewett chanted for the Maui welcoming ceremony at 'Iao Valley. Hewett concluded with:

"I would like to see, in

my lifetime, the Hawaiian people recognized by the world as a people, not as an attraction."

Kānaka Maoli Leslie Kulololo testified on the destruction of sacred cultural and burial sites at Waihe'e, Maui, where the Japanese-owned development company, Waihe'e Oceanfront Hawai'i, Inc., has planned a private membership golf course. He appealed to the judges:

"We thank you for the cries of these changing times.... We thank you for your presence, for today we represent—with ourselves—the changes that will take place tomorrow. We need your *kōkua*—*kōkua*—*kōkua*. We thank you all."

DANA MAONE HALL

It's a simple human value we all share, the protection of our ancestral burials...we're trying here at Waihe'e to prevent the further loss of what is really the foundation of our culture.

So my plea to this Tribunal is that unless we have and are able to exercise sovereign decision-making over our cultural, sacred sites, we will always be at the mercy of exactly the forces that have been decimating us and destroying the land right up to this very moment, as we speak.

KALEIKOHA KA'EO

The State courts decided to force the sale of land and to force our family to accept the cash amount.

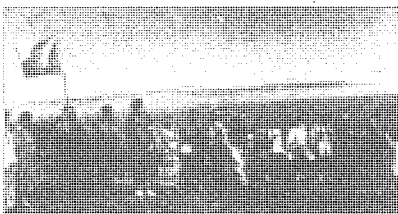
to be taken away from them.

'IWALANI SWIM

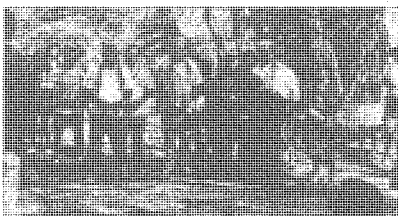
The areas where there wasn't lo'i, Maui Pine Land took and planted trees around this land. And so that's how they took adverse possession was by planting trees around the areas where there was no taro patches. And that's how they got to claim the land.

ERIC KANAKA'OLE

Without water land is nothing.



Circle in honor of Parley Kanaka'ole at Haleakala.



That is genocide when they force the dispossession of people from their ancestral lands.

MOANI MINN

I can't even find a beach to swim at. The beaches that we did find were stink. Smelled like sewage. I just can see this whole place being exactly like it. I've talked to younger people who are my age and they're really concerned about the security of Hāna, being able to fish and hunt like they've been taught. They're feeling like it's going

BERNICE HOKOANA

We have the worst health record in the entire nation—diabetes, high blood pressure, heart problems, you name it. One form of genocide is when the white man came here and took all our rights and food away from us and made us unhealthy. A lot of our Hawaiians died because of all the disease brought in—gonorrhea, syphilis, measles. For instance, my husband's family lost nine of their children from measles here in Kīpahulu. Is there anything out



there that you can teach us to defend ourselves? I use the word "defend" because this is what the system does to us.

TERRY LIND

We are a part of the world. And we are an endangered species. We are Hawaiians. Aloha.

TWENTY LIND

I'd like to welcome all of you to Hāna, the breath of life. When you come here to feel the goodness and the love that we always want to share here, that's what Hāna is all about. We are the life. We are the breath.

DONYA FITZSIMMONS

The Hawaiian movement doesn't make us anti-haole. It makes us anti-exploitation, anti-oppression, and anti-subjugation. If they don't want us to be anti-American, then stop oppress-

ing us, exploiting us and subjugating us.

The tourist industry thrives on the exploitation of our cultural ways. These racist attitudes forced many Kānaka Maoli to want to forget about being Kānaka Maoli.

The Federal government has stipulated a blood quantum percentage of who is Hawaiian and who is not. Their way you must be 50 percent blood quantum to be Hawaiian. Think about this. In a few years, given our poor health rate, there will be no more Kānaka Maoli.

This is a clear violation of our human rights. This is also blatantly contributing to the genocide of the Hawaiian race. We know today that when the United States government says "and justice for all," we know that they mean "justice for some." Them.



Frank Hewett.

Moloka'i, August 16

Kumu hula John Ka'imikaua led his *hālau* in performing the chant of prophecy of the priests of Pāku'i Heiau on Moloka'i. Ka'imikaua explained it like this:

"In 1819, Queen Ka'ahumanu, under influence of foreign ways, abolished the *kapu* system, the ancient religious-political structure, and she ordered all temples destroyed. When her men came to Pāku'i on Moloka'i, the people resisted and started a mock battle. In the meantime, the priests of Pāku'i quickly gathered all the sacred paraphernalia of the temple and hid them in a cave in the mountains and faced the destroyers, bravely standing with their backs to the walls of the *heiau*. Here they chanted the prophecy, 'Puni i ke mau 'ia Moloka'i.... Moloka'i is overcome, the spirit of Moloka'i is overcome. Overcome in the face of death. The day shall fall. The night shall fall. The heavens shall fall. All of the highborn shall fall.'

"This is a poetic reference to the abolishment of the political system of *nā ali'i*. The chant continues, speaking about what will happen to our people. '*Hō'āle'ale ka lepo pōpolo.*' *Hō'āle* means the crest of the wave when it rises. *Lepo* is dirt. When the farmer, the *mahi'ai* *maka'āinana*, comes out of the *lo'i*, his legs are dirty from the kee down to the foot. This is a poetic reference saying that the time will come when the *maka'āinana* shall rise, shall be in the heavens.

"Half of this prophecy has been fulfilled. And Hawaiians of today are searching for sovereignty, searching back to our *kūpuna*, feeling the pride, looking and building and



John Ka'imikaua leads the ceremonies on Moloka'i.

coming together. This is a fulfilling of that prophecy. This is that prophecy. 'Puni i ke mau 'ia Moloka'i....'"

This chant was given as the *ho'okupu* for the Tribunal to convene.

JOHN KA'IMIKAUA

I have been privileged in my life to have met a 92-year-old woman by the name of Ka-wahine-kapu-hele-ka-pō-kāne, who taught me the ancient dances and chants and tradition of the Hawaiian people and especially of the island of Moloka'i. Our people have lived on these islands for 2,000 years. And for the first 1,000 years that our people have lived upon these lands there was no *ali'i* system.

When the *kapu* system was abolished, it was the national religion, the religion of the chiefs, the religion that was had in the temples. That religion was abolished. But the *ʻaumakua* and the religion of the *maka'āinana*, the family religion, the reli-

gion of the ancestors, that still prevailed.

Before the time of the *ali'i*, there was only the *maka'āinana*. And the *maka'āinana* lived upon the land, the *maka'āinana* worked upon the land. They were born, they planted, and they died upon the land. It is important for us to reflect the original attitudes of our people from even before the time of the *ali'i*.

COLETTE MACHADO

The reason behind the strength and the energy of the people that come from this land is the fact that we are still rural practitioners. And we have to struggle to even keep this for ourselves.

NOA EMMETT ALULI

The Protect Kaho'olawe 'Ohana wants Kaho'olawe to set a precedent for a sovereign land base that would eventually come under the jurisdiction of a re-established Hawaiian nation.

WILLIAM KALPI

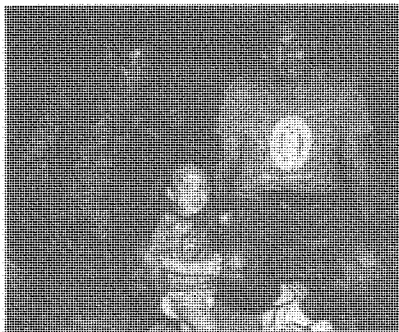
Fishpond builder

William Kalpi, Sr., testified at 'Lalapu'e. He related the history and rich lore connected with the 'Lalapu'e *ahupua'a* and fishpond, famous for the "fatness" of the mullet, and he explained its importance in present day life and politics.

The State claims to own the 18-acre fishpond at the south shore on the East End of Moloka'i which is leased by Hui o Kuapā, a non-profit organization focusing on aquacultural projects such as restoration and use of fishponds and production of *limu*. The 'Lalapu'e project involves commercial production and training. It integrates modern aquacultural techniques with revitalization of traditional Kānaka Maoli practices and preservation of historical and cultural values associated with the land and ocean. Hui o Kuapā has developed plans involving the entire *ahupua'a*. This is but one of the many ongoing projects on the island of Moloka'i, integrating a lifestyle with a strong reliance on subsistence economy with community demands for meaningful management.

Kalpi explained the necessity in the present day world to respect the Kānaka Maoli concept of *mālama 'āina*, to take care of the land, never to take more than you need, give back what you take and be grateful. Later, during the hearing session at Mālama Cultural Park, he made it clear how the right to practice sovereignty, to live it out in everyday life, is closely connected to these and other important Kānaka Maoli concepts, which are still being taught.

Whenever we go *mauka* to the mountains for



William Kalipi Sr. and his son Billy, and his grandson Kawatola.

gathering, we take what God has planted. But we never take what somebody planted as of hardship. We respect the next man's [work]. And yet Western culture comes to us with private property and "No trespassing," put fences up, so that we cannot go and gather—a necessity for our lives.

Today you no can be buried on your own property. Why? Because they no can sell the land. Nobody like buy one land with graveyards. But it is our *tradition*. I am going to be buried on my land.

Zoning is a new, modern technology. They zone us urban. All my life I raise pigs, animals, chickens—subsistence. Because of urbanization, I cannot continue to raise. But that's the law of American citizens. I am not an American citizen. So, I am raising my animals on my land.

Everything I do, I live in pono with myself, my God, my family, my community and the ecosystem of the environment I live in. The government harassed me and everything becomes a genocide to my lifestyle. I never did take an oath to become one American citizen. If you ask the immigration how does one become an American citizen, they have to go through school

and say one oath. I have never taken an oath. And my great-grandparents never take an oath. So as far as I'm concerned, I'm a Hawaiian national, sovereign heir to the Kingdom of Hawai'i.

That fraudulent government has identified American citizens as those who accept to be an American citizen by choice. But I have not chosen that.

They have stolen many of the lands belongs to our forefathers. The land was undivided interest to every Hawaiian Kānaka Maoli that lives in the Kingdom of Hawai'i. They made the land system, they gave the land under fee simple so they can steal it away from you. Our way of life was simplicity. We *mālama* the 'āina, the 'āina *mālama* us. We take care our land.

In our traditional system, as we raise our children we take in *hānai*. All the children becomes *hānai*, will be raised by Grandma or Grandpa, Uncle or Aunt and if anything should happen to me, my children could automatic [be] with one of the family by tradition. Within the State of Hawai'i, if anything happened to you, your children become ward of the State and that's against our traditional culture.

Kaua'i, August 17

The Tribunal hearings continued August 17 on Kaua'i at Anahola Beach Park, a contested area. Since 1986, a group of Kānaka Maoli has continued to live in the area in spite of repeated evictions and brutal destructions of their homes. The Hawaiian Homestead Commission prefers to evict from the area and leave the park administration to the County of Kaua'i. Since Dec. 7, 1993, three of the group have been serving 45-day prison sentences for trespassing and contempt.

At Anahola, the judges were presented with testimonies from the people of the land. Testimonies included concerns about U.S. Star Wars programs. In February, 1993, 19 people were arrested while protesting the Strategic Defense Initiative Rocket launch. On August 25, the second STARS test missile launched off for the Marshall Islands.

KUPUNA NANI ROGERS

Three governors of the Territory of Hawai'i turned over 548.57 acres of Hawaiian Home Lands to the U.S. Government for the Manā Airport Military Reservation, without the knowledge and consent of us, the beneficiaries of these sacred, cultural Nohili burial dunes. We should be left alone to promulgate our life purpose, which is to *mālama* 'āina, care for the land. Not be the wards of the State, but caretakers of the land. Why were we ignored?

I speak with *aloha*, compassion and pain when I say, admit your wrongs, apologize for the pain and destruction of our people, and get Congress to sign that document that will return all the lands stolen from us. Then peace can be restored, all healing of the wounds and pain inflicted can com-

mence, and *aloha pono* can flourish.

CHUCK TREMBATH

The foreign power and the culture have nearly overwhelmed Hawai'i at the expense of all Hawaiians. Hawaiians are endangered species, and strangers in their own land.

ATTWOOD MAKAMANI

Legal tide, in our culture and our traditions, that does not exist. And never did. Ka Pae 'āina o Hawai'i is the whole archipelago that falls within our use and our claims as our land. On and above the ocean as well as below.

All of the 'āina was very sacred. Life itself was very sacred in the use of the land. Ceremonies, family prayers, family traditional functions, and beliefs—that was very private. The United States foreigners, businessmen, sugar men, Western mentality, economic financial gains—totally foreign to us—have alienated the people from their sacred areas, from their land base.

A conflict [exists] over the use of the resources just to survive. Families are dependent upon their fishing, their gathering, their mountain resources. And without that they will be forced economically [to] change, the family begins to break up, they begin to move out, they begin to be dependent upon a different resource.

It is not by their choice. Those who choose to follow the family traditions end up in a court of law being arrested, evicted, their homes broken down.

KEALOHUKINA

I charge the Department of Hawaiian Homelands [with] genocide because they were created to better the condition for

our people. But in reality they did the opposite of that.

Our *kūpuna* taught a life that was all about potential. Society was molded around hundreds of years to fit into subtleties of nature. Like a tree, people were rooted to the earth and yet to the open sky. We receive and we give. This was what was given to us as Kānaka Maoli. We were self-monitoring. All of us had a practical mastery immortalized in our myths and stories, handed down over generations. We are part of the physics, nuclear sciences, sky sciences, psychology, theology of mastery of self.

statement come true.

But when someone takes a part of the earth away and someone takes a part of the open sky away or when someone comes and strips us of the ingredients that we need to nurture that mastery, then we as a people have a difficult time believing that we are the people that we are.

SHARON POMROY

Over 500 acres of our stolen Hawaiian Homelands was given to the U.S. military for bombing runs and practices in World War II. Today, they have almost 2,000 acres of stolen ceded

sites down range into Kwajalein, which is about 2,400 miles south of us, in the middle of a lagoon. The military says the missiles land in a designated area which is safe; nobody gets hurt, there's no injuries. They've forcibly relocated almost the entire race of the Marshall Islands—over 12,000 people—to a little island about a half mile long, two hundred yards wide, and six feet high. We are Pacific Island people who live together in harmony, but we are now dropping missiles on each other. As a native Pacific person, I strenuously object to the military coming in here and doing this, forcing us to dump on our own cousins. That's totally wrong.

For me, the bottom line is independence. No military, no Federal government, just Kānaka maoli making decisions for ourselves on our own land.

JEFF CHANDLER

I am one of *ahupua'a*. I believe solely in *ahupua'a* concept. I live it. My ancestors lived it, my uncles, my aunts, my *kūpuna*. They all live 'em. I want to pass that on. Any and all who come into my *'āina* and does not *mālama* my *'āina* would answer to me and my people, 'cause I am there every day.

Money cannot buy back the *'āina*. You kill this *'āina*, money will never buy it back. Never. Only Mother Nature can. That's why we have 'Iniki. She come to clear the land. To search, to see if you got in your heart to *mālama* this *'āina*.

We are the way of life. This is our life. This is it. Everything that moves on this *'āina* is us. That's the Hawaiian concept of life.

SONDRA FIELD GRACE

We have consistently argued that these are stolen lands, the State does not have title. My husband is an

indigenous Hawaiian, has interest in these lands, inalienable and inherent interest. Genocide "subjects the group to conditions of life that are intended to cause physical destruction of the group in whole or in part." That applies to our situation here. We've been thrown in jail nearly a dozen times. We've had our homes destroyed. We have warrants out for us. We never know if they're gonna arrest us or not. They're trying to get a permanent injunction to keep us off the land. And we tell them every time, "No matter what you do to us, we coming back." As an international tribunal, we call on you to help us make these powers stand under their obligations to respect our self-determination.

The Hawaiian Homes Commission Act is genocide. To divide the race has caused so much hurt. It's murder, because they knew Hawaiians weren't gonna get on the land when they passed that act.

MICHAEL GRACE

The State and the United States has no jurisdiction over us. We keep asking the judges, "Do you have the jurisdiction?" They say no. They stole the land [but] the land is not stolen. You cannot lift up the land, take them away. The land is here. But we gotta use and exercise our rights to these lands. Stay on them and use them.



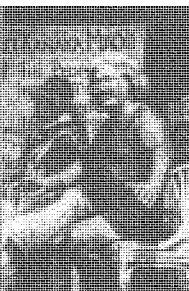
Kealohikina.

We are people of hidden knowledge. We live by a common traditional knowledge. What we are sharing with the judges today is the theft of our breath of life, our *hā*, our inherited birthright as native Hawaiians is so important. It's something that words cannot describe. As native Hawaiians, when we are born we have inherited the soul of our ancestor. Mastery of self is what we consider to be hidden knowledge, a part of our birthright, handed down through our ancestry. It's believing in yourself and making that

trust lands [to] launch their missiles. They've turned Hawaiian Homelands into a hazardous materials and munitions storage area.

The Federal government pays one dollar rent for a sixty-year lease. They paid the Philippine government billions of dollars. They paid the Japanese government billions of dollars to put their bases on their soil. Yet, for our land, which they claim as American, protecting American people, they will not even pay us fair market value for rent.

The Navy still wants to launch these Polaris mis-



Hilo, Big Island, August 18

From Kaua'i the Tribunal traveled on to Hawai'i, the biggest, youngest, and most southerly island in Ka Pae'āina, the Hawaiian Archipelago. The group arrived at Hilo airport which, like many other state structures, is built on Hawaiian Home Lands, stolen Kānaka Maoli land.

Testimonies were heard at Onekahakaha Beach, Keaukaha, many focusing on homelessness and on failures and abuses of the Department of Hawaiian Home Lands. Hawaiian homestead should-be beneficiaries at Keaukaha Beach Park have taken action themselves and are living on the land as a last solution to their housing problems. Since the Tribunal, their pavilion and other structures have been destroyed and they have been arrested three times by the State, on August 30, September 22, and October 4, 1993.

GINGER KAHAEPA

Adverse possession and quiet title action appear daily in the newspapers. The blatant misuse of this legal system completes quiet title actions against native Hawaiians, the true genealogical heirs of these lands. Who speaks out for the native Hawaiian? Where are the agencies in the State to protect these claims? Where is OHA and the Native Hawaiian Legal Corporation? Vast trusts such as these are strangely silent. Nobody really cares.

Let sugar repay its moral debt to native Hawaiians. Give Hamakua lands to those Native Hawaiians that need it for taro, culture and lifestyle.

The Native Hawaiians who now go to the moun-

tains or the ocean to gather food or practice their religion and culture are finding the fences up. The security guards roam these lands and the "No Trespassing" signs stop them. It is not Native Hawaiians' intention to destroy these lands but to be allowed to continue to cross these lands for subsistence and cultural purposes.

When a space port is finally built at South Point, how can the Kānaka Maoli access the site patterns in the population control zone? Have any of the planners had the decency to include or address the opinions of the native Hawaiian?

SKIPPY KEU'IKANAKA'OLE IOANE

The carriers of the Bible took the Hawaiian people into a house of prayer and then came out and raped the land. They



made Hawaiians feel like it was a mistake to get wet from the rain, that being with nature is not good. So the indigenous people ran back into the house of prayer to keep dry. This is genocide. It was premeditated. Americans slowly indoctrinated us, like if you jerk a dog on a chain long enough, after awhile, you just touch the chain and the dog going get scared.

Hawaiians look at one \$60,000 house, and they so

fear the rain, they jump for that \$60,000 house. I charge the American government, the Christian church with knowledgeably making Hawaiians afraid of the rain. We don't call Hawaiians homeless because we, the Hawaiian people, are home. We are just houseless. So we changed that. What you see out here is affordable housing. I charge the Church, the Department of Education, the Department of Hawaiian Home Lands with abetting in a crime. I charge them with conspiracy to keep the Hawaiian people afraid of rain.

If you put so much money and your life efforts into four walls and a roof, then you being held hostage. Because you cannot take that house with you, unless you burn the house when you die. The house should not be your focus, your whole life savings. You're investing in a stationary coffin. When you're made, you're gone. Nature is not our enemy. Nature is our mother. When the Hawaiian people lost that urge to merge with their Mother Earth, then we were picked up as hostages.

I don't get mad with the Hawaiian Christians. The only thing I get irritated with them for [is] not seeing that they was set up to be Christians. 'Cause in the Christian philosophy, it's easier to steal property.

MICHAEL TRASK

As far as native Hawaiian fishing rights, there's been a very bad bias to monopolize fishing permits through amendment 7. This will effectively bar new participation of Hawaiian fishermen in long line, cross sea mount fisheries. To me, these actions further degrade and penalize Hawaiians.



Larry Kauanoe Lindsey Kimura

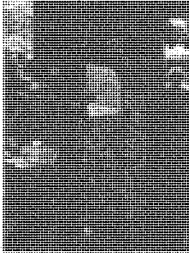
both economically and culturally because of the loss of our near-shore and off-shore resources, which have sustained our people from the beginning.

LARRY KAUAÑO LINDSEY KIMURA

(Translation from 'ālelo makuahine) When our independent Hawaiian government was wrongfully overthrown, the door was opened to those who would destroy one of the few remaining aspects of our way of life that had remained strong since the beginning of time. It was opened to those who would snatch the mouths of Hawaiian children from their native language to the language of the plunderers. If Hawaiian thinking were to change, such change would be hastened in government schools where minds were molded, where the cord of language attaching the child to his own people would be severed, so that his entire way of thinking would reflect that found in English, thereby completely destroying the life, wholeness and sovereignty of the Hawaiian people.

BERT KAHI

I am not American. My koko Kānaka Maoli. I am pihā, "pure." Self-deter-



Melissa Moniz

mination. My people are still dying, waiting. Please *kōkua* my Kānaka Maoli. *E kū mau mau, e kū wā.*

CLARA KANAKA'OLE KAKALIA

The Māhele is a sham and is disgraceful for the Kānaka Maoli. It is surrounded by confusion and misunderstanding. Prior to that, the businessmen could not own large parcels of

lands. But after the Māhele, these plantation owners, the missionary families, all laid claim to these lands. I charge the U.S. for the raping of our lands to bring about the Māhele. I charge them for theft of our lands.

MELISSA MONIZ

Anything Hawaiian was forbidden. I was taught that to get anywhere in this world, I had to behave as a white. My Hawaiianess would always be second. Most of my life I was ashamed to be Hawaiian.

MILNOR LUM

In the case of the Hawaiian Home Lands trust land on which the Prince Kūhiō Shopping Plaza sits, there was no offer first to the over 20,000 eligible Native Hawaiians on the waiting list.

Ka Lae & Kona, August 19



Kānaka Maoli in chains.

The Tribunal traveled to Ka Lae at Ka'ū, the site of 11,000 acres of Hawaiian Home Lands.

ABEL SIMEONA LUI

I got arrested 23 times for simple trespassing on my *tutu man's 'āina*. Twenty-two times I went before the court and I was found not guilty.... They send DLNR to tear down my house. One night when go I fishing. I came

home three o'clock in the morning and I had no house.... Over 80 percent of the people in prison is Kānaka Maoli. I did 18 years over there. We got to stop all this.

PELE HONUA

My culture is a living culture that depends upon the land and ocean base. The continued existence of the Hawaiian race depends upon stopping development like the spaceport. We need

to educate the world of the injustice and encroachment of the U.S. upon our fertile and viable land base, of and for our people. We need to stop the desecration of historic sites, the theft of the sacred land. The rip-off by the U.S. is endless. The time has come. We must stand together and fight for our rights as Kānaka Maoli. Injustice must stop. We must determine our own destiny, we must be self-determined and self-governing for sovereignty.

KEOLANI HANOA

The Hawaiian Homes Commission Act of 1920 set aside 11,000 acres of Kama'oa Pu'ueo in Ka'ū to be awarded to Native Hawaiians for residential, pastoral, and agricultural use. It has been 73 years and only 25 lots have been awarded. No infrastructure, only water for a few home-steads. We are angered and frustrated because DHHL ignores our basic needs and rights as beneficiaries.

WALTER PAULO

When I got into the service in 1944, in basic training, we were all classed as blacks. They used the term "nigger." It hurts. In 1980, Brother Puhipau, Brother Bobby and I were arrested on Sand Island for, they claim, "squatting." I went to court and pled "not guilty." I denounced my American citizenship. We all did. I like to die as a Hawaiian. No way as an American.

KIMO PHANEA

We're still being held prisoners here because of big business, big money. We don't have that kind of money. We carry stone.

PALIKAPU DEDMAN

Our religion starts from the top of the mountain to the sea, not around a church. The resources and elements that surround

these islands are our gods. Our purpose is to be Hawaiian, not any other race, or Westerners. The forest and all its species are related to us. Certain deities surround us that's been here for thousands of years. [It is] our responsibility to carry on for thousands more years to come. Industrial development cannot be in these Islands. It will be the end of everything. Geothermal, rockets, ocean mining, radiation plants. They don't fit here.

Let's set our priorities. We have to destine our own future. We have to run our



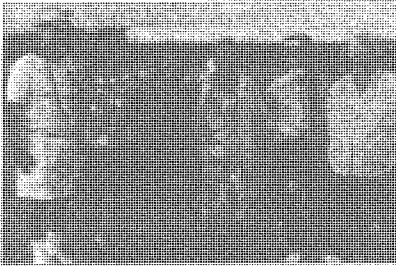
Palikapu Dedman speaking.

own government. We have to take care of our resources. We have to limit people that rape our resources, that use our religious shrines for prostitution activities so tourists can go there and use it as they see fit, but we have to pay to use our religious shrines. Crimes we see every day. *Pilau* ships with toxics to dump. Over-commercialization of fishing to foreigners to rip us off inside the 200-mile limit. We Hawaiians should not be regulated how we use our resources, to license, to sell fish, to type of nets. We should not be limited at all. We don't have to believe in anything but ourselves and our traditions.

The gross neglect of Hawaiian Homes still falls in the hands of the Feds and the State. The crimes are

daily crimes. We have to tell the world of these crimes. The hardest thing to be in Hawai'i is one Hawaiian.

Hanging on to the remains of our fragile island ecosystem however we can, we are indeed a most endangered human species. We will continue to do whatever we can do as Hawaiians to bring world awareness to our position as a distinct people with a unique and valuable culture to be appreciated, nurtured and perpetuated.



Tribunal participants in Kilauea.

The **Pai 'ohana** greeted Tribunal members at Honokohau, where they have been living for several generations and are presently fighting eviction by the National Park Service.

"Here on the Pai land, every act has a meaning. Normally the family sits down to welcome guests. Today we remain standing to show you that we are committed. We stand before you. Send our message around the world."

At the beach and later in testimony, Al Kalokekoa explained the Pai 'ohana land. "We have four *kapu* on the land: no drinking, no swearing, no drugs, no weapons. We recently started a cultural learning center to teach kids about the land and sea."

MAHEALANI PAI

In 1988, the Greenwell family came and told us to sign a *palapaia* for them

to sell the land to the Federal government for a national park. We had a verbal agreement that we would remain here to practice our cultural heritage. Today we are threatened by the National Park Service. We are struggling. This is our plight.

SONNY KAHIO

For 72 years the Hawaiian Homes Commission have do their best to kill Hawaiians on the waiting list. They lose your applica-

right, the water. The State has determined the better use of this water [is] for indoor plumbing, for resorts, for public fountains and golf courses, and waste industry, such as sugar cane. The wastewater and all other pollutants are then pumped into our oceans, destroying our other major source of food for Hawaiians, the reef fish.

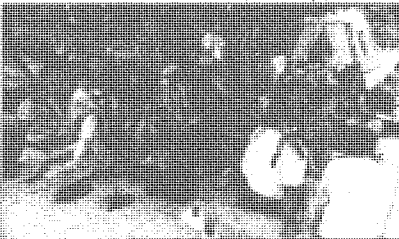
CLARENCE MEDEIROS

Our State government misuses our State lands. While our people is on the beach, homeless, some in jail, some jobless, there are thousands of acres in Kona which they have put in reserve for the birds and the plants. I say that's okay. But the Hawaiians are also endangered species and they should be allowed to use some of those lands.

LENHIA LOPEZ

Cultural appropriation and cultural cannibalism may be defined as the buying, selling, and consuming of other peoples' cultural artifacts, images, values, beliefs and sacred sites without permission of the culture being used. Cultural cannibalism is an insidious and hideous part of colonialism as it is part of the process of assimilation, what I would call a deliberate attempt to eradicate those beliefs, values, attitudes, behaviors, language, religion and practices of a culture that are in contradiction or in conflict with the dominant culture.

Tribunal participants at Honokohau.



The thirteen testimonies given at the old Kona airport ended the hearing of testimonies. In closing, composer and songwriter Liko Martin led all in a moving singing of his and the late kupuna Pilahi Paki's "Hawai'i Loa," a song of self-determination.

From Kona, the Tribunal returned to Honolulu. The judges, on the basis of knowledge they had acquired through testimonies supported by 150 pounds of exhibits, continued through the night their deliberations and work on the Interim Report.

Wrap-up in Honolulu, August 20

At the Reorganized Makiki Church in Honolulu, the summation by the Prosecutor Advocates took place, the judges presented the verdict, and an Interim Report summary of general recognitions, findings and recommendations. The closing ceremonies were followed by a press conference and public discussion.

August 21 saw a rally at 'Iolani Palace grounds protesting statehood on its 34th anniversary, and meetings evaluating the Tribunal and planning for the future on August 22.

The future includes organizing a study group on International Law and fundraising for a Kānaka Maoli attorney to defend those arrested and evicted while occupying lands.

International Witnesses & Observers

LOPETI SENITULU, TONGA

The Nuclear Free and Independent Pacific movement is a coalition of peoples' organizations from throughout the Pacific islands and the Pacific rim. The focus of our work over the last 15 to 18 years has been the empowerment of the indigenous peoples of the Pacific islands.

Over the last 18 years we have been instrumental in getting the struggles of the Kanak People of New Caledonia re-inscribed on the United Nations decolonization committee's list. At the moment we are working on getting the struggles of the Maohi people of Tahiti Nui to be re-inscribed on the Committee of 24's list. We're also working on doing similar exercise for the legitimate struggle of the people of West Papua to reassess their independence and sovereignty from the Indonesian government.

The Ho'okolokolonui here is not an isolated event. It is happening elsewhere in the Pacific.

I come here to bring the greetings of the sisters and brothers from the other Pacific island countries. And we hope that this, the Ho'okolokolonui, will continue to engender the process of the empowerment of the peoples of the Pacific and, as some of the learned judges have

said, to creating a new world order, where justice is an integral component of such order.

BOBBY CASTILLO

I'm a Cheracahua Apache. And I will never, never tell you that I am an American citizen, a U.S. citizen.

The United States government took all [our] land and then they started expanding out into islands.

They did not do this in a peaceful way. They talk about glory; they talk about justice from sea to shining sea. It was murderous. It was bloody. We didn't just give it to them. They forced it. They took it from us with a gun.

They gave us the worst land that they could possibly give us. And then when they found out that that land had natural resources, today, in 1993, they're taking it from us [again].

They use their technology, their resources, their stroke of their pen, their legislation, to do it to us, to steal our land, to murder our people.

The same things that we suffer, it's all over the world. Three hundred million indigenous peoples, we're finally uniting, we're finally coming together. And we're finally saying something, that things has got to change.

Five hundred years, five hundred and one years now for us on the Mainland. It's a long time. I'm proud that there's a resistance today.

ANGEL SANTOS, CHAMORU NATION, GUAM

I am a descendant of the original inhabitants of Guam who have lived there for the past 4,000 years. I want the world to know that our people are dying everywhere.

Today I stand before you to understand the suffering that is going on in Guam. We cannot survive. [The] United States military is holding on to 44,000 acres of our lands in Guam. 32,000 acres is outside the military installation fence, not ever being used. Twelve thousand acres of our homelands is within the fence. Only 6,000 acres is being used.

We are asking the United States to give us our ancestral lands back. They are telling us that we must pay for it, at \$281,000 an acre. The United States has plans to set aside 32,000 acres of that to establish Guam National Wildlife Refuge to protect our endangered species. In fact, the animals in Guam are more important to the United States government than the Chamoru people.

How can our people survive when the United States military dumped highly toxic

chemicals over Guam's sole source water aquifer? Our drinking water has been contaminated with trichloroethylene. How can our people survive when 70 percent of our drinking water comes from that sole-source water aquifer? How can our people survive when our only fresh-water lake has a fence built around it and is a military installation?

When you control a people's land, you control the people. When you control the people's water, you control the people. Colonialism on Guam and throughout the world has its roots in capitalism and the exploitation of man and natural resources, our mother earth. It is very much alive in the Gaza strip and the West Bank. You will find its heart beating in Northern Ireland. You will find the blood of colonialism flowing down in South Africa. We need to stand together.

So today I bring with me a message of unity, a message of coalition of all indigenous peoples.

A loyalist, a loyal colonialist once said, "Give me liberty or give me death." This radical nationalist would like to say, "I would much rather die than be a slave in my own land."

In the end, the spirit of the oppressed will conquer the sword of the oppressor.

For more information: **Kānaka Maoli Tribunal Kōmike**, 3333 Ka'ohinani Drive, Honolulu, Hawai'i 96817 • (808) 595-6691 • FAX (808) 595-0303

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George L. Theis

Testimony Before the Senate Indian Affairs Committee

The following information summarizes my oral testimony to be presented to the Senate Indian Affairs Committee on 30 August 2000, regarding Senate bill S2899, United States Relationship with Native Hawaiians.

I would like to state up front that I'm firmly opposed to the proposed legislation for many reasons. First and foremost, I feel that this legislation is fundamentally racist and is totally contrary to all the basic principals for which America stands. As we enter the 21st century, we should be working to end racism, not only in our country but around the world. If enacted into law, I strongly believe this legislation would in effect legitimize racism right here in the United States and will surely result in our society being divided along racial lines. In America, all citizen are to be treated equally, regardless of race, religion, and ethnic background. This legislation is in fact saying, an individual's ethnicity is the principal determinant to his standing as a citizen. Unless an individual is a member of the "proper" ethnic group, there will be a segment of society to which he may not belong. Isn't this the same rationale used by the Serbs, which we condemned so forcefully, to discriminate against the other ethnic groups living in the former Yugoslavia? History has shown such segregation generally leads to prejudice, discrimination, hatred, and ultimately conflict. I beseech you to spare the citizens of Hawaii this travail and withdraw this legislation.

To emphasis my point, my first grandson was born at Queen's Hospital on 13 January of this year. Had he been born in Texas, he would be a Native Texan, had he been born in California, he would be a Native Californian, etc., but having been born in Hawaii he would not be considered a Native Hawaiian by the provisions of your legislation, solely because of his ethnicity, and his rights as a citizen would by statute, be restricted. If your legislation results in any state sponsored right, benefit, or privilege being given to the grand child of any other citizen of the state, which is then denied my grandson solely because of his ethnicity, then it is no more than institutionalized racism and totally un-American. Just like recent events on Fiji, it wouldn't matter how many generations a family may live in Hawaii, if they are not the "correct" ethnicity, they and their descendants would forever be denied franchise in the Native Hawaiian Governing Body empowered by your legislation.

I also feel this legislation is based on the false premise that the United States was instrumental in the overthrow of the Kingdom of Hawaii and therefore owes compensation to ethnic Hawaiians. I believe an objective review of the facts would show it was the residents of Hawaii, not the U.S. government, who initiated the action to overthrow the Hawaiian monarchy and replace it with a democratic form of government. Seven of the 13 members on the Committee of Safety, who orchestrated the overthrow, were Hawaiian citizens and only four of the 13 were Americans. The fact is it was the actions of Queen Lili'uokalani, by announcing her intentions to unilaterally rewrite the constitution and assume absolute power for herself, that precipitated the overthrow. It is also important to note that 157 U.S. Marines who came ashore from the USS BOSTON engaged in no combat operations and played no active role in deposing the Queen. They were here for a brief period, solely to protect the lives of Americans living in the islands should conflict arise as a result of the overthrow. Today, such actions would be termed a Non-combatant Evacuation Operation (NEO), which the United States has conducted on many occasions over the years and none have resulted in annexation of territory. I would ask, if you believe the actions of the United States were wrong in this case, does that mean you believe it is inappropriate for the United States to conduct a

NEO any where and at any time? And if NEO's are legal and appropriate to protect the lives of American citizens living abroad now, how do the events of 1893 in Hawaii differ? I believe there should be a consistent standard between then and now and that the actions of the U.S. military were both legal and appropriate at the time.

Another false premise is, ethnic Hawaiians are some how excluded from the main stream of society in the country and are relegated to a lower socioeconomic status and are therefore due special benefits as compensation. I would respond, that one of our senators is Hawaiian, as was the past two-term governor, and Hawaiians successfully serve as doctors, lawyers, college professors, military flag officers, and are well represented across the entire spectrum of our society. I also strongly believe state sponsored benefits should be based on need not ethnicity. That way if in fact one ethnic group truly has a disproportionate number of people in need, they will automatically receive a greater proportion of available benefits. If assistance is allocated based on ethnicity, there is no way to distribute resource equitably and any program so administered will be inherently unfair. I also reject the claim that ethnic Hawaiian have been injured in any way by America. Quite the contrary, I feel they have in fact been blessed by having become sovereign citizens of the United States, the greatest, freest, most prosperous democracy to have ever graced this earth. There are literally billions of people around the world who would give anything to trade places with them and many risk their lives everyday for a chance to reach our shores to take advantage of the opportunity our freedom provides. The Hawaiian Supremacists who doggedly pursue a segregated, independent Hawaiian nation ungratefully curse the United States rather than acknowledge the tremendous opportunity and benefits bestowed upon all U.S. citizens, regardless of race.

I contend it is a small, but very vocal, minority of Hawaii's citizens that supports this racist legislation. If asked why the Hawaiian Supremacists persist in their efforts without support from a majority of citizens, I suspect they would respond, "Their goals are too important to be deterred by lack of majority support." It's then you're reminded that the society they lament the loss of was a monarchy and in a monarchy the will of the people is totally irrelevant, it's the whim of the leaders that determines fate of their subjects, for only in a democracy do the people control their own destiny. Rather than speculate on the level of support among Hawaii's citizens, there is one sure way to ascertain the true wishes of your constituents, those who elected you and sent you to Washington to represent their interests. Table this bill and add a referendum to the November ballot asking the citizens to vote for or against this legislation. That way if it passes, you'll have a mandate to reintroduce the legislation next year and it should pass easily because you'll have the support of the majority of citizens behind you. But if it fails, it will validate my contention that the majority of people in Hawaii are proud to be Americans and believe this legislation would not be in their best interest and should not be enacted.

If you feel getting a mandate from your constituents is unnecessary, and you continue to pursue this legislation without a referendum, I would ask it be modified to truly restore the status quo ante in the islands. It is stated this legislation would rectify wrongs done to the indigenous population and the status of Native Americans is cited as a model for ethnic Hawaiian recognition. I would request your legislation be modified to do so completely and accurately. Specifically, American Indians are not viewed as a single, monolithic ethnic group, but rather each tribe is recognized as a separate, independent entity. Therefore I believe to be fair, descendants of kanaka maoli from these islands should be treated the same way as Indians and each island should be established as a totally

separate and independent tribe. As with Native American tribes, residents from each island would then be free to establish their own criteria for who would be recognized as a member of their tribe. The justification for this position is based on the principal of consistency and fairness. Less than 100 years before the overthrow of the Kingdom of Hawaii, there were several independent, sovereign nations in the islands. In the late 1700's, Kamehameha embarked upon armed conquest to expand his empire. He assembled an army, sequentially invaded each of the other islands, slaughtering many thousands of the inhabitants, forcibly subjugating the survivors, and appropriating all land and property. He made no pretext of being fair, egalitarian, or acting in the best interest of the people, only in his own self interest. So any family who can trace their heritage to any island other than the big island, has been American longer than they were ever Hawaiian. Contrast the actions of Kamehameha to the overthrow of the Kingdom of Hawaii, where the citizens of Hawaii replaced a monarchy with democracy without the taking of a single life. Therefore, if you don't restore independent sovereignty to each island, you will be in effect legitimizing the armed aggression of Kamehameha while invalidating the non-violent transition to democracy by the citizens of the islands. Is that the message America should be sending the rest of the world, that if a monarch creates an empire through military action, it is illegal for the citizens of that country to establish a democratic government without permission of the reigning monarch? I predict, if you don't create independent status for each island now, within a few short years others will press for such action, for the reasons stated. This will create a situation similar to the recent conflict in the Solomon Islands where residents of one island demanded individuals from other nearby islands "go home" even though all individuals were ethnically Melanesian and all the islands were part of the same country. History has shown, once you begin the process of segregation, people will create ever finer criteria by which to differentiate between "us and them" and it ultimately leads to disintegration of civil society.

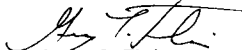
I contend the overthrow of the Kingdom of Hawaii in 1893 was in effect an act of political evolution, for monarchy is an anachronistic form of government which has been replaced by democracy in most countries around the world and it had to come to Hawaii sooner or later. History has repeatedly shown genetics is a poor criteria for selecting political leaders and is similarly inappropriate for determining citizenship, as your legislation enables. As we cross the threshold to the 21st century, the Hawaiian Supremacist would take our society back to the 19th, much as the Ayatollah Khomeini did for Iran when he lead the revolution which overthrew the Shah. I predict if this legislation is enacted, there is a very real potential for Hawaii to suffer similar chaotic and catastrophic consequences as Iran. Those who say it could never happen here because the citizens of the new Nation of Hawaii would have such integrity and unity of purpose. I would respond, just look at the recent antics of the Bishop Estate trustees and the OHA trustees, who are supposed to be the esteemed leaders of the Hawaiian community. The former were relieved for cause because they abused the power of their office and the later couldn't even agree on a new trustee for a neighbor island and basically abdicated their duty to the governor. Would their actions have been more effective if they had full responsibility for the Native Hawaiian government, free of the checks and balances inherent in the U.S. State and Federal government? I wonder.

For those supporting creating an additional layer of government for the exclusive benefit of just one ethnic group, as called for in your legislation, they should reflect on three basic questions. What would this government do for its citizens? How much would it cost? Who will pay? I would also like to remind those asking for creation of this governmental body of the old saying, "The only

thing worse than not getting what you want, is getting what you ask for." The corollary being, "Be careful what you ask for, because you might get it." I contend the reality will fail to match their expectations and they, their children and future generations will have to live with the consequences. As citizens of the United States, they already receive and pay for a broad array of benefits from the federal, state and city/county governments. The federal government provides many services, such as: defense, social security, international relations, federal judiciary, etc., with an annual budget of more than a trillion dollars. The state government provides other services such as: public schools, state courts, prisons, administration of public utilities, etc., with a multi-billion dollar budget every year. Then the city & county governments provide: roads, lifeguards, garbage pickup, etc. with \$100+ million dollar budgets every year. How many unique services would the Native Hawaiian Governing Body provide and how many would only duplicate services already available? How much would this cost every year, \$10 million, \$100 million, more? The real question would then be, who pays? I contend, if this governmental body is for the exclusive benefit of a small segment of our society, then its citizens should bear the cost, for that is the only way a rational level of equilibrium can be achieved between costs and benefits. If the recipients must pay for the benefits the government provides, then they will decide, by the level of taxes they are willing to bear, which benefits have sufficient value to warrant the cost. If someone else pays the bills, the "needs" of this group would be infinite. Additionally, one of the founding principals of our government is, taxation without representation is illegal, immoral, and would no doubt be found unconstitutional by the Supreme Court. If I'm to be totally disenfranchised and have no representation in the Native Hawaiian Governing Body, then my tax dollars should not be used to support it. If this legislation creates a governing body exclusively for the benefit of only one ethnic group, then they must be prepared to fully fund its expenses.

There are many more issues I could raise to make the point that this legislation would be detrimental to equanimity of our multicultural society, but there is insufficient time to fully articulate them at this time. So in conclusion, I would ask that you, as the sponsors of this legislation, reflect carefully and fully consider the potential for unintended consequences, then choose wisely, for you will be creating a legacy not just for us, but for our children, grand children, and future generations. What do we want that legacy to be, harmony or conflict? I pray God guides your actions.

Most respectfully;



George L. Theis

Lela M. Hubbard
 99-407 Aiea Hgts. Drive
 Aiea, HI 96701
 (808) 487-2311
 August 23, 2000

and House Resources Committee
 Pikake Room, Neal Blaisdell Center
 August 30, 2000

TESTIMONY OPPOSING S 2899/ HR 4904

This bill seeks NOT JUSTICE, which Hawaiians, without a doubt, deserve; NOR does this bill seek RESTITUTION for the dastardly illegal acts of the United States against the sovereign nation, the Hawaiian Kingdom. This bill reaffirms the power of the United States over Hawaiians and the delegation of that power to the State of Hawaii in the Statehood Admissions Act of 1959. Sec. 9. The United States did not have clear title to our lands which were received as part of an illegal activity as admitted in PL.103-150. Sec. 1, (18)A,1 and (10). Thus, in accepting this bill, Hawaiians accept the theft of our lands, the "public trust" imposed on Hawaiians which made us wards and incompetents, and all the American laws and actions that have followed. Moreover, this bill strips us of any right to full restoration of our stolen assets by limiting negotiations: "the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian governing body regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use under existing law as in effect on the date of enactment of this Act to the Native Hawaiian governing body." Sec. 9, Reaffirmation of Delegation of Federal Authority: Negotiations. What does this include? the Hawaiian Home Lands? the income from 20% of the public land trust (mainly Hawaiian Lands)? the assets of the Office of Hawaiian Affairs? Shouldn't there be a moratorium on these lands to protect them for the true owners? Truly, this bill is an attempt by the powerbrokers to undermine and kill the Hawaiian Sovereignty Movement and to keep control of Hawaiian assets in the hands of the traders and traitors who are making money off Hawaiian lands and assets.

The U. S. must recognize the right of self-determination of the Hawaiians and our right, under international law, to re-establish our nation as part of the family of nations. We suggest that PL 103-150 be used as the venue for the protection of our nation and the programs funded by Congress. In 1898 the Newlands Resolution was used to annex our nation; in 2000 a resolution can be used to recognize the Hawaiian Nation, protect the Native Hawaiians from legal challenges, and satisfy U.S. Supreme Court scrutiny. Create new policy and law which does not put us under the mantle of the Native American Nations. Our history is different; we have a unique legal status. We are the indigenous po'e Hawaii, ka po'e Hawaii.

Hawaiians never asked for a trust relationship with the United States nor have we really benefited from that "Broken Trust" which the United States never enforced as they should have. The best lands were sold or given away. We all know the Hawaiian Home Lands were the worst lands in the Territory that were given to Hawaiians to keep them from the rich agricultural lands coveted by the white plantation owners.

We do wish restitution and restoration which is the U.S. obligation under international law---not a domestic Indian nation nor a corporation, Sec. 7. Process, (7), (e) Charter of Incorporation, but a fully independent nation. The entire process will be controlled by Hawaiians: our roll will reflect 60% of all eligible Native Hawaiians to be considered a valid basis to begin crafting our nation; those running for office will not have to jump through the hoop of a nominating committee but simply take out the proper papers.

Perhaps, the greatest flaw of this bill is to place Hawaiians in the Department of the Interior. That agency has done such a wretched, deplorable job of caring for Native Americans and their assets---horrible poverty, terrible education systems lacking resources for students. Native American money has been stolen; their BIA accounts have been plundered. The very agencies that should protect the Native Americans have burned incriminating evidence. Hawaiian money will be controlled by Hawaiians in Hawaii. Moreover, if there is a Special Office for Native Hawaiian Affairs, Sec. 4, the head will be a Hawaiian called Alaka'i not Trustee. The Alaka'i will fully inform Hawaiians about legislation that affects us and other matters by creating a website and by mailing out to every constituent a quarterly newsletter.

We demand that there be a survey paid for by the Office of Hawaiian Affairs which will ask Hawaiians, who prove their genealogy by stating who their parents and grandparents are, whether they want the Recognition Bill or not and other pertinent questions on nation building. The scope of the survey will be approved by the Hawaiian sovereignty groups, societies, civic clubs, Aha Hawaii Oihi, Kamehameha Schools Alumni and any others who wish to participate in an open, well-advertised forum.

In summary, this bill does not uphold true self-determination nor does it protect program appropriations which can be changed by any Congress nor does it protect the alii trusts which are private trusts established under U.S. law. It does not reflect the will of the people who refuse to give up their lands; resources; religious, cultural and historic sites and who wish to exercise our RIGHTS TO TRUE NATIONHOOD for a mere \$34,000,000 when rental at 50¢ an acre for a century is a billion dollars PLUS.

TESTIMONY OF DOROTHY SOO-KIU LAM 587 Kealahou St. Hon. HI 96825 Tel:386-9800

I am a pure Chinese, a naturalized immigrant, I am not a Hawaiian myself. I am speak out of my great love for America as a American citizen, which I believe, nevertheless America is still one of the greatest nation on earth and America! I am also speaking as a concerned resident of Hawaii, and out of my love for this "Aloha Paradise", while observing what is unfolding to pointing to the future destiny of this beautiful tropical islands of Hawaii.

I would like to speak of my perception to the future destiny of Hawaii, of which I believe is unfolding now before us, not based on a rational scenario. But based on karmic law of universal truth. Seeing it from the highest choice of harmony and balancing role, Hawaii can serve and play, at its best productive creative capacity, given its geographic location, the vibrant life force as the youngest land on earth, afford its natural role on the planet earth, as the sacred centre space and commanding core centre to the pacific rim and all continents, has a special role to play, in the turning of this new Millennium, into the New World.

Hawaii is a God created paradise on earth, given a ideal tropic climate and its beautiful unique strong energy and vibrant life force, newly born from the centre of the magna of mother earth. Hawaii is so very intimate to the heart and soul of mother earth. Tourist, from all over the world, naturally fall in love with Hawaii. The same spirit/energy that made of Hawaii, is the same spirit/energy that made of ~~human~~ ^{us as HUMAN BEING, IT} can be profoundly felt, in the land itself. It has an awakening power to that human spirit that is in us, as people.

Hawaii has a special role as a nation of all nations, a land of people of all nations on earth. Hawaii geographic location is at the core centre, in command to the Pacific rim in command to all Continents of the world. The Asia continent which connect with Europe and Africa as one piece to the east, Australia and New Zealand to the south, North and South America to the west. It is a perfect convergence, a centre connectivity point to the geographic global brain, in the prospective of a one global planetary nation. A spot ideally made for the destiny to serve for international exchange and international trade centre.

It was a good thing that Hawaii had become a state of America, though it was done in an unlawful way. Or else I would not have been living here as a America citizen. And that although the corruptive force of corporate America, in the State of Hawaii government, that had unlawfully overthrow the Queen and the kingdom of Hawaii, had been still existing and actively alive. There had been some good progress and establishment occurred in Hawaii.

A closure of a wounding, can only be complete, if the wounding was healed. A legal master

held captive in her own home by her visitors who made themselves legal master, her children made destitute and become like as a refugee, at the mercy of its illegal master. Cannot be given a title as refugee made subject to the visitor in disguise as master, for a cure to the karmic wounding. The legal master must be returned to its entitled command, and all visitors must admit themselves as visitors, as a cure by truth. It is the type of disease that dictate what medical can cure, not any medicine can dictate its cure. A wrong medicine (Akaka Bill) to be given cannot be claimed as a cure to the disease, when shoffled down the throat of one who knows, it is not the proper medicine to the illness.

The disease in this case is 2 fold. The entitlement to its legal master. The visitors must claim themselves as visitors and made subject to with respect to the authority of its legal master. Treasure and gold stolen by visitors in disguise as master, must be returned to its legal entitled master. All subsequent new comers shall so be recognised and acknowledge its true master and made subject to its true master.

How can a nation (America) even be claimed to be able to establish as a nation (master, Hawaiian nation), within a nation (visitor in disguise as master, America), when the unlawfulness act of extermination by the corruptive force of businessman for gold (corruptive Corporate America controlling the government authority) is not only a history of yesterday and yet has been continuing and is still a true life actively alive, in today's time, in unlawful oppression to, depriving and discriminated against the Hawaiian people. There is a lack of good faith, for a genuine gesture to establish a nation (Hawaiian nation), without an active effort to eradicate such unlawful act that had been and was out of control by the visitor nation (America). How can one (America) make claim to return a nation (Hawaiian Nation) within a nation (America), when its gold and treasure (Billions of established trust funds and trust property were stolen and still in possession by thief known to the visitor nation (America). There is a lack of genuine good faith, in any measure to the cure. Unless the fundamental good faith must first be exercised and demonstrated. The return of gold / treasure, the eradication of the unlawful corruptive force which had infiltrated and was in control by the governmental abuse, with unlawful oppressive act. It must be stopped and tackled first, as a demonstration of good faith, before an term of settlement to the mess, can be of any significant meaning.

My perception is, the ultimate Independence of the Hawaii Nation (not Nation within a nation) would have the freedom to serve its highest role as a Land for all people of all nation on earth, as a global centre for all continents and international convergence and world trade development, to be in alignment with its role for the new world, as a role model of a peaceful international nation on earth.

Respectfully, *IT'S TIME FOR AMERICA TO STEP UP AND DEMONSTRATE HIMSELF AS A BIG BROTHER, A HONORABLE RIGHTEOUS WORLD LEADER!*
Dorothy Soo-Kiu LAM
Dated: Honolulu, Hawaii Aug. 23, 2000



From the desk of Kanohawailuku Koko

ADVOCATE for JUSTICE & the TRUTH

"WHERE TRUTH BEARS NO FEAR"

Where Knowledge is Power and when its Foundation is based on the Facts and Truth, Only then Through Education will JUSTICE PREVAIL! Koko

TO: Hawaii's Congressional Delegation; Senator Daniel K. Inouye, Senator Daniel K. Akaka, Reps. Neal Abercrombie & Patsy Mink, and all others'

SUBJECT: Testimony on SB2899 and H.R. 4904

Aloha!

My name is Kanohawailuku Koko. My first question to you, what is it that you do not understand of the word "reinstate"? Queen Lili'uokalani's "Protest" letter is part of Public Law 103-150, whereas clause #9 that state in part: 'Now to avoid any collision of armed forces, and perhaps 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 Hawai'ian Islands. In studying and understanding Public Law 103-150 so called apology bill, I ask you, how remorseful are you? Within the 37 whereas clauses lay the most heinous acts ever committed to a friendly and peaceful Nation and its people; especially by a nation built on lies, and you must know by now that Public Law 103-150, is an Absolute Confession which contains all the facts as presented for which is requested for the reinstatement of the lawful Hawai'ian Government.

In learning and understanding the perspective of the laws that governs sovereignty, and laws vested in authority to the indigenous aboriginal Kanaka Maoli through the usage of the Law of Nations, the reinstatement of the Lawful Hawai'ian Government became a reality on March 13, 1999.

As Mr. Akaka continues to enlighten us and continues to emphasize that the United States is a great country can only lead me to believe that the atrocities done to the Kanaka Maoli is okay by him. Mr. Abercrombie mentioned what a great document the U.S. Constitution is, then why breach it; and go against the Law of Nations? ...Article I, Section 8, Clause 10. But this truth which cannot be disputed even by the highest court of your land no matter how you may want to twist it to fit your desires is this: "The Constitution of the United States of America was never created for the indigenous aboriginal Kanaka Maoli". Knowing this being the *truth*, the Supreme Court have overstepped their jurisdiction in presiding over the Rice VS Cayetano case #98-818 caressing Articles 14 and 15 in favor of Rice because Public Law 103-150 assures us of our rights. SB2899 and H.R. 4904 is also contradicting Public Law 103-150 which cannot be superseded from what was already given to us and that it would right for the Kanaka Maoli to pursue their endeavors without the help from this task force. This task force goes against the moral standards of every nation. Many individuals on this force are not Kanaka Maoli and many have taken the oath of allegiance to uphold the constitution of the United States and the State of Hawaii. WHY should we let citizens of another nation build a nation of our own choosing. Session Laws of the State of Hawaii; ACTS 359, 200 AND 140.

It is easy to understand why all this is happening to us, like the American Native(s) [Indians], of the fork tongue language by our Congressional Delegates who upon presenting Resolution 19 to the senate for passage said the bill was not for us Kanaka Maoli to seek independence. The bill forcing us of a roll call can only lead to a referendum. You are led to believe, that the unique status we bear as Native Hawaiians are being distinct aboriginal indigenous native people. So are the Alaskan native and those 556 native governments, but the real unique status that we the Kanaka Maoli bear to the State of Hawaii and the United States is the status of *de jure*. No other nation government within the confines of the United States and its laws bears that unique status of *de jure*.

HPACH

919 4th Street
Pearl City, Hawaii 96782

August 30, 2000

Representative Ben Nighthorse Campbell
Chairman, Committee On Indian Affairs
and Committee Members
United States Congress

ALOHA Kakou.

My name is Richard Pomaikaioikalani Kinney. I am an indigenous descendant of the Hawaiian Kingdom. The nation that President Clinton and the members of the Congress of United States recognized in Public Law 103-150.

On behalf of my ancestors who signed the Kue Anti-Annexation Petitions of 1898, both sides of my parents and of my family today I asked this committee to withhold this bill from any type of consideration of approval.

Thru the Joint Resolution of Annexation the national lands of the Hawaiian Kingdom were unlawfully ceded to the United States as a special trust. The United States accepting the ownership of all public, government and crown lands, but provided that the existing laws of the United States relating to public lands would not apply and the Congress "shall enact special laws for the management and disposition."

These provisions collectively were held by the Attorney General of the United States as creating a "special trust" of the ceded lands, the federal government holding only a naked title to those lands.

The Organic Act of 1900, the Hawaiian Homes Commission Act, 1920 and the Admission Act of 1959 were

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Indian Affairs Committee
United States Congress
Honolulu, Hawaii

all acts of Congress recognizing the "Special Trust" of its managing of the national lands of the Hawaiian Kingdom.

Today, the indigenous people of the Hawaiian Kingdom are the only recognized indigenous beneficiary of any State's Admission's Act and Constitution.

On the annexation of Hawaii by the United States in 1898 1,800,000 acres made up the public lands. Since Statehood in 1959 close to 1,700,000 acres of the trust lands have been transferred to the State of Hawaii to administrate under the trust provisions of its Admission Act.

The intent of this bill is to unlawfully relinquished both the federal and state governments from the "Special Trust" management of the National Lands of the Hawaiian Kingdom.

The Hawaiian Homes Commission Act will be terminated in its entirety. The Admission Act will be unlawfully amended and relinquishing the State from its "Special Trust" managing provisions of the act. Allowing the State of Hawaii to privatize its management of the public lands.

Native Hawaiians will once more be Wards of the federal government and landless at the same time.

When Queen Liliuokalani yielded her authority to the superior force of the United States on January 16, 1893, she

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United States Congress
Honolulu, Hawaii

had high hopes that after facts presented to Congress, the United States would undo the actions of its representatives.

This bill perpetuates the wrongs of the overthrow of my country, the Hawaiian Kingdom. It further relinquishes any and all breach of trust committed by the federal and state governments in its management of the National Lands of the Hawaiian Kingdom as a "Special Trust".

As mentioned in Public Law 103-150, the Supreme Court Ruling in the Rice v Cayatano case and in the language of this bill, United States signed Three Treaties with the Hawaiian Kingdom.

Article VI of the Constitution of the United States recognizes these Three Treaties as the Supreme Law of the Land. That the Judges of every State shall be bound thereby. The Three Treaties are still binding in law.

This bill violates Article VI of the United States Constitution that all of you have sworn to uphold as members of Congress.

It is your duty to recognize the international relationship that the United States signed with the Hawaiian Kingdom in 1826, 1842, 1849, 1875 and 1887.

Unlike the treaties that the American Indians who were forced to sign with the United States as defeated nations.

HPACH

919 4th Street
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August 30, 2000

Indian Affairs Committee

United States Congress

Honolulu, Hawaii

the Hawaiian Kingdom was a nation at peace with the United States. Equal to the United States in standing as a Free, Sovereign and Independent nation with signed treaties to many nations of the Free World of Nations.

Federal recognition as Native Americans will require that I and my family to relinquished our Inherent Sovereignty to the National Lands of the Hawaiian Kingdom.

I and my family will never turn our backs on Queen Liliuokalani, our ancestors and relinquishes our Inherent Sovereign to Hawaii as a defeated nation to United States.

Hawaii is our ancestral homeland and country.

Hawaii Pono I is our National Anthem.

Ua Mau Ke Ea O Ka Aina I Ka Pono speaks of Hawaiian Sovereignty over Hawaii.

Uphold the integrity of your country. One hundred and seven years of Justice Delayed is Justice Denied.

"ALOHA KUU AINA HAWAII"

Pomaikaika Kinney
Richard Pomaikaika Kinney, SOVEREIGN

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8/23/00

TESTIMONY
Of
Louis Agard
Delegate
To the
NATIVE HAWAIIAN CONVENTION
On the
Native Hawaiian Bill

Mr. Chairman and members of the Committee Aloha and welcome We are the heirs or Descendents of native Hawaiians and have included in a first time election from everywhere, abroad And foreign countries, all heirs of the native Hawaiian homeland Because we view all descendants to be entitled to or registered on our election rolls regardless of residence We suggest that any enrollment be conducted likewise.

The issue of Native Hawaiian Sovereignty has been lengthy. It appears the sovereignty of Natives has been placed in limbo by the actions of January 1893 even while several efforts were Made to correct the armed landing of marines in Honolulu Which means for some of us that our Government has been in suspension since that event and our status has not changed since that Suspension

Due to our status we would have concerns about the statement that the present proposal to "recognize" native Hawaiians under the federal government pursuant to Congress' plenary authority over Indian Affairs. This requirement appears restrictive and does not equate to the process of self-determination

Another approach maybe used as follows During the Congressional annexation hearings of 1897-98 General John Schofield who had scouted Hawaii with General Alexander for military uses, testified in favor of annexing Hawaii and was to say, "We made a preemption which nobody in the world thinks of disputing, provided we perfect our title If we do not perfect our title in due time, we have lost those islands

The Congress has had at least two opportunities to purchase Hawaii and its ceded lands but has Not chosen to perfect its title as argued by General Schofield The purchase occasions were under the House HR 1944, S B 155 and P L 96-565 or the Native Hawaiian Study Commission legislation

Hawaii has existed for better than a century without the U S compliance with the Fifth Amendment, that property shall not be taken or occupied without just compensation And brings forth the Suggestion that if the thrust of the Native Hawaiian Bill is pursued, then it is a temporary or interim Process, not the final process for native Hawaiians

The Native Hawaiian Bill is not a final process, under the federal constitution, due to the October 4, 1988 Opinion of the office of Legal Counsel, United States Department of Justice memo To the U S State Department that the annexation of Hawaii was unconstitutional and illegal under The Newlands Resolution of 1898 These terms should be addressed in any recognition process and Why the recognition is being considered or granted

It is important that recognition be observed because the erosion of assets and privileges is Ongoing There are lawsuits in the wings to challenge the Office of Hawaiian Affairs, the Department Of Hawaiian Homes and the Kamehameha Schools as being race based and unconstitutional The Problem here is those filing believe that the Bill of Rights applies to these institutions that are actually Serving the descendants or heirs of the native Hawaiians who have vested rights in their homeland Vested rights earned over centuries and recorded in the constitutions of 1839 and 1840 and beyond To address this we suggest that special note be made of the foregoing and the process be ongoing

It is also notable that the present timeframe is short, or within a few months a decision maybe

Made on native Hawaiian "recognition" On the other hand since 1975 there has been hearings on the issue of native lands, compensation or rights This was a beginning to educating native people and the Process has continued In earnest since 1991 when funding of one million dollars to Hui Na Auao from The Administration of Native Americans (ANA) At the same time the State of Hawaii funded the initial Sovereignty Advisory Council (SAC) to take input from native people on the issue of sovereignty

The following year the Hawaiian Sovereignty Commission (HSAC) was formed to continue The earlier (SAC) work, and the following year the Hawaiian Sovereignty Elections Council (HSEC) Continued and carried out a plebiscite on the question of should delegates be elected to a convention To design a document for native governance Seventy two percent of those responding in the plebiscite Voted yes or in the affirmative As a result in January 1999 the election of seventy seven delegates Was carried out to go into convention to design a governing document At least nine of the last years Has been devoted to clarifying the status of natives and at least that many years in education, an Educational process supported by a branch of the federal government in the form of the ADMINISTRATION OF NATIVE AMERICANS There have been more than nine years of education When it can be considered that the education began in 1975 There have been at least forty Hawaiian Organizations involved in some of the efforts, and seems to be the largest gathering of organizations That represented thousands of natives in different organizations statewide

It must be noted that these voting process' are open to all natives, from all countries and from all Organizations that have transparent memberships of natives The question is, why do we now have an Appointed Task Force versus a voting and election process which seems to be competing or duplicating Each other? Further that natives as one group of five in the Task Force may have only twenty percent representation being one of five, while other groups are not vested interest holders but would be included in the sought after recognition?

The Native Hawaiian Convention has produced two documents for further native review and Input and is the culmination of the last nine years of work and education which could be diverted for The now fast track "recognition" process and does not seem to fit the self-determination description

If natives have a preference, it would seem that their past treaties be recognized promoting peace In place of themselves being "recognized" for and in an unknown future And a sixth treaty maybe Reasonable to establish the natives future and past oversights

August 23, 2000

Aloha. My name is Harry Wasson. I am a taro farmer from Laiewai. My ancestors have been on our Kuleana land since 1804.

I grow taro. I work the land. I should be there instead of being here before a group of politicians.

My sovereignty guaranteed to me is from the land. When I get up early in the morning and look out into the land, I can smell the earth, the grass, the trees, the flowers. I see the clouds go passing by, birds fly. I look toward the mountains and see a few clouds, maybe a little rain today. Then I look toward the sea, I see the sky yellow and orange intermixed with white and grey clouds and then I look again at the land.

I need to weed the taro patch. I wonder if some snails got into it? I see the leaves of the taro plant sway to and fro. What a life. A great life, a Hawaiian way.

My ancestors lived on this land and now, I do. I love my work because it is who I am, a Hawaiian, a taro farmer like my ancestors. They cared for this land and now I am doing the same as they. I am they and they are me.

But today my sovereignty is being threatened. My life, my culture, my land, my spirituality, who I am is being discussed, decided without care, thought, or authority.

I am not an AMERICAN. Who are they? Do they grow taro? Do American's know what it is and who how it affects who I am?

I am a taro farmer and will not change that. Any change to my sovereignty given from Kamehameha I, Paiea to my Kupuna and to me, through the land and the rights and entitlements that comes with it is a threat to me.

I oppose the Akaka bill and all it stands for.

Harry F. Wasson

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