

burden on folks who only have earned income—and generally not enough of it.

I would remind my colleagues on the other side of the aisle that the impact of deficit spending is immense and one that will be borne not only by us in the coming years but by future generations who have no say in our current financial irresponsibility. Since this administration took over and Congress has been controlled solely by one party, we have seen our Nation's economic security drop precipitously. In order to pay for unaffordable tax cuts, we have become a beggar nation, forced to go to foreign countries with our hat in hand asking them to buy our debt. Many of these countries, such as China and Japan, are the very same countries that are becoming more and more competitive with our Nation for high-tech and higher salaried jobs—a fact that is not unrelated. As interest rates continue to rise to combat inflationary pressures, it is costing this Government more and more to sell our debt to our foreign competitors. At the same time, we are facing demand pressures to offer a higher rate of return to attract these wary investors, as they gradually accumulate more of our debt than most economic models would indicate is prudent. The only prudent course of action would be to tighten our belts and balance our budget thereby returning control of our economic prosperity to us instead of leaving it in the hands of our foreign competitors. But instead of coming up with rational tax policy that rewards the majority of Americans who work for a living, we are foisting on these families the delusion that estate tax relief benefits them and handing out further tax cuts to those who have seen their wealth grow at historic rates in the past several years.

Mr. President, we owe it to our children and grandchildren to provide them with the opportunities we inherited from our parents. The real “death tax” is the one we are leaving for our children to pay when we are gone. With the passage of the Deficit Reduction Act in 1993, we were able to correct years of irresponsible tax policy and head our Nation back in the right direction. By maintaining fiscal discipline, we were able to have our first surplus in decades. It is shameful that we are considering legislation today that, in many senses, is the final nail in the coffin of fiscal responsibility by providing additional tax cuts to the richest in our Nation to the detriment of hard-working American families. This is not the act of a Government that is supposed to represent all of the people in our Nation—a nation that was founded on the belief that the opportunity for prosperity is to be shared by everyone. This legislation is another step toward creating an America that I was not elected to represent by my fellow New Mexicans—the vast majority of whom earn their living by going to work every day. I hope my

colleagues will join me in opposing this legislation.

NATIVE HAWAIIAN GOVERNMENT  
REORGANIZATION ACT OF 2005—  
MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the hour of 3 p.m. having arrived, the Senate will proceed to consideration of the motion to proceed to S. 147, which the clerk will report.

The assistant legislative clerk read as follows:

Motion to proceed to S. 147, a bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

The PRESIDING OFFICER. Under the previous order, the time from 3 p.m. until 6 p.m. shall be divided for debate as follows: 3 to 3:30, majority control; 3:30 to 4, minority control, alternating between the two sides every 30 minutes until 6 p.m.

The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, one of the parliamentary mysteries of the Senate is that we are now about to move, as was reported, to the Native Hawaiian Government Reorganization Act. Some might wonder why. I was presiding, as the Senator from Minnesota is now, earlier in the week. I heard an eloquent speech by a Senator from the other side of the aisle, the Senator from Vermont, who said we ought to “focus on solutions to the high [gasoline] prices, something that hurts people in your state and mine, the rising cost of health care . . . the ongoing situation in Iraq. . . . We’re not going to talk about any of those things,” said the Senator from Vermont, from the other side of the aisle.

Yet as a result of efforts there, on that side of the aisle, we are now moving ahead to the Native Hawaiian Government Reorganization Act, S. 147.

The legislation may seem insignificant, but I am here today to say that, in this seemingly insignificant piece of legislation, is an assault on one of the most important values in our country. It is a value so important that it is carved in stone above the Chair of the Presiding Officer. It is our original national motto: *E Pluribus Unum*, one from many. This bill is an assault on that principle because it would, for the first time in our country's history, so far as my research shows, create a new, separate, sovereign government within our country, based on race, putting us on the path of becoming more of a United Nations than a United States of America. It will set a precedent for the breakup of our country along racial lines, and it ought to be soundly defeated.

No one has to take my word for this. The U.S. Commission on Civil Rights, a body established to protect the rights

of minorities and the underprivileged, has publicly opposed this legislation. Here is what the Commission on Civil Rights said:

The Commission recommends against passage of the Native Hawaiian Government Reorganization Act of 2005 as reported out of committee on May 16, 2005, or any other legislation that would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups, accorded varying degrees of privilege.

So this bill undermines our unity. It would undermine our history of being a Nation based not upon race but upon common values of liberty, equal opportunity, and democracy.

We have had many great accomplishments in our country. Our diversity is a magnificent accomplishment. But the greater accomplishment, greater even than our diversity, is our ability to unite all of that diversity into one Nation. We should be going in that direction and not in the opposite direction.

Our Constitution guarantees equal opportunity without regard to race. This legislation does the opposite.

Those who favor this bill like to describe a bill that is not the bill I have read. Those who favor the bill say it is not about sovereignty, it is not about land and money, it is not about race, it is what we did once in Alaska and that the Native Hawaiians would be just another Indian tribe. It is a nice bill, they say. It is sponsored by the two Senators from the State of Hawaii, whom we all greatly respect and admire, so, they say, let's just pass it.

Let me address each of those claims one by one—sovereignty, to begin with. Those who favor the bill say this is not about sovereignty. After all, they argue, the new government that would be set up would be subject to the approval of those who are “Native Hawaiians,” and it would have to be approved by the U.S. Secretary of the Interior. But the bill expressly states in section 4(b) that its purpose is to establish a “political and legal relationship between the United States and the Native Hawaiian governing entity for the purposes of continuing a government-to-government relationship.”

A government-to-government relationship—such as a government relationship between the United States and France or England or Germany or any other country. That sounds like a sovereign government to me.

That's not the end of it. In an interview on National Public Radio on August 16 last year, the Senator from Hawaii, who is the sponsor of this bill, was asked if this could lead to secession of the State of Hawaii from the United States. The NPR reporter stated, “But [Senator AKAKA] says this sovereignty could even go further, perhaps even leading to independence.” And the Senator from Hawaii responded, “That could be. As far as what is going to happen at the other end, I'm leaving it up to my grandchildren and my great-grandchildren.”

The office of Hawaiian Affairs, an office of the Government of the State of Hawaii at one time said on its Web site that under this bill:

The Native Hawaiian people may exercise their right to self-determination by selecting another form of government, including free association or total independence.

Total independence, Mr. President. This bill clearly allows for the establishment of a new, sovereign government within the United States of America. I have not found another example of that in our history.

No. 2, those who favor the bill say this is not about race. But the bill itself says something else. It says that anyone "who is a direct lineal descendant of the aboriginal, indigenous native people" of Hawaii is eligible to participate in creating this new sovereign government. By this definition, anyone who may have had a seventh-generation Native ancestor, making him 1/256 Native Hawaiian, can qualify. They do not need to have been part of a Native Hawaiian community at any point during their lifetime. They don't even need to have lived in Hawaii. In fact, of the 400,000 Americans of Native Hawaiian descent in the United States, approximately 160,000 don't even live in Hawaii. They live all over the United States of America. But they all would be eligible to be part of this new sovereign government under the bill.

So eligibility to participate in this new government is not based on where you live. It is not based on being part of a specific community. It is based on your ancestry. That is why the U.S. Commission on Civil Rights has specifically said the bill "would discriminate on the basis of race or national origin."

No. 3, land and money. Those who favor the bill say it is not about land and money, but the bill says something else. My staff counted 35 references to "land" or "lands" in the text of the bill, and in section 8 of the bill it specifically delegates to this new race-based government the authority to negotiate for:

(A) the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources;

(B) the exercise of governmental authority over any transferred lands, natural resources, and any other assets, including land use.

So the bill says this is about land and "other assets." It is not surprising. According to an Associated Press article from April 14 of last year on this bill, "there is a general belief the Department of Hawaiian Home Lands would be folded into this new native government. According to that department's Web site, "Approximately 200,000 acres of homestead lands are provided for the Hawaiian Home Lands program." That is from the Associated Press.

According to the Wall Street Journal, the state's Office of Hawaiian Affairs controls a trust fund worth \$3 billion for the benefit of Native Hawaiians. One has to ask whether some or

all of that \$3 billion would be given to this so-called tribe. The bill expressly allows the transfer of land and assets, so this is a serious question.

Then the last two arguments the proponents make. They say that this is similar to what we did for the Alaska Natives. But there are some profound differences between Alaska and Hawaii. First, the history is different. When the United States acquired Alaska from Russia, the treaty stipulated we needed to deal with the Alaska Natives. And when Alaska became a State, we included in the law that Alaska Natives would have a special status. That is not true for Native Hawaiians. They have always been part of the State and lived under its jurisdiction.

Second, the provisions in S. 147 for the recognition of a native government are different from those for Alaska Natives. Alaska Natives were recognized to form corporations and other local forms of government, based largely on the village communities in which they lived. Most Native Hawaiians don't live in separate villages or communities in Hawaii and elsewhere in the United States. They are everyone's next-door neighbor. Of the 240,000 Native Hawaiians living in Hawaii, the U.S. Census reports that less than 20,000 live on "Hawaiian homelands." The rest are mixed with the States' population.

Finally, there is another argument that those who support this bill make. They say: We are just recognizing another Indian tribe. This puts Native Hawaiians on an equal footing with other Native American groups.

That is their argument. But U.S. law has specific requirements for recognition of an Indian tribe. A tribe must have operated as a sovereign for the last 100 years, must be a separate and distinct community, and must have had a preexisting political organization. That is what the law says. Native Hawaiians do not meet those requirements.

In fact, in 1998 the State of Hawaii acknowledged this in a Supreme Court brief in the case of *Rice v. Cayetano*, saying, "the tribal concept simply has no place in the context of Hawaiian history." It would be difficult to argue that Hawaii was not well represented in that debate because the current Chief Justice of the U.S. Supreme Court, Justice Roberts, was the lawyer for the State of Hawaii in this argument before the Supreme Court and they said, "the tribal concept simply has no place in the context of Hawaiian history."

If the bill establishing a Native Hawaiian government would pass, it would have the dubious honor to be the first to create a separate nation within the United States. While Congress has recognized preexisting American Indian tribes before, it has never created one. That is the difference. Of course, we have recognized preexisting American Indian tribes who meet a very specific definition of what an Indian tribe

is in our law. But so far as I can tell, we have never created an Indian tribe, and the State of Hawaii itself recognized before the Supreme Court that its native peoples are not a tribe.

To pass this legislation would be a dangerous precedent. It wouldn't be much different than if American citizens who were descended from Hispanics who lived in Texas before it became a Republic in 1836 created their own tribes based on claims these lands were improperly seized from Mexico or it could open the door to religious groups such as the Amish or Hasidic Jews who might seek tribal status to avoid the constraints of the establishment clause of the Constitution. If we start down this path, the end may be the disintegration of the United States into ethnic enclaves.

Hawaiians are Americans. They became U.S. citizens in 1900. They have saluted the American flag, paid American taxes, fought in American wars. The distinguished Senator from Hawaii has won the Congressional Medal of Honor fighting in American wars.

In 1959, 94 percent of Hawaiians reaffirmed that commitment to become Americans by voting to become a State. Similar to citizens of every other State, they vote in national elections.

Becoming an American has always meant giving up allegiance to your previous country and pledging allegiance to your new country, the United States of America.

This goes all the way back to Valley Forge when George Washington himself signed such an oath, and his officers did as well.

Today, in this year, more than 500,000 new citizens will take that oath where they renounce their allegiance to where they came from, not because they are not proud of it but because they are prouder to be an American. And they know if we are going to be one Nation in this land of immigrants, they must become Americans.

All around the world, countries are struggling with how to integrate and assimilate into their societies people from other countries: Muslims in Europe, specifically in those countries, Turks in Germany, Great Britain, France, and Italy—all are struggling with this. They are envious of our two centuries of history of helping people from all countries come here, learn a common language, understand a few principles, and become Americans. They are proud of where we came from, prouder of who we are.

This goes in exactly the opposite direction. This may seem like an insignificant piece of legislation, but within it is embedded an assault on one of the most important fundamental values in our country: the value that is expressed and carved right there, "E Pluribus Unum," one from many.

This legislation would undermine our national unity by treating Americans differently based on race. It would begin to destroy what is most unique

about our country. It would begin to make us more of a "united nations" instead of the United States of America.

I hope the Senate heeds the advice of the U.S. Commission on Civil Rights and defeats this legislation, legislation which the commission said "would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded varying degrees of privilege" and create a new, separate, race-based government for those of Native Hawaiian descent.

I have tried in my remarks to show that this bill is about sovereignty, that it is about land and money, that it is about race, that it is not like what we did for Alaskans, that the Native Hawaiians would not just be another Indian tribe. We don't create new tribes in our country. We recognize pre-existing ones, and we have very specific provisions in the law about how we do that.

The question before us is about what it means to become an American. And this bill is the reverse of what it means to be an American. Instead of making us one Nation, indivisible, it divides us. Instead of guaranteeing rights without regard to race, it makes them depend solely upon race. Instead of becoming one from many, we would become many from one.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, I rise today in strong opposition to the Akaka bill. If cloture is invoked on that bill, there is a process by which we will debate and amend the bill.

I would like to discuss with my colleagues today some of the infirmities with the bill that we would hope to address through the amendment process. There is no way to sugarcoat this bill.

This bill proposes that the Federal Government establish a racial test for Americans who want to participate in the creation of a new government—a government that will gain, according to section 8 of this legislation, lands and natural resources, civil and criminal jurisdiction, and governmental authority and powers. It is unconstitutional, it offends basic notions of American values, and it should be rejected.

I would like to spend a few minutes talking about an amendment that we would be voting on should this bill be brought forward.

First, keep in mind that we are going to have to decide once and for all if we believe in racial tests and race-based government. Government anticipated by this bill is created through a racial test. Read section 3, subparagraph 10:

Native Hawaiians, those eligible to participate in the creation of this government, are defined "as an individual who is one of the indigenous, native peoples of Hawaii and who is a direct lineal descendent of the aboriginal, indigenous, native people in the Hawaiian islands on or before January 1, 1893, and exercised sovereignty there, or a person who descends from one who was one-half Native Hawaiian in 1921."

What is that test? It is a racial test. As the Supreme Court emphasized, ancestry is a proxy for race.

Some advocates insist that it is not a race-based government, no matter what the actual language of the bill says.

So we will offer an amendment to put this question to the Senate.

The amendment will say that this new government will not have any governmental powers if membership in the entity is in any way determined by race or ancestry. The Senate will have a straightforward up-or-down vote on whether it supports or rejects the principle of race-based government. If I am wrong and the bill's text is wrong, and this isn't about race, then that amendment will surely pass overwhelmingly.

When I discussed this amendment with the bill's sponsors in the past, they have said they would strongly oppose it. So we will let the Senate vote directly and resolve the issue. All Senators should look forward to a vote on whether they support race-based government.

Second, we will have to decide whether the Constitution and basic civil rights are to be left to a negotiation process after the bill's passage.

As I have explained previously, this bill would allow the creation of a government not subject to the Constitution and Bill of Rights. It could also be immune from the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and all other State and Federal civil rights laws. It would authorize creation of an enclave where Native Hawaiians would be subject to a different set of legal codes, taxes, and regulations.

Proponents deny this. They say it is preposterous to say that civil rights won't be protected. They say the bill won't result in unequal tax and legal systems in Hawaii. They say basic fairness would be preserved. But then they say just how this happens is entirely up to subsequent negotiations between the Native Hawaiian entity and State and Federal bureaucrats.

Obviously, basic civil rights should not be up for negotiation. So we will offer an amendment to clear this up. My civil rights amendment will apply the entire Bill of Rights to the new government. It will apply all Federal antidiscrimination laws. It will ensure that the new government doesn't have any special immunities from lawsuits under those laws.

It will prevent the creation of any racially defined liabilities, so that no

person is subject to any law, regulation, tax, or other liability if any person is exempted on the basis of race or ancestry. And it will guarantee fairness and equal treatment. It will not leave these matters up to future "negotiations."

This civil rights amendment deserves a vote, and it will get one.

The New York Times editorialized today that the bill does not "supersede the Constitution." I disagree, but we can resolve this.

So let's vote and not leave it up to chance. Let's adopt my amendment and guarantee civil rights and equal treatment.

Again, I have shared the drafts of this amendment with the sponsors of the bill who said they oppose it. Perhaps they will reconsider, but the Senate will have an opportunity to vote on this amendment.

Third, there is a dispute over whether the people of Hawaii, who are most personally affected by this legislation, actually want this bill. The sponsors say yes, and point to opinion polls that speak vaguely of "recognizing" Native Hawaiians. I can point to alternative polls which show strong majorities opposed when the citizens understand that with recognition comes the potential for unequal treatment. Do the Hawaiian people want this? We know much of the political establishment does. But what about the citizens? I am concerned that this bill will divide Hawaii and encourage racial division there and elsewhere.

Indeed, as the U.S. Commission on Civil Rights noted in its report, if you listen to the citizens of Hawaii rather than just their political leaders, it is clear that this legislation has already divided that State. Why would the Senate want to impose a divisive result upon the State of Hawaii without giving Senators a voice?

So one of my colleagues will offer an amendment that will give us the answer to the question. It will simply require that all citizens of Hawaii have a voice by requiring a statewide referendum once the negotiations are complete.

The Senate should not be passing on the question of what is good for Hawaii when we have evidence of such division.

Again, I have floated this idea by the bill's sponsors, and they have opposed a referendum requirement. But why would they not want to ensure that the people of Hawaii have a direct voice in approving or rejecting the final product of the negotiations called for in the bill?

So we will have an amendment. The Senate can decide if the people of Hawaii should be denied their opportunity to speak.

As I have said in the past, I will support a cloture vote and will support the Senate having an opportunity to debate and vote on amendments to this bill. But should cloture be accepted and the Senate get on this bill, I have also

noted I strongly oppose it and will offer amendments to try to ensure the result of the bill is most fair to the people of Hawaii. That I will most surely do.

I look forward to that debate. I look forward to the debate and amendments that will be offered as a result.

I yield the floor.

The PRESIDING OFFICER. At this time, the hour of 3:30 having arrived, the next 30 minutes is under the control of the minority.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, I expected my colleague from Arizona would speak on the estate tax. He, in fact, spoke about the subject which we will now spend the next 30 minutes on, on this side, the Native Hawaiian Government Reorganization Act. He raises some questions, and my expectation is that debate and discussion about this proposal will promote some rather aggressive discussion in the Senate. That is fine. It is nice at this point that after all these many years we are debating this issue.

I will give a little bit of the history as vice chairman of the Committee on Indian Affairs. That committee is the committee that brought this legislation to the Senate. The action was bipartisan. We have decided this is a worthy piece of legislation. I support it. The committee supports it. That is the basis on which it is in the Senate now.

I don't know the history nearly as well as my colleagues, Senator AKAKA and Senator INOUE, but let me describe a little of the history, if I might. I know a bit of this because I represent a State in which we have numerous Indian tribes. Those are the first Americans. Those are the folks who were there before my ancestors showed up. They owned the land. They farmed along the Missouri River. I understand something about Indian tribes, tribal governments and self-determination. I understand that because I work in that area a lot with the Indian tribes from my State.

Let me describe the issue of aboriginal and indigenous peoples in the United States, and especially in Hawaii, from the small amount of history that I know. Again, the rich history here will be better recited by my colleagues, Senator INOUE and Senator AKAKA.

January 16, 1893—that is a long, long time ago—the United States Minister John Stevens, who served, then, as Ambassador to the court of Queen Liliuokalani, directed a marine company onboard the USS *Boston* to arrest and detain the queen. This is the queen that served the indigenous people in Hawaii. She was arrested. She was placed under arrest for 9 months at the palace.

That event was engineered and orchestrated by the Committee of Public Safety which I understand consisted of Hawaii's non-native Hawaii businessmen, with the approval of Minister Stevens.

So we have a people in Hawaii who were the first Hawaiians, the indige-

nous people to Hawaii, who had a government, who had a structure. The head of that government was summarily arrested and a new government was created in Hawaii. That new government apparently was a government that would meet at the pleasure of those who engineered the arrest of the queen.

Today, after many decades raising questions, should there not be an opportunity for Native Hawaiians, very much as there has been an opportunity in our country in what is called the lower 48 for Indian tribes to seek reorganization, to seek reorganization—there should be some opportunity along the way for there to be a Native Hawaiian Government Reorganization Act. The reason this is a “reorganization” is because that government existed. This is not the creation of a new government. This is a government that previously existed, but many decades ago was essentially dissolved or destroyed as a governing unit by the actions I previously described.

My colleagues have come to the Congress from the State of Hawaii and have asked that a bill authorizing the reorganization of a Native Hawaiian governing entity that could negotiate agreements with the United States and the State of Hawaii to address a good number of issues relating to self-determination and self-governance of the Native Hawaiians be brought to the Senate and be considered and debated. That is the basis on which it is here today.

Upon introduction last year by my colleagues from Hawaii, this bill was referred to the Committee on Indian Affairs. We held a hearing on the bill, received testimony that demonstrated broad bipartisan support, strong support for this bill in Hawaii and also in Indian country around America.

We heard from Governor Lingle from the State of Hawaii about the importance of this bill to the people and to the economy of Hawaii. We heard from Native Hawaiians about the significance of this bill on all aspects of Native Hawaiian life. We heard from the National Congress of American Indians about its long-standing support for Native Hawaiians to be formally afforded the right to self-determination. This bill does not by itself do that. It establishes the process for a reorganization in order to create that structure.

There has been back and forth between interested parties on this bill. There are some who have concerns and questions about it. Significant efforts, I know, have been spent by my two colleagues, Senator AKAKA and Senator INOUE, to address concerns relating to jurisdiction, claims and gaming issues. I believe these concerns in almost all cases have been adequately resolved.

Even more importantly, I believe the Members of the Senate, finally, deserve the opportunity, and my two colleagues from Hawaii deserve the opportunity, to have this legislation before the Senate open for discussion and open for debate.

Senator AKAKA requested floor time for this bill 1 year ago. His request was not granted because we were compelled to address other imminent concerns relating to hurricane relief and other matters at that time that were urgent.

Bills on this issue have been introduced since the 106th Congress. None have received time for floor debate. Fairness, I believe, now requires this Congress to offer this bill in the Senate for full debate.

Let me finally say this. I know of no two Members of the Senate who have worked harder, with greater determination to advance the cause in their State that has broad bipartisan support in their State on behalf of Native Hawaiians, a right that is already afforded to many other aboriginal and indigenous peoples around the United States that has not been afforded to those Native Hawaiians. I know of no one in this Senate who has worked harder for an important issue of passion in their hearts than Senator AKAKA and Senator INOUE. I am very pleased that the Senate Committee on Indian Affairs was able to pass this legislation and bring it to the Senate today.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, today I discuss legislation that is critically important to the people of Hawaii, all the people of Hawaii, the Native Hawaiian Government Reorganization Act of 2005. While I am pleased to see this bill finally come to the Senate floor after 6 long years, I remain perplexed by the constant barrage of misinformation that has been provided by opponents to this legislation.

Tomorrow we will be voting on a motion to invoke cloture on the motion to proceed to S. 147, the Native Hawaiian Government Reorganization Act of 2005. I ask all of my colleagues, to let this bill come to the floor for a debate—whether you are for or against it. At the minimum, we should be allowed to discuss what this bill is really about.

I also want to alert my colleagues to the fact that a new substitute amendment has been drafted which incorporates legislative language negotiated between Senator INOUE and myself and officials from the Executive Branch to address policy concerns regarding the liability of the United States in land claims, the impact of the bill on military readiness, gaming, and civil and criminal jurisdiction in Hawaii. While I realize that we will not consider the substitute amendment until we get to the actual consideration of the bill, I share this with my colleagues so that they know that our negotiations with the administration have been successful in addressing their concerns and adhering to the intent and purpose of this bill.

This bill is about process and fairness. Hawaii's indigenous peoples, Native Hawaiians, have been recognized

as indigenous peoples by Congress through the one hundred sixty-plus statutes we have enacted for Native Hawaiians. Congress has historically treated Native Hawaiians, for more than a hundred years, in a manner similar to American Indians and Alaska Natives. What our bill does is to authorize a process so that the federal policy of self-governance and self-determination, a policy formally extended to American Indians and Alaska Natives, can be extended to Native Hawaiians, thereby creating parity in the way the United States treats its indigenous peoples.

We have bipartisan support for the enactment of this bill. I extend my deep appreciation to the cosponsors of this legislation, Senators CANTWELL, COLEMAN, DODD, DORGAN, GRAHAM, INOUE, MURKOWSKI, SMITH, and STEVENS, for their unwavering support of our efforts.

I especially want to recognize Hawaii's Governor, Linda Lingle, who serves as the first Republican governor in Hawaii in 40 years. Despite our political differences, Governor Lingle and her cabinet, primarily Attorney General Mark Bennett and Hawaiian Homes Commission Chairman Micah Kane, have worked tirelessly with us for the past 4 years in an effort to enact this bill for the people of Hawaii.

In Hawaii, support for the preservation and culture of Hawaii's indigenous peoples is a nonpartisan issue. In Hawaii, diversity is precious. The more we understand our culture, traditions, and heritage, the more we can contribute to the fabric of society that has become the local culture in Hawaii. While my opponents see diversity as a threat, the people of Hawaii embrace diversity and celebrate it as a means of understanding the foundations upon which our local culture, the culture that brings us all together, is based.

Let me be the first to say that the people of Hawaii, including Hawaii's indigenous peoples, are proud to be Americans. The many Native Hawaiians in the National Guard who were away from their families for eighteen months, serving in Operation Iraqi Freedom, are proud to be American. In fact, it is a well-documented fact that native peoples have the highest per capita rate of serving in our military to defend our country. It is absolutely offensive to read opponents' mischaracterization of this bill as an effort to secede from the United States or to question the right of Hawaii's indigenous peoples to have a mechanism of self-governance and self-determination within the framework of Federal law.

This bill is of significant importance to the people of Hawaii. It is significant because it provides a process, a structured process, for the people of Hawaii to finally address longstanding issues resulting from a dark period in Hawaii's history, the overthrow of the Kingdom of Hawaii. The people of Hawaii are multicultural and we celebrate our diversity. At the same time,

we all share a common respect and desire to preserve the culture and tradition of Hawaii's indigenous peoples, Native Hawaiians.

Despite this perceived harmony, there are issues stemming from the overthrow that we have not addressed due to apprehension over the emotions that arise when these matters are discussed. I have mentioned this to my colleagues previously, but it bears repeating that there has been no structured process. Instead, there has been fear as to what the discussion would entail, causing people to avoid the issues. Such behavior has led to high levels of anger and frustration as well as misunderstandings between Native Hawaiians and non-Native Hawaiians.

As a young child, I was discouraged from speaking Hawaiian because I was told that it would not allow me to succeed in the Western world. My parents lived through the overthrow and endured the aftermath as a time when all things Hawaiian, including language, which they both spoke fluently, hula, custom, and tradition, were viewed as negative. I, therefore, was discouraged from speaking the language and practicing Hawaiian customs and traditions. I was the youngest of eight children. I remember as a young child sneaking to listen to my parents so that I could maintain my ability to understand the Hawaiian language. My experience mirrors that of my generation of Hawaiians.

While my generation learned to accept what was ingrained into us by our parents, my children have had the advantage of growing up during the Hawaiian renaissance, a period of revival for Hawaiian language, custom, and tradition. Benefiting from this revival is the generation of my grandchildren who can speak Hawaiian and know so much more about our history.

It is this generation, however, that is growing impatient with the lack of progress in efforts to resolve longstanding issues. It is this generation that does not understand why we have not resolved these matters. It is for this generation that I have written this bill to ensure that we have a way to address these emotional issues.

There are those who have tried to say that my bill will divide the people of Hawaii. My bill goes a long way to unite the people of Hawaii by providing a structured process to deal with issues that have plagued us since 1893.

This bill is also important to the people of Hawaii because it affirms the dealings of Congress with Native Hawaiians since Hawaii's annexation in 1898. Congress has always treated Native Hawaiians as Hawaii's indigenous peoples, and therefore, as indigenous peoples of the United States. Federal policies towards Native Hawaiians have largely mirrored those pertaining to American Indian and Alaska Natives.

Again, let me reiterate, Congress has enacted over 160 statutes to address the conditions of Native Hawaiians including the Native Hawaiian Health Care

Improvement Act, the Native Hawaiian Education Act, and the Native Hawaiian Home Ownership Act. The programs that have been established are administered by federal agencies such as the Departments of Health and Human Services, Education, Housing and Urban Development, and Labor. As you can imagine, these programs go a long way to benefit Native Hawaiians, but they also serve as an important source of employment and income for many, many people in Hawaii, including many non-Native Hawaiians. There are many Hawaii residents whose livelihoods depend on the continuation of these programs and services.

While I took the time a few weeks ago to talk about Hawaii's history, I want to spend the next few moments discussing that history once again. This is very important to understand the context of what we are trying to accomplish with this bill.

The year 1778 marks the year of first contact between the Western world and the people of Hawaii. That year, Captain James Cook landed in Hawaii. Prior to Western contact, Native Hawaiians lived in an advanced society that was steeped in science. Native Hawaiians honored their land (aina) and environment, and therefore developed methods of irrigation, agriculture, aquaculture, navigation, medicine, fishing and other forms of subsistence whereby the land and sea were efficiently used without waste or damage. Respect for the environment and for others formed the basis of their culture and tradition.

Society was structured. Chief, alii, ruled each of the islands. Land was divided into ahupuaa, triangular-shaped land divisions which stretched from the mountain to the ocean. Each ahupuaa controlled by a lower-chief. The lands were worked on by the commoners, referred to as makaaainana. There was an incentive for the chiefs to treat the makaaainana well as they could always move to another ahupuaa and work for another chief.

The immediate and brutal decline of the Native Hawaiian population was the most obvious result of contact with the West. Between Cook's arrival and 1820, disease, famine, and war killed more than half of the Native Hawaiian population. By 1866, only 57,000 Native Hawaiians remained from the basically stable pre-1778 population of at least 300,000. The result was a rending of the social fabric.

This devastating population loss was accompanied by cultural, economic, and psychological destruction. Western sailors, merchants, and traders did not respect Hawaiian kapu, taboos, or religion and were beyond the reach of the priests. The chiefs began to imitate the foreigners whose ships and arms were so superior to their own.

By the middle of the 19th Century, the islands' small non-native population had come to wield an influence

far in excess of its size. These influential Westerners sought to limit the absolute power of the Hawaiian king over their legal rights and to implement property law so that they could accumulate and control land. As a result of foreign pressure, these goals were achieved.

The mutual interests of Americans living in Hawaii and the United States became increasingly clear as the 19th Century progressed. American merchants and planters in Hawaii wanted access to mainland markets and protection from European and Asian domination. The United States developed a military and economic interest in placing Hawaii within its sphere of influence. In 1826, the United States and Hawaii entered into the first of the four treaties the two nations signed during the 19th Century.

King Kamehameha I began the Kingdom of Hawaii in 1810 upon unifying the islands. The Kingdom continued until 1893 when it was overthrown with the help of agents of the United States. The overthrow of the Kingdom is easily the most poignant part of Hawaii's history. Opponents of the bill have characterized the overthrow as the fault of Hawaii's last reigning monarch, Queen Lili'uokalani. Nothing could be further from the truth.

America's already ascendant political influence in Hawaii was heightened by the prolonged sugar boom. Sugar planters were eager to eliminate the United States' tariff on their exports to California and Oregon. The 1875 Convention on Commercial Reciprocity eliminated the American tariff on sugar from Hawaii and virtually all tariffs that Hawaii had placed on American products. It prohibited Hawaii from giving political, economic, or territorial preferences to any other foreign power. It also provided the United States with the right to establish a military base at Pearl Harbor.

While non-Hawaiians were determined to ensure that the Hawaiian government did nothing to damage Hawaii's growing political and economic relationship with America, Hawaii's King and people were bitter about the loss of their lands to foreigners. Matters came to a head in 1887, when King Kalakaua appointed a prime minister who had the strong support of the Hawaiian people and who opposed granting a base at Pearl Harbor as a condition for extension of the Reciprocity Treaty.

The business community, backed by the non-native military group, the Honolulu Rifles, forced the prime minister's resignation and the enactment of a new constitution. The new constitution—often referred to as the Bayonet Constitution—reduced the King to a figure of minor importance. It extended the right to vote to Western males whether or not they were citizens of the Hawaiian Kingdom, and disenfranchised almost all native voters by giving only residents with a specified income level or amount of

property the right to vote for members of the House of Nobles. The representatives of propertied Westerners took control of the legislature. This is the constitution that the opponents to the bill have characterized as bringing democracy to Hawaii.

A suspected native revolt in favor of the King's younger sister, Princess Lili'uokalani, and a new constitution were quelled when the American minister summoned United States Marines from an American warship off Honolulu. Westerners remained firmly in control of the government until the death of the King in 1891, when Queen Lili'uokalani came to power.

On January 14, 1893, the Queen was prepared to promulgate a new constitution, restoring the sovereign's control over the House of Nobles and limiting the franchise to Hawaiian subjects. She was, however, forced to withdraw her proposed constitution. Despite the Queen's apparent acquiescence, the majority of Westerners recognized that the Hawaiian monarchy posed a continuing threat to the unimpeded pursuit of their interests. They formed a Committee of Public Safety to overthrow the Kingdom.

On January 16, 1893, at the order of U.S. Minister John Stevens, American Marines marched through Honolulu, to a building known as Arion Hall, located near both the government building and the Hawaiian palace. The next day, local revolutionaries seized the government building and demanded that Queen Lili'uokalani abdicate. Stevens immediately recognized the rebels' provisional government and placed it under the United States' protection.

I was deeply saddened by allegations made by opponents of this legislation that the overthrow was done to maintain democratic principles over a despotic monarch. As you can tell by the history I just shared, our Queen was trying to restore the Kingdom to its native peoples after Western influence had so greatly diminished their rights. Colleagues, I want you to understand Hawaii's history and the bravery and courage of our Queen, who abdicated her throne in an effort to save her people after seeing United States Marines marching through the streets of Honolulu.

The Republic of Hawaii was formed in 1893, and in 1898, Hawaii was annexed as a territory of the United States. At the time of the overthrow, the Republic of Hawaii took control of approximately 1.8 million acres of land which were held in a trust for the people of the Kingdom of Hawaii. The driving force of the overthrow, the formation of the Republic, and the drive towards annexation was land ownership and control over land.

Native Hawaiians, like other indigenous cultures, could not grasp the concept of fee simple ownership of land. The concept of owning land was as foreign to them as the concept of owning air would be to us today. For ancient

Hawaiians, and for many Hawaiians today, it is understood that all fortune comes from the aina, or land. Therefore, it was important to cultivate and protect the aina and its resources, but the concept of owning it was inconceivable. Ancient Hawaiian society was based on sharing—everyone cultivated, everyone protected, everyone reaped the benefits.

From the time of annexation until present day, as I noted previously in my statement, Congress has treated Native Hawaiians in a manner similar to that of American Indians and Alaska Natives. Federal policies towards Native Hawaiians have always paralleled policies towards American Indians and Alaska Natives. As early as 1910, Congress included Native Hawaiians in appropriating funds to study the cultures of American Indians and Alaska Natives.

In 1921, Congress enacted the Hawaiian Homes Commission Act of 1920, which set aside approximately 203,500 acres of land for homesteading and agricultural use by Native Hawaiians. The act was intended to "rehabilitate" the Native Hawaiian race which was estimated to have dropped from between 400,000 and 1 million, to 38,000. At the time, prevailing Federal Indian policy was premised upon the objective of breaking up Indian reservations and allotting lands to individual Indians. Indians were not to be declared citizens of the United States until 1924, and it was typical that a 20-year restraint on the alienation of allotted lands was imposed. This restraint prevented the lands from being subject to taxation by the states, but the restraint on alienation could be lifted if an individual Indian was deemed to have become "civilized." The primary objective of the allotment lands to individual Indians was to "civilize" the native people. The fact that the United States thought to impose a similar scheme on the native people of Hawaii in an effort to "rehabilitate a dying race" illustrates the similarity in federal policies toward Native Hawaiians and American Indians.

Opponents of my bill have unfortunately conjured a theory that there was no intent to recognize Native Hawaiians as indigenous peoples at the time of Statehood. I've gone back and reviewed the constitutional convention of 1950 which resulted in the constitution that was adopted in 1959 when Hawaii was admitted to the Union. The delegates to this convention reflected the multi-ethnic diversity in the islands. Only 19 percent of the delegates were Native Hawaiians. The 1950 convention deliberately incorporated provisions of the Hawaiian Homes Commission Act of 1920.

It was not without controversy. At least one delegate opposed its inclusion. Yet, the majority of convention delegates voted to include the provisions and the Hawaiian Homes Commission Act remains a part of the Hawaii State Constitution today.

In addition, the Hawaii Admission Act also required the State to take title over the majority of the public lands which had been ceded to the United States at the time of annexation. The Act required that the lands be held by the state as a public trust, with income and proceeds being used for five public purposes, one of which was to address the conditions of Native Hawaiians. It is clear to me after reviewing these documents that while this issue has not been unanimous, there has always been overwhelming support for efforts to recognize Native Hawaiians as Hawaii's indigenous peoples, and to accord them such treatment.

From 1959 to 1978, little was done at the state level to benefit Native Hawaiians. In 1978, the state held a constitutional convention. One of the results of the constitutional convention was the establishment of the Office of Hawaiian Affairs, a quasi-State agency which was set up to address Native Hawaiian issues. The agency would be directed by a Board of Trustees, all Native Hawaiians, who were to be elected by Native Hawaiians. The State of Hawaii ratified the constitutional convention's proposal and from 1978 to 1999, the Board of Trustees for the Office of Hawaiian Affairs was elected by Native Hawaiians.

In 1999, the United States Supreme Court ruled in the case of *Rice v. Cayetano* that because OHA receives state funds, the vote for the Board of Trustees could not be restricted to Native Hawaiians. The vote for the Board of Trustees has since been open to the entire State of Hawaii and all state citizens are eligible to run for a position on the Board of Trustees. The people of Hawaii have elected Native Hawaiians to each of the nine positions.

Some of my opponents have claimed that this bill would circumvent the *Rice* case. There is no intent to circumvent the *Rice* case. Nothing in this bill would address the election of the Board of Trustees for the Office of Hawaiian Affairs.

In 1993, P.L. 103-150, the Apology Resolution, was signed into law. The bill apologized to Native Hawaiians for participation of U.S. agents in the overthrow of the Kingdom of Hawaii and committed the United States to a process of reconciliation with Native Hawaiians. In 1999, officials from the Departments of the Interior and Justice traveled to Hawaii for public consultations with Native Hawaiians. In 2000, the Departments issued a report, *From Mauka to Makai: The River of Justice Must Flow Freely*. One of the primary recommendations in the report is that legislation should be enacted which would provide Native Hawaiians with greater self-determination within the federal framework over their assets and resources. S. 147 would make this recommendation a reality.

The reconciliation process I referred to is still an ongoing process. I see this measure as an important step in the

reconciliation process—a necessary step that provides the structure for us to continue to progress in reconciliation between Native Hawaiians and United States.

I also want to share a unique fact about Hawaii's history. We have had six forms of government. Pre-1810 the islands were ruled by chiefdoms. The Kingdom of Hawaii was established, following the unification of the Islands by King Kamehameha I in 1810, and continued until the overthrow of the Hawaiian Monarchy in 1893. From 1893-1898, the Republic of Hawaii ruled. The territorial government followed from 1898-1941. During World War II, martial law was declared, resulting in the civilian government being dissolved and a Military Government ruling the territory of Hawaii from 1941-1944. We returned to our territorial government in 1944 and in 1959 we were granted admission into the Union.

I can assure my colleagues that the political status of Native Hawaiians has been a hot topic in Hawaii since 1959. In 1999, Hawaii's Congressional delegation formed the Task Force on Native Hawaiian issues. I was selected to head our delegation's efforts. I immediately established five working groups to assist us in addressing the clarification of the political and legal relationship between Native Hawaiians and the United States. The groups included the Native Hawaiian community, state officials, including agency heads and state legislators, Federal officials, Native American and constitutional scholars, and Congressional members and caucuses. We held several public meetings in Hawaii with the members of the Native Hawaiian community working group and the state working group. Individuals who were not members of the working group, and many who opposed our efforts, were allowed to attend and participate in the meetings. Overall, we had more than one hundred individuals provide initial input to the drafting of the legislation.

The bill was first considered by the 106th Congress. Five days of hearings were held in Hawaii in August 2000. While the bill passed the House, the Senate failed to take action. The bill was subsequently considered by the 107th and 108th Congresses. For each Congress, the bill has been favorably reported by the Senate Committee on Indian Affairs and the House Committee on Resources. Unfortunately, until now, we have not had an opportunity for the Senate to consider this legislation.

S. 147 the Native Hawaiian Government Reorganization Act of 2005, does three things: (1) it establishes a process for Native Hawaiians to reorganize their governing entity for the purposes of a federally recognized government-to-government relationship with the United States; (2) creates an office in the Department of the Interior to focus on Native Hawaiian issues and (3) establishes an interagency coordinating group comprised of federal officials

from agencies who implement federal programs impacting Native Hawaiians.

The process for the reorganization of the Native Hawaiian governing entity has received the most publicity and most attention. I am very proud of the careful balance between structure and flexibility provided in the reorganization process. Native Hawaiians will truly be able to make critical decisions in shaping their reorganized governing entity.

Some have asked, why do you need to reorganize the entity? My answer is simple—our history requires it. Unlike some of our native brethren, when the Kingdom of Hawaii was overthrown, our native peoples were not allowed to retain their governing entity. Article 101 of the Constitution of the Republic of Hawaii required prospective voters to swear an oath in support of the Republic and declaring that they would not, either directly or indirectly, encourage or assist in the restoration or establishment of a monarchical form of government in the Hawaiian Islands. The overwhelming majority of the Native Hawaiian population, loyal to their Queen, refused to swear to such an oath and were thus effectively disenfranchised.

Similarly at the time of annexation, an overwhelming number of Hawaiians signed a document in protest of annexation, referred to as the *Ku'e Petition*. It is this document that I have here. A substantial number of Native Hawaiians signed this document in further protest of what had happened to their government.

My bill provides for the reorganization of the governing entity, because upon the overthrow of the Kingdom of Hawaii, Native Hawaiians lost their governing entity. Despite the lack of a government, Native Hawaiians have maintained distinct communities and perpetuated their culture, traditions, customs, and language. While the United States has always treated us in a manner similar to that of American Indians and Alaska Natives, the Federal policy of self-governance and self-determination has not been extended to us because we lack a governmental structure.

Opponents of my bill say that I am creating a government. I believe it is clear that, rather than creating a government, I seek to provide an opportunity for the restoration of a government which requires the reorganization of an entity.

Similarly, because of our history, the governmental authority in Hawaii is held by the State, local, and Federal governments. For that reason, the bill requires that following the reorganization of the entity and the recognition of the entity by the United States, the Native Hawaiian governing entity will negotiate with the State and Federal governments regarding matters such as the transfer of lands, assets, and natural resources, and the exercise of governmental authority. Everything remains status quo until addressed and resolved in the negotiations process.

It is anticipated that Hawaii's State Constitution is likely to require an amendment which will require the vote of all residents in Hawaii. It is also anticipated that implementing legislation at the state and federal levels will be required to implement negotiated matters. This is what I referred to as the structured process that would allow the people of Hawaii to address the longstanding issues resulting from the overthrow of the Kingdom of Hawaii. This process is inclusive and allows for all interested parties to participate.

Opponents of my bill have sought to either mischaracterize potential outcomes or to predetermine the process. I have opposed both efforts. As you can see, enactment of this bill alone does not, for example, allow for the native government to exert criminal and civil jurisdiction over people in Hawaii. Rather, for the Native Hawaiian governing entity to exert any jurisdiction, the state and federal government would need to agree to allow the Native Hawaiian governing entity to exercise such authority. Implementing legislation at the state level would also need to be enacted to make this a reality.

Others have sought to predetermine this matter. Given the inclusive process that the bill provides, and the fact that the people of Hawaii need to address these matters, I do not believe it is appropriate for Congress to predetermine the outcome of this process. Given everything that I have shared with you, I would hope that you agree with me.

Finally, before I conclude, I'd like to speak briefly about what this bill does not do. The enactment of S. 147 will not lead to gaming in Hawaii. There is only one federal statute that authorizes gaming in Indian Country, the Indian Gaming Regulatory Act, and it does not authorize Native Hawaiians to game. In addition, the State of Hawaii is one of two states in the union that criminally prohibits all forms of gaming. Therefore, gaming by the entity would only be allowed with changes to both federal and state law.

The enactment of this bill also does not impact funding for Indian programs and services. As I described earlier, Congress has established programs and services for Native Hawaiians. These programs are appropriated from accounts completely separate from those that fund Indian programs and services. The bill clearly states that it does not create eligibility for Native Hawaiians to participate in Indian programs and services.

I will conclude where I began. Colleagues, for the people of Hawaii, native issues are not partisan. Many of my constituents merely ask that we do right by Hawaii's indigenous peoples and enact this measure that provides Native Hawaiians with the opportunity to reorganize their governing entity for the purposes of a Federally recognized government-to-government relation-

ship with the United States. Many of my constituents ask that you enact this bill because it provides a structured process for us to finally address longstanding issues resulting from a painful history so that we can all move forward as a State.

Mr. AKAKA. After 6 long years, we will be voting tomorrow on a motion to invoke cloture to proceed to S. 147. Whether you are for or against it, I ask all Members to let this bill come to the Senate so we can discuss its merits. It is only through this dialog, through the airing of facts and the dismissal of misunderstandings and myths, that we can provide a fair and honest consideration of what this measure really means to Native Hawaiians as well as to this great Nation of ours. That is what this honorable body has always done. This is why we gather in this Senate to discuss matters of law and governing and of fairness and of human and civil rights.

At the heart of it, this bill is about fairness and about creating a process to achieve it. Native Hawaiians have been recognized as indigenous peoples by Congress. After more than 160 statutes, for more than 100 years, Congress has treated Native Hawaiians in a manner similar to American Indians and Native Alaskans. But when it comes to having a process and Federal policy on self-governance and self-determination, Native Hawaiians have not been treated equally.

What this bill does is authorize a process to examine whether a policy of self-governance and self-determination can be extended to Native Hawaiians, thereby creating parity in the way the United States treats its indigenous peoples.

We have bipartisan support for this bill. I extend my deep appreciation to its cosponsors, Senators CANTWELL, COLEMAN, DODD, DORGAN, GRAHAM, INOUE, MURKOWSKI, SMITH, and STEVENS for their unwavering support. Again, I especially want to honor Hawaii's first Republican Governor, Governor Lingle, in 40 years. Despite our different political affiliations, Governor Lingle, Hawaii's Attorney General Mark Bennett, Hawaiian Homes Commission Chairman Micah Kane, and the rest of the Lingle administration have worked tirelessly with us to support this bill.

While that may surprise some in Washington, DC, you have to understand back home, support for Hawaii's indigenous peoples is a nonpartisan issue. We see our diversity as our strength and not as a threat. It is a point of pride and a thing that unites, not divides us. We embrace our diversity and celebrate it as part of our social fabric. It is who we are as a people and as a State. That is why we are not threatened by efforts to preserve and strengthen the culture and traditions of Hawaii's indigenous peoples.

Let me also say that the people of Hawaii, including Native Hawaiians, are proud to be Americans and to share

that system of government that always has and allows us to be many and also to be one. They include the many Native Hawaiians who are members of the Hawaii National Guard and who are called away from their families to serve in operation Iraqi Freedom. Moreover, it is a well-documented fact that native peoples have the highest per capita rate of those serving in our military.

That is why it is absolutely offensive to read mischaracterizations of this bill as an effort to secede from the United States.

What this bill really does is provide a structured process to finally address long-standing issues resulting from a dark period in Hawaii history, the overthrow of the kingdom of Hawaii.

A few weeks ago I took time to talk about Hawaii's history. I have given a review of that history and its ramifications on this measure. I believe it is absolutely essential for anyone voting on this bill to understand historical context. I strongly encourage all Members to again review this history because there remain issues stemming from the overthrow that have not been addressed because of apprehension based on emotions rather than facts.

Instead, there has been fear of where these discussions might lead, causing people to avoid the issue altogether. Such behavior has led to frustration and misunderstanding between some Native and non-Native Hawaiians. But let me bring this complex history and how it has affected us down to a more human scale and to a more personal level.

As young child, I was discouraged from speaking Hawaiian because I was told it would not allow me to succeed in the Western World. My parents, God bless them, lived through the overthrow and endured the aftermath, when all things Hawaiian, including language, hula, custom, and tradition, were viewed negatively. I was discouraged from speaking the language and practicing Hawaiian customs and traditions. I was the youngest of eight children. I remember as a young child sneaking to listen to my parents so that I could maintain my ability to understand the Hawaiian language. My experience mirrors that of many other Hawaiians of my generation.

While we dealt with the stigma of being Hawaiian, my children have had the advantage of growing up during a period of revival for Hawaiian language, custom, and tradition. My grandchildren, who can speak Hawaiian and know so much more about our history, also benefited from this revival. It is this generation, knowing the history, that grows impatient with the lack of progress and efforts to resolve longstanding issues. It is this generation, steeped in American values of justice, equality, and self-determination, who cannot understand why we have not yet resolved these matters. It is for this and future generations that we have written this bill to address these important issues.



There are those who have tried to say that my bill will divide the people of Hawaii. I believe my bill goes a long way to unite the people of Hawaii by providing a structured process to deal with unresolved issues and unhealed wounds that have plagued us since 1893.

Essentially, the Native Hawaiian Government Reorganization Act does three things: One, it establishes a process for Native Hawaiians to form a government-to-government relationship with the United States. Two, it creates an office in the Department of the Interior to focus on Native Hawaiian issues. And three, it establishes a coordinating group comprised of officials from Federal agencies who implement programs impacting Native Hawaiians. But it is the process for reorganizing a governing entity that has received the most attention. That is why I am very proud of the careful balance between structure and flexibility provided in this process. Native Hawaiians will truly be able to make critical decisions in shaping their government.

Some have asked: Why do you need to reorganize a governing entity? My answer is simple: Our country's history requires it. Our sense of justice and fairness requires it. When the kingdom of Hawaii was overthrown, our native peoples were not allowed to retain their governing entity. Article 101 of the Constitution of the Republic of Hawaii required prospective voters to swear an oath in support of the Republic and declare that they would not, either directly or indirectly, encourage or assist in the restoration or establishment of a monarchy in the Hawaiian Islands. The overwhelming majority of the Native Hawaiian population, loyal to the Queen at that time, refused to swear to such an oath and was thus effectively disenfranchised.

Similarly, at the time of annexation, an overwhelming number of Hawaiians signed a document of protest referred to as the Ku'e petition—it is this document that I have—as a substantial number of Native Hawaiians signed this document in further protest of what had happened to their government. Despite the lack of a government, Native Hawaiians have maintained distinct communities and perpetuated their culture, tradition, customs, and language.

Opponents of the bill say I am creating a new government. I believe I am providing an opportunity for the restoration and reorganization of a government that once existed and was unjustly removed.

Before I conclude, I wish to speak briefly about what this bill does not do. This bill will not result in the taking of private lands in Hawaii. No one will lose their home or business because of my bill. The enactment of S. 147 will not lead to gaming in Hawaii. There is only one Federal statute that authorizes gaming in Indian Country—the Indian Gaming Regulatory Act. And it does not authorize Native Hawaiians to game. In addition, the State of Hawaii

is one of only two States that criminally prohibits all forms of gaming. Therefore, gaming would only be allowed with changes to both Federal and State law.

Enactment of this bill does not impact funding for Indian programs and services. Congress has established separate programs and services for Native Hawaiians. These programs are appropriated from accounts separate from those that fund Indian programs. Moreover, the bill clearly states that it does not allow Native Hawaiians to participate in Indian programs and services.

Finally, gaining an understanding of a history of a culture and people we are not familiar with is not an easy task. I commend Members of the body for doing their homework. It can be so easy to simply dismiss this bill as racially based, as a threat to the sovereignty of the United States or as a ploy for one group to gain an undeserved advantage. The harder task is a studied one. But it is the right one.

If I might take you back in history one more time for just a moment: In the 1840s, recognizing the strategic importance of the Hawaiian Islands, the great maritime powers of the day—principally England, France, and the United States—jockeyed for positions of advantage, even as they acknowledged the islands as an independent nation. It was a time of much international intrigue. Urged on by local British residents, the commander of the British squadron in the Pacific sent an armed frigate to Honolulu to “protect British interests.”

King Kamehameha III was forced to yield to British guns, and for 5 months the islands were placed under British rule. International pressure, as well as personal intervention from Queen Victoria herself, eventually forced the British Government to declare the action as unauthorized. On July 31, 1843, the Hawaiian flag was raised once again.

During a service of thanksgiving held at historic Kawaiahaeo Church in Honolulu, Kamehameha III recited a phrase that has since become Hawaii's State motto: *Ua mau . . . ke ea . . . o ka aina . . . I ka pono*—the life of the land . . . is perpetuated . . . in righteousness. That has always been the case, not only in Hawaii but throughout our Nation's history.

The people of Hawaii are asking that we do right by Hawaii's indigenous peoples and enact this measure that provides Native Hawaiians with an opportunity for self-determination and self-governance. They ask that we enact this bill because it provides a structured process to finally address longstanding issues resulting from a painful moment in our history, so that we can move forward as a State. They ask that we enact this bill because it is just, because it is fair, because it is the right thing to do.

We are a nation of immigrants, and we celebrate our diversity every day at dining room tables around the country.

In this grand experiment of democracy, we have found we can be many and yet be indivisible. The United States of America has pledged itself to liberty and justice for all people. This bill does that for the Native Hawaiians.

I yield the floor.

The PRESIDING OFFICER. There are 2 minutes 7 seconds remaining on the minority's time.

Mr. AKAKA. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Mr. President, I said earlier that I think we will hear on the Senate floor many times during this debate about the enormous respect we have for our two colleagues from Hawaii and how much we would prefer not to disagree with them. I think it is fair to say that this bill would not have a chance of being seriously considered on the floor if it weren't for our respect for them.

Despite that respect, I have to say, after hearing the Senator from Hawaii, this bill is worse than I thought. Many of my colleagues in the Republican caucus have come to me and said this is not about sovereignty or about race. The Senator from Hawaii made very clear that this is about sovereignty. He said in his own words that this is a bill to create—he says “restore”—let's just say establish—a new government within the United States of America, and admission to that government is based upon race. So you cannot pass this bill off and say it is not about sovereignty. It is about sovereignty. There is no difference of opinion about that between the Senator from Hawaii and me.

He said specifically that the first objective of this legislation is to establish a process to establish a government-to-government relationship with the United States. That is a sovereign government composed of American citizens who would now become part of a new government because they might be a small percentage Native Hawaiian, and certain benefits would come to them. So it is about sovereignty and race.

Why is that a problem? Let me add that the Senator from Hawaii referred to this new sovereignty as their government. But we have one government. That's why there are Americans, just like my family, which is Scotch-Irish American, like those of African descent who are Americans, and like those of every descent who are Americans, who share in our government.

That is what is special about this country. Of course we admire our diversity. What a great strength diversity is. No country is more diverse. We are a land of immigrants. Out of that

great mix comes our strength. But there is one greater strength, and that is taking all of that diversity and making one country of it.

How do we do that? We do it in an extraordinary way that goes all the way back to Valley Forge, when George Washington administered an oath to his officers that said:

I renounce, refuse, and abjure any allegiance or obedience to the king, and I swear that I will, to the utmost of my power, support, maintain, and defend the United States of America.

Now, new citizens of this country have "become Americans" ever since then by taking that same oath. In the immigration bill we passed a couple weeks ago, we codified that oath. So every year, a half million people come here from countries such as Bangladesh, China, France, and every part of the world. They don't come to salute India or speak the language of China or to adopt the principles of France. They respect where they came from, and they are proud of it, but they become Americans. We don't do it based on race. We don't do it based on ancestry. We do it based upon a few principles in our founding documents. One of those is that we don't discriminate based upon race or ancestry, and another great principle is *E pluribus unum*, which this bill would turn upside down.

So this is not a bill which should be passed just because we greatly respect our colleagues, which we do. But Hawaiians are Americans. Tennesseans are Americans. Oklahomans are Americans. Hawaiians have been American citizens since 1900. In 1959, they voted 94 percent to become a State, to be Americans. When you become American, you renounce your allegiance to some other government and pledge allegiance to the United States of America. If we don't do that, we take step toward being a sort of United Nations instead of a United States.

I hope my friends, who have looked at this bill and said: We love our colleagues and this doesn't seem like a very important bill, so let's do it for them, will look at the assault upon a tremendously important principle embedded in this bill. It is about sovereignty. It is about land and money. It is about race. It is not the same as what we did in Alaska. Native Hawaiians are not just another Indian tribe. We don't create Indian tribes; we recognize Indian tribes. This is not an Indian tribe under the language of our laws.

I am afraid that what has happened here is that in 1998, the Supreme Court of the United States made a decision and they said Native Hawaiians could not have an organization if the voting membership was based upon being Native Hawaiian because the 15th amendment to the U.S. Constitution says you cannot vote based on race. So this is an attempt—it is a breathtaking attempt—to establish a new nation within the United States of America.

I suppose there might be a lot of aggrieved people in the United States

who might like to establish a nation. This Nation isn't without pain. We have stories from our beginning, whether it is Native Americans, whether it is African Americans, whether it is Mormons who may have felt mistreated, murdered in State after State, whether it is one religion today—maybe it is Hasidic Jews or an Amish group. There are a great many people who, in our history, may not have been properly treated. But an understanding of American history is that it is a great saga of setting high goals for ourselves and then always moving toward those goals. We never reach them. We say "all men are created equal," but we have never been. The men who wrote that owned slaves. But what have we done? We have systematically, over our history, chipped away, moving ahead, falling back, fighting a great Civil War, saving the Nation, waiting another hundred years before African Americans could sit at a lunch counter in Nashville, always moving toward that goal. Most of the debates in this Senate are about establishing high goals—pay any price for freedom, equal opportunity, *E pluribus unum*. Those are our goals, and we never reach them, but we always try for them.

What is our goal here? Our goal is that we should hope that every single citizen in this wonderful State of Hawaii be equal—if there ever were a multiethnic, diverse State, it is Hawaii. It is a wonderful example of our diversity. According to the 2000 census, 40 percent of Hawaiians are of Asian descent, 24 percent are White, 9 percent say they are Native Hawaiian or Pacific Islanders, 7 percent claim to be Hispanic, 2 percent Black. Twenty-one percent report two or more racial identities. There is much diversity of which Hawaiians are proud and of which we are proud. What unites them? What unites us all is that we have become Americans. We are proud of where we came from, proud of our ancestry, but prouder to be American.

There may be some issues that need to be addressed. We can find ways to address them. There may be some wrongs that need to be righted. Certainly, Native Hawaiians would want to renew their culture and their customs and their language. All of us do that. I go to my family reunion of Scotch-Irish Presbyterians every summer. I have been to the Italian-American dinner here in Washington, DC. I never went to an event where there was more emotion or Italianness. But the greatest emotion came when the Italian Americans stood up and pledged allegiance to the United States. They didn't have a problem saying: We are proud to be Italian, but we are prouder to be American. So how could we be seriously discussing on the floor of the Senate establishing for 400,000 Americans who live there, I think from almost every State of this country, a new government based on race to which they would be privileged and the rest of us could not be a part of? That

is not American. That might be the United Nations, but it is not the United States. It is not consistent in the most basic ways with the history of this country.

So I hope that my colleagues, who have considered this legislation as maybe not too important, as something that should be done primarily out of respect for our two distinguished friends from Hawaii, will look at this carefully and not be lulled in by comments that this isn't about sovereignty. I think Senator AKAKA was very candid and very direct when he said the first objective of this bill was to establish a process to create an entity which would have a government-to-government relationship with the United States.

Mr. President, this is a dangerous precedent. It is the reverse of what it means to be an American. We have other issues that should come to the floor before this. I hope colleagues will think carefully before moving ahead on this piece of legislation.

I see the Senator from Alabama has arrived.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Tennessee, Mr. ALEXANDER, for his thoughtful comments on this subject and other related subjects. He taught me a phrase that he uses, which is that we need to make sure everyone who grows up in this country knows what it means to be an American. To be an American is not a racial thing. An American is a person who adopts the American ideal of equal justice under law, without regard to race, religion, national origin, or any other matter of that kind.

Our Founders of this Nation were very wise in a number of important ways. One of the most important ways was they had a clear vision of the Nation they birthed and they saw it far into the future. They always considered the importance of principle because principle was important to the growth and progress of the Nation they loved for the long term. They never failed to think of the impact their actions may have on the future, even the distant future of the country they birthed, the country they loved.

I do not believe we are as thoughtful today in that matter as we used to be. Too often, we make decisions based on perceived immediate needs or on political forces at the time or friendship or some deal we thought we were forced to make or needed to make at a given time; and too seldom in this busy, hectic place do we take the time to consider the long-term implications of our actions on the great Republic which we have been given.

We simply must think in the long term in a principled way as we consider the Native Hawaiian legislation. It is not too much to say the legislation could create a crack in the American ideal of equal rights and colorblind justice. This would be a huge step. It is a

step we must not take. This Nation in its maturity and wisdom must not succumb to any balkanization of America. A great nation must set crystal clear policies on these matters, crystal clear policies on this question. The Republic must firmly reject, must nip in the bud now and whenever it may appear in the future, any notion of creating sovereign governments within our borders unless they meet every criteria of the Indian Tribe Program.

National Review said in a recent article:

You might have thought after watching the immigration debate that the Senate could not be more cavalier about the unity and sovereignty of the Nation. Think again. The Senate is about to vote to pave the way with a bill to create a race-based government which is on the verge of passing.

This bill has been around a number of years, but we have never had a full debate about it. Unfortunately, many in Congress don't seem to fully understand yet the enormous implication of establishing what can really fairly be said to be a race-based government. And further, the American people have not been informed of the breadth and significance of the legislation. That is why it is good we are having the debate at this time.

We must talk about it. We ought to let the American people know that this bill would create a nation out of United States citizens. The territory known as Hawaii is the epitome really of our country's great melting-pot concept and has always been made up of a diverse group of citizens with different racial backgrounds. They are famous for that.

If we pass this bill, we will divide them. The bill would result in the State of Hawaii giving up substantial lands to the new nation which would begin a downward spiral from an America that is based on a shared ideal to one where race, ancestry, our nationality constitute a legally approved basis for segregation and really discrimination.

What is discrimination? Discrimination is saying you have an advantage or a disadvantage based on race.

This legislation seeks to create an extra constitutional race-based government of Native Hawaiians by arbitrarily labeling that race of people as an Indian tribe.

Essentially, it seeks to create a sovereign entity out of thin air, something that the Supreme Court said as far back as 1913 cannot be done. Indian tribes existed before our Constitution, before our Nation, in many cases, with continuity of leadership, centralized locality, and cultural cohesiveness. Therefore, the United States recognizes qualified Indian tribes as sovereign entities. Indeed, we signed treaties with many of them and made promises in those treaties to provide them certain degrees of sovereignty.

Equating Native Hawaiians with a legitimate Indian tribe is not possible because Native Hawaiians share none

of the unique characteristics possessed by recognized tribes. Native Hawaiians never lived as a separate, distinct, racially exclusive community, much less exercise sovereignty over Hawaiian lands. They never established organizational or political power. They never lived under a racially exclusive government. All Hawaiians, regardless of race, were subjects to the same monarch in 1893. In other words, Native Hawaiians have never exercised inherent sovereignty as a native indigenous people, as the bill asserts and must assert if it were to have any chance of withstanding constitutional muster.

Nonetheless, the bill would carve out a special exemption in the Constitution for these people based on race solely. A special exception being sought for Native Hawaiians is extraordinary.

Under the bill, there is no guarantee that members of a new government would be subject to constitutional rights and protections, such as the first, fourth, and 15th amendments. The U.S. Constitution guarantees to every citizen a republican form of government, and this has been defined to mean all the protections of our Constitution.

At a minimum, the Founding Fathers intended that a republican form of government ensure popular rule and no monarchy, but under this bill, nothing guarantees these basic principles will be honored. This new government, this new sovereignty will be free to reinstate a monarchy or establish any other method of government they may choose.

Essentially, persons who are now citizens of the United States and who are now guaranteed these protections, a republican form of government, would now be turned over to a government that is not bound to honor that.

One should not be deprived of the right to vote or be denied free speech or have property taken without due process. These are deeply rooted principles in the United States, but they will not be guaranteed as part of a Native Hawaiian government. Under the bill, Congress would strip United States citizens of these and other great protections they now enjoy.

Perhaps this is why there is a lot of unease in Hawaii about this legislation. Indeed, so many residents oppose it. In May of 2006, in a telephone pole, 58 percent of Hawaiian residents said they opposed the bill. Of the respondents identifying themselves as Native Hawaiian, only 56 percent said they supported it. Of the Native Hawaiians, only a little more than half said they supported it. Given this split among even Hawaiians, is it not surprising that 50 percent of all respondents said they want a vote on the bill before it becomes law, which is not provided for in this legislation?

I will share a few thoughts by the U.S. Commission on Civil Rights. They oppose the bill. The U.S. Commission on Civil Rights voted recently to oppose the legislation because of its con-

cern with the bill's discriminatory impact.

The Commission is an independent Government agency tasked with the duty to examine and resolve issues related to race, color, religion, sex, age, disability, or national origin. It is composed of eight members, though currently only seven. Four are appointed by the President and four are appointed by Congress. At no time may more than four members of the same party sit on the Commission.

Pursuant to its authority to submit reports, findings, and recommendations to the Congress, the Commission released their report last month on this bill recommending "against the passage of the Native Hawaiians Government Reorganization Act or any other legislation that would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded various degrees of privilege."

That is strong language. I submit that is what the bill does. I submit that is why we should not pass it.

Let me repeat that. They oppose this act and any other legislation that would "discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded varying degrees of privilege." And, I would add, based on their national ancestry or race.

This report was issued after—the Commission held a hearing on January 20, 2006, where experts—both opposing and supporting the bill—testified about the legislation. The Commission held the briefing record open until March 21, 2006, to receive additional comments from the public. Sixteen public comments were received during the period, and most of the commentators wrote to express their opposition to the bill.

Interestingly, the report notes that "While most commenters oppose the legislation, the governmental and institutional commenters primarily support it. The report also states that "Many [opponents] argued, in very personal terms, that the proposed legislation would be inconsistent with basic American principles of equality, traditional Hawaiian values, and their own personal ethics.

Commission Chairman Gerald A. Reynold, himself an African American, agreed with opponents, stating that:

I am concerned that the Akaka Bill would authorize a government entity to treat people differently based on their race and ethnicity . . . This runs counter to the basic American value that the government should not prefer one race over another."

In a case called *Rice v. Cayetano*, the Supreme Court found a similar attempt to create a race-based classification unconstitutional. In that case, the Court struck down a race-determinative voting restriction in Hawaii as a violation of the fifteenth amendment, which bars racial restrictions on voting. By a vote of 7 to 2, the Court held unconstitutional a system under which non-Native Hawaiians were barred from voting for or serving as

trustees of the State's Office of Hawaiian Affairs. Finding that the fifteenth amendment protects the rights of Whites, Asians, Hispanics, and persons of other races in Hawaii just as it protects all other individuals against racial discrimination, the Court stated:

One of the reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities. An inquiry into ancestral lines is not consistent with respect based on the unique personality each of us possesses, a respect the Constitution itself secures in its concern for persons and citizens.

Proponents of this bill seek to circumvent this Supreme Court decision by completely separating the Native Hawaiian community into its own sovereignty, placing it and its members outside of Constitutional protections. This is the only way it can be done.

Instead of carving Native Hawaiians out from constitutional protections, and separating them from America, we must uphold constitutional principles, as well as American—especially Hawaiian—ideals, by not discriminating against anyone on account of race.

Our Constitution seeks to eliminate racial separatism, not promote it. How can we promote equality while separating our people into distinct, legally-recognized racial sovereignties with more or less rights and still be "one nation"?

Because they existed prior to the establishment of our Constitution and Federal Government, Native American Indian tribes have long been recognized as sovereign entities—most signed treaties to that effect.

Tribes have never been, nor can they now be, created out of thin air by Congressional legislation. Instead, "tribes" seeking recognition after statehood must adhere to a process established by the Federal Government. To be formally recognized, a tribe must demonstrate that it has operated as a sovereign for the past century, was a separate and distinct community, and had a preexisting political organization. The Native Hawaiian people cannot meet these criteria and have conceded such on at least one occasion. In the case that I previously mentioned, *Rice v. Cayetano*, the State of Hawaii argued in its brief that:

[F]or the Indians the formerly independent sovereign entity that governed them was the tribe, but for native Hawaiians, their formerly independent sovereign nation was the Kingdom of Hawaii, not any particular 'tribe' or equivalent political entity. . . . The tribal concept simply has no place in the context of Hawaiian history.

Let me reiterate and further explain why Native Hawaiians cannot meet the Bureau of Indian Affairs' standards for tribal recognition. Those standards boil down to two basic requirements: one, the group must be a separate and distinct community, and two, a preexisting political entity must be present.

The BIA requires a tribe to demonstrate that it represents a separate

and distinct community. Yet, Native Hawaiians live in almost every state in the Nation and have fully integrated into American society. Native Hawaiians do not live as a cohesive, autonomous group of people and have not done so at any point in history. Rather, they are fully immersed in all aspects of American life. For example, almost half of all marriages in Hawaii are interracial. Hawaiians serve in the U.S. military, dedicating their lives to the service of America. They are a part of American culture and certainly do not live separate and distinct from the rest of us.

The BIA requires a tribe to demonstrate that it had a preexisting political organization. Yet, no political entity—whether active or dormant—exists in Hawaii that claims to exercise any kind of organizational or political power. Knowing this, the bill's advocates rely on findings in the bill declaring that "Native Hawaiians" exercised "sovereignty" over Hawaii prior to the fall of the monarchy in 1893, and that it is therefore appropriate for Native Hawaiians to exercise their "inherent sovereignty" again. This argument is factually flawed because there was no race-based Tribal Hawaiian government in 1893, so there is no "Native Hawaiian" government to be restored. Since the early 19th century, the Hawaiian "people" included many native-born and naturalized subjects who were not "Native Hawaiians" in the sense of this bill—those people included Americans, Chinese, Japanese, Koreans, Samoans, Portuguese, Scandinavians, Scots, Germans, Russians, Puerto Ricans, and Greeks. All were subjects of the monarch, not just those with aboriginal blood. Further, Hawaiian government, including the monarchy that existed until 1893, always employed non-Natives, even at the highest levels of government. Therefore, it would be impossible to "restore" the "Native Hawaiian" government of 1893—as the bill purports to do—because no such racially-exclusive government—or nation—ever existed.

If there ever was a time for Native Hawaiians to establish themselves as an Indian tribe, it has long passed. When Hawaii was considering statehood, there was absolutely no push to establish any tribal sovereignty. In fact, 94 percent of voters supported statehood in 1959, and at the moment it was attained, all people living in the territory became full-fledged citizens of the United States of America. They deserve every protection that our Constitution ensures.

There are many practical consequences of this legislation that must be considered. If this bill passes, it would allow for the creation of Hawaiian "tribes" in every State. This would have extreme social consequences—sporadic pockets of people in almost every State would be governed differently than their neighbors and would be immune from State and Federal laws and taxes. The result would

be a chaotic intermixing of different rules and regulations throughout the entire country. Native Hawaiian business owners, exempt from state and local taxes, could displace non-Native Hawaiian business-owning neighbors, giving them an enormous competitive advantage. Further, the bill could conceivably lead to complete secession from the United States. In fact, a group of supporters, including the State of Hawaii's own Office of Hawaiian Affairs, views this bill as a potential step towards "total independence." On a website operated by that agency, the following passage appears under a section called, "How Will Federal Recognition Affect Me?"

[The bill] creates the process for the establishment of the Native Hawaiian governing entity and a process for federal recognition. The Native Hawaiian people may exercise their right to self-determination by selecting another form of government including free association or total independence.

How breathtaking is that? We simply cannot return to a government where different races of Americans are governed by different laws.

The bill itself does not require any percentage of Native Hawaiian blood for inclusion in the new race-based government, which could therefore include someone with only "one drop" of native blood. Hawaiians with significant traceable blood heritage oppose the bill, in part, for this very reason. Those Hawaiians with at least 50 percent blood quantum were given Federal assistance and lands by the Hawaiian Homes Commission Act of 1921, a requirement which still exists today, with the only exception being for children of homesteaders with 25 percent blood quantum.

Doesn't this entire process of dividing money, property, and benefits based on a person's race—the percentage of "blood" they have—sound an alarm? Yet this bill positively seeks to divide people based upon race and blood—all in the name of apology and restitution.

What about the French who held the Louisiana territory? Should they be given special benefits because we forced them into a sale?

We cannot go down this path. Not only would all Americans suffer if we sever Native Hawaiians from our American community, but those individuals who would become citizens of a Native Hawaiian sovereignty would lose rights that we as Americans cherish.

One of the many lessons learned from the Civil War is the importance of national unity. Abraham Lincoln referred to the principle of secession as "one of disintegration, and [one] upon which no government can possibly endure."

We fought a war over the issue, and the question was settled for all time. We are one Nation and will not be separated—whether by secession of a State or a racial group. Certainly we cannot promote this state-sanctioned racial separatism. If passed, this bill would create a slippery slope that could lead

to a host of pernicious possibilities for our future as a unified Nation. In an editorial written last fall, Georgie Anne Geyer quoted the eminent historian Henry Steele Commager praising the Founding Fathers for thinking hard about the future—even the distant future. They “couldn’t give a speech or write a letter without talking about posterity.”

We cannot set a precedent that would allow every racial group in America to become its own independent sovereignty. Native Hawaiians, just like any other racial group in this country, are free to practice and promote their culture. They are free to pass down their traditions from generation to generation. America celebrates her diversity, but she cannot allow her diversity to divide her citizens.

E Pluribus Unum—out of many, one—is fundamental to our national character. This bill seeks to turn that fundamental principle upside down and would make us many out of one.

Mr. President, I see my colleague from Idaho is in the Chamber. I will conclude with these thoughts. We are as Members of this Senate particularly charged with thinking about the long-term future of our Republic. That is how we are today in a relatively healthy condition because our forefathers thought about those matters. They thought about the principles on which this Nation was founded.

The concept is that once an American, based on adoption of the American ideal, you become an American regardless of your race, your ancestry, your religion, or your national origin. That is who we are as a people. And I submit, it is a matter of the greatest danger that we move away from the classical acceptance of Indian tribes to now start creating sovereign entities.

Sovereign means independent, to a certain degree uncontrollable by the U.S. Government. Sovereign entities within our Nation based on race, with people spread all over the Nation actually, being a member of a new government, a new government that according to the supporters and even the Hawaiian Web site indicates could lead to separation and independence, that is not a step we ought to take. We need to nip this in the bud. We need to end this now. We need not go down this road.

I so respect my colleagues from Hawaii. They are committed to their people. They understand the concerns of their citizens. They want to help them. They have a particular desire to be compassionate to the Hawaiian people, the Native Hawaiians who have grown up on the islands for many years. But I say with all due respect, in terms of the overall National Government of which we are a part and the principles to which we must adhere, that we should not go down the road creating an independent sovereign entity based on race, as this bill would do. Therefore, with reluctance and great respect for my colleagues who support this legislation, I urge our Members to vote no.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I quote:

Hawaii illustrates the Nation’s revolutionary message of equality of opportunity for all, regardless of background, color, or religion. This is the promise of Hawaii, a promise for the entire Nation and, indeed, the world, that peoples of different races and creeds can live together, enriching each other, in harmony and democracy.

That is Lawrence H. Fuchs, Hawaii Pono, 1961, written at the time of statehood.

Today, with that quote in mind, I rise in opposition to the Native Hawaiian Government Reorganization Act of 2006. As my colleague just mentioned, I respect both of my Hawaiian colleagues and the work they have done to promote the culture and heritage of their native people. At the same time, I must disagree with the underlying notion of this bill.

The major argument in favor of this bill is the notion that Congress should create a Native Hawaiian tribe in order to treat them the same as American Indians and Native Alaskans. But Congress cannot simply create an Indian tribe. Only those groups of people who have long operated as an Indian tribe, lived as a separate and distinct community—geographically and culturally—and have a preexisting political structure can be organized as a tribe.

Hawaiians could never qualify as an American Indian tribe. First, they do not have the preexisting political structure. Prior to secession from the Republic of Hawaii, Hawaii operated under a monarchy and not a tribe. Even if they were once organized in tribal governments, they have had no type of Native Hawaiian government for over 100 years.

Furthermore, in 1959, 94 percent of Hawaiians voted favorably to approve the Hawaii Statehood Act and become American citizens.

At this time, there was an understanding that Hawaii’s native people would not be treated as a separate racial group and that they would not be transformed into an Indian tribe.

Second, Native Hawaiians do not have an independent and separate community. In fact, Hawaii is one of the most integrated and blended societies in America. Hawaii is, in essence, America’s great melting pot. The creation of a Native Hawaiian race-based government entity would drive a wedge into the now harmonious melting pot of the Hawaiian culture. This bill is asking us to pretend that a tribe existed based on the sharing of one drop of blood. We cannot simply reorganize a tribe that never existed or create a new race-based government entity.

Furthermore, using Congress to create a tribe offends the very idea of equal protection under the law. Creating a Native Hawaiian tribe, especially one with no borders, undermines our constitutional rights.

The PRESIDING OFFICER (Mr. COBURN). The control by the majority has expired.

Mr. CRAIG. Mr. President, I ask unanimous consent to proceed for 3 more minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CRAIG. I thank my colleagues for allowing that to happen.

This would establish a set of laws for Native Hawaiians and another set of laws for non-natives, some of whom have lived on the island for generations. This division would create a wedge, in my opinion, in the Hawaiian community. It would create two sets of laws for a group of people who live in the same neighborhoods, attend the same schools, and go to church together. A Native Hawaiian could be subject to one set of laws while his neighbor is subject to a different set of laws. I think not.

The legislation offends a founding principle of this Nation: that all men and women are created equal—we have fought wars and struggled mightily down through the decades to make that happen—not men and women with Hawaiian blood are equal, and those without Hawaiian blood are equal. That is a confusing thought. As the Supreme Court stated, “In the eyes of the government, we are just one race—it is American.”

It is astonishing that Congress is considering creating a race-based government in Hawaii given the tremendous progress that this Nation has made, as I have mentioned, in eliminating race as a distinguishing characteristic among its citizens. Presumptive color blindness and race neutrality is now at the core of our legal system and cultural environment and represents one of the most important American achievements of the 21st century.

To create a race-based government would be offensive to our Nation’s commitment to equal justice and the elimination of racial distinctions in the law. The inevitable constitutional challenge to this bill almost certainly would reach the U.S. Supreme Court. We cannot simply circumvent the Supreme Court’s holding and strict scrutiny of race-based tests.

The U.S. Civil Rights Commission issued a report earlier this year that recommended that Congress reject this bill or any other legislation that would discriminate on the basis of race or national origin and further subdivide the American people into subgroups accorded varying degrees of privilege. This bill would authorize a government entity to treat people differently based on their race and ethnicity. Again, this notion runs counter to the basic American value that the government should not give preference to one race.

Our most violent internal conflicts, whether in the 1860s or the 1960s, have revolved around efforts to eliminate the laws of racial distinctions and to

encourage a culture where all citizens become comfortable as a part of the American race.

Creating a race-based government in Hawaii would create a dangerous precedent that could lead to ethnic balkanization. This is a huge step backwards in our American struggle to advance civil rights and to ensure equal protection for all Americans under the law.

This journey is by no means complete, but this bill halts progress in that very important journey and sends an entirely contrary message—a message of racial division and racial distinction and ethnic separatism and of rejection of the American melting pot ideal.

As many of our colleagues have said, and I repeat: We so respect our Hawaiian colleagues, our Hawaiian friends; at the same time, we must reject this idea that there is a separation spoken to in this law unique to a race or a culture.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Mr. President, I rise at this moment to join Senator AKAKA speaking in support of the measure before us this day.

This bill, which is long overdue, finally will have a chance for fair consideration by this body. I hope this bill will finally begin the process of extending a Federal policy of self-governance to Native Hawaiians and will repair the injustices of the past.

As I sat here listening to the speeches, I must candidly say that I was a bit disappointed that some of my friends who oppose this measure have mischaracterized the history of my State.

Hawaii's history, as recounted by Senator AKAKA, is well-documented. After Captain James Cook arrived in Hawaii, other foreigners came to the islands, often as laborers. Over the ensuing years, like other Native people who carried no immunities to the diseases that accompanied the waves of immigrants to their shores, the Native Hawaiian population was reduced from estimates as high as several hundred thousand people at the time of first recorded western contact to a little over forty thousand. An 1854 smallpox epidemic, for instance, took the lives of 6,000 people—almost 10 percent of the population at that time.

Along with the decimating diseases, the social and economic conditions of the Native Hawaiians deteriorated as well. The influence of non-Native Hawaiians continued to grow. On January 17, 1893, the Hawaiian Kingdom was illegally overthrown with the assistance of the United States. The United States' involvement in the overthrow is thoroughly documented in a report commissioned by President Grover Cleveland.

My parents and grandparents lived through Hawaii's trying times. In my generation, I was raised with an understanding that the Native Hawaiian people had been wronged. It is for this rea-

son that I, and the other citizens of Hawaii, ask you to do the right thing for the Native Hawaiian people.

Some of our colleagues have also questioned Congress' authority to deal with Native Hawaiians. But after serving for 28 years on the Committee on Indian Affairs, with approximately seventeen years as either the Chairman or the Vice Chairman, I am very informed of the law that governs the Federal relations with the aboriginal, native people of the United States. As such, I want to assure everyone that Congress possesses the authority to pass this measure.

Congress' authority over Indian matters has been repeatedly affirmed by the United States Supreme Court. Its power is explicit in the Constitution. It derives from the Indian Commerce Clause, Article I, Section 8, clause 3, which vests Congress with the power to regulate commerce with the Indian tribes. It also stems from the Treaty Clause, which authorizes the Federal Government to enter into treaties with other nations, as was done with various Indian tribes and the Native Hawaiian government. Although the Constitution does not authorize the Congress to make treaties, this provision does authorize Congress to address matters with which the treaties made pursuant to that power pertain.

In addition, the Court has found that Congress' power over Indian affairs derives from the Property Clause, Article IV, Section 3, Clause 2, which vests the Congress with the authority to "dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." This provision was used by Congress to set aside public lands for the use of Alaska Natives and a colony, established for scattered, unrelated Indians. In Hawaii, approximately 203,500 acres of land were similarly set aside for Native Hawaiians.

And Congress' authority over Indian affairs also derives from the Debt Clause and, like any other national government, its inherent authority that is a necessary concomitant of nationality.

Congress' authority is broad and plenary. The Federal policy towards the aboriginal, indigenous people has not been constant nor consistent. But changing Federal policy is fully within the scope of Congress' authority. Congress has exercised this authority to recognize the inherent sovereignty of an Indian tribe, to terminate the government-to-government relationship between the United States and an Indian tribe, to establish a process for the reorganization of a tribal government, as Congress did with the enactment of the Indian Reorganization Act of 1934, and to restore tribes to their original federally-recognized status.

In fact, after terminating the government-to-government relationship with Indian tribes, Congress enacted legislation to restore the sovereign status of some of those tribes. Even though the

Indian tribe did not exercise federally-recognized sovereign authority during the time its relationship with the United States was terminated, this was not a barrier to an exercise of Congress' power to restore the federal recognition of the native government.

When Congress exercises its authority in this manner, it is not "creating" sovereignty nor is it "creating" a native government. Native sovereignty preexisted the formation of the United States. For the purpose of carrying on government-to-government relations, the form of native government is irrelevant.

Congress established the Indian Reorganization Act of 1934 to provide a process for the reorganization of other native governments. This Act does not require that Native governments be organized as tribes. Senate bill 147 proposes to provide a similar process for Native Hawaiians.

Although Native Hawaiians are not Indians nor are they organized as Indian tribes, Congress is not precluded from dealing with them in the manner proposed by the bill. The Constitution is a living document. The authors of the Constitution intended that Congress' authority to deal with Indian tribes include all aboriginal, indigenous people of the United States, including American Indians, Alaska Natives and Native Hawaiians, wherever they were located and however they were organized.

The Supreme Court has affirmed Congress' authority over other aboriginal, indigenous people of the United States, regardless of whether they are "Indians" or organized as a "tribe," as those terms are defined today. It is irrelevant whether the native peoples are located within the original territory of the United States or in territory subsequently acquired, whether within or without the limits of a state. In pre-colonial times, the term "Indian" was defined to mean "native" or "the aboriginal, indigenous people" and the term "tribe" was defined to mean "a distinct body of people."

Correspondence between James Monroe and James Madison concerning the construction of what was to become the Commerce Clause make no reference to Indian tribes, but they do discuss Indians. Clearly, our founding fathers did not intend the term "Indian tribes" as used in the Constitution to only extend to those pre-existing Indian tribes that were dependent nations at the time of the framing of the Constitution. Under this interpretation, Congress would have no authority.

As Senator AKAKA relayed, the first recorded western contact with the aboriginal indigenous people of Hawaii was the arrival of Captain James Cook in 1778. While recording his encounters with Native Hawaiians, Captain Cook referred to Native Hawaiians as "Indians." His accounts reported that the Native Hawaiians "lived in a highly organized, self-sufficient, subsistent social system based on a communal land

tenure with a sophisticated language, culture, and religion." In other words, Native Hawaiians were a distinct body of people.

The Court has upheld Congress' exercise of its broad, plenary authority to recognize Indian tribes who were and are not Indians nor were they organized as tribes at the time that Federal recognition was extended to them. For instance, the Court affirmed Congress' recognition of an Indian tribe that consisted of scattered, unrelated individual Indians, who were forced onto a reservation or colony. Even after the Supreme Court questioned whether the Pueblos of New Mexico were Indians and found that they were not organized as tribes, the Supreme Court upheld Congress' exercise of authority to recognize and treat Pueblos as Indian tribes. Despite numerous opportunities to do so, the Supreme Court has not questioned Congress' authority to treat Alaska Natives as Indian tribes.

Whether the reference was to "Indians" or "Indian tribes," the Framers of the Constitution did not intend those terms to limit Congress' authority, but rather intended those terms as descriptions of the native people who occupied and possessed the lands that were later to become the United States. When the Constitution was drafted, they authorized the Federal government to enter into treaties with the Indian tribes because they were considered independent sovereigns, not dependent nations.

Any other interpretation would mean that Congress has been acting illegally since the formation of the Union and that the Supreme Court has wrongly decided the scope of Congress' authority.

The legal basis for the distinct status of the indigenous, native people is their sovereignty, which preexisted the formation of our country, over lands that became the United States.

This sovereignty is not created by Congress. This sovereignty did not need to be retained through treaties with the Federal government. Treaties are a mechanism for recognizing the inherent sovereignty of another government.

Like the other Federally recognized Indian tribes, Native Hawaiians are a distinct body of aboriginal, indigenous people who exercised sovereignty over land that is now the United States. Like other Native groups, the Federal government has a unique responsibility for Native Hawaiians. On November 23, 1993, the United States apologized for its role in the overthrow, acknowledged the historical significance of the overthrow and the suppression of the inherent sovereignty of the Native Hawaiian people, and committed to provide a foundation for reconciliation between the United States and the Native Hawaiian people. As such, Congress has assumed a special relationship with them.

Giving effect to the special relationship between the federal government

and the native peoples is not racially discriminatory. The Supreme Court has sustained Congress' action towards Indian tribes as constitutionally valid as long as our actions are reasonable and rationally designed to further self-government and to fulfill our unique obligation towards them.

Between 1826 and 1887, the United States entered into treaties with the Native Hawaiian government. In 1893, we assisted in the illegal overthrow of their government and extinguished the government-to-government relationship between the United States and the Native Hawaiian government. Now, we propose to establish a process that may lead to the restoration of a Federal relationship with a Native Hawaiian governing entity. This bill will authorize Native Hawaiians' with more autonomy to undertake activities that they believe will better their conditions and meet their other needs in the manner that they deem best. It fulfills the Federal government's unique obligation towards Native Hawaiians. As such, it is not racially discriminatory.

Some have suggested that the Supreme Court, in *Rice v. Cayetano*, has ruled that the Congress does not have the authority to enact this bill.

This is incorrect.

In 1978, the citizens of Hawaii convened a constitutional convention and proposed amendments to the State's constitution to afford Native Hawaiians a means by which to express their right to self-governance and self-determination. They did so by creating the Office of Hawaiian Affairs, which is governed by a Board of Trustees. Because this was intended to be the State counterpart to the Federal policy of extending self-governance and self-determination to the aboriginal, indigenous people, the citizens of Hawaii limited eligibility to vote for the Office of Hawaiian Affairs trustees to Native Hawaiians.

The Office of Hawaiian Affairs is, however, a State agency. Thus, when the Court considered this matter, it ruled that the voter eligibility requirement violated the Fifteenth Amendment as a State may not disenfranchise voters by limiting voter eligibility for a State agency to one group of people. The Court expressly refused to address whether Congress had the authority to treat Native Hawaiians as Indian tribes. In passing, however, the Court mentioned that if the issue were before the Court, it would look to whether Congress has treated Native Hawaiians in the same manner as it has treated Indian tribes.

Congress has done that.

Hawaii became a territory of the United States in 1900 yet by 1910, Congress began treating Native Hawaiians as Indians when it appropriated funds for the ethnological research of American Indians and Native Hawaiians.

In 1921, after receiving testimony from the then Secretary of the Department of Interior who testified that the Native Hawaiians were our wards and

"for whom in a sense we are trustees . . .," and who explained that Congress had the right to use the same authority for dealing with Indians to set aside lands for Native Hawaiians, Congress did just that. Congress set aside land for Native Hawaiians as part of its trust responsibility to them.

In 1938, Congress recognized certain Native Hawaiian fishing rights in Hawaii National Park, in a manner similar to Congress' recognition of retained tribal hunting, fishing, and gathering rights in some national parks.

In the 1950s, Congress was terminating its government-to-government relationship with some Indian tribes and delegating some of its authority over Indian affairs to the various States, through such laws as Public Law 83-280, which delegated certain Federal authority of Indian affairs to some States. At this time, Hawaii was seeking to become the fiftieth State. Consequently, Hawaii's admission to the Union was conditioned on its administration of the public trust established pursuant to the Hawaiian Homes Commission Act.

In 1972, a Native Hawaiian employment preference was enacted in the same manner that Congress enacted Indian preference laws. The Indian preference law was subsequently upheld by the Supreme Court as constitutionally sound and consistent with laws designed to preclude discrimination in the workplace.

Notably, this was the same year that the Equal Employment Opportunities Act of 1972, which prohibited discrimination in the workplace, was enacted into law. I mention this for a reason. Congress is an intelligent, thoughtful body. It is highly unlikely that Congress would have adopted one law prohibiting discrimination in the workplace while at the same time enacting a Native Hawaiian employment preference, unless Native Hawaiians were exempt from the broader bill because Congress treats them in the same manner that Congress treats Indian tribes.

Only two years after the United States Supreme Court held that Indian preference laws were not racially discriminatory because of Congress' unique responsibility towards Indian tribes, a second Native Hawaiian employment preference law was enacted. Clearly, Congress considered Native Hawaiians as having the same status as Indian tribes.

There are many more laws like these but I will not list all of them. In total, however, over 160 laws concerning Native Hawaiians have been enacted into law. Within the last five years, we have enacted additional laws, including laws that have legislatively reaffirmed our trust relationship with Native Hawaiians. Under the theory of those opposing the bill, all of these laws are illegal.

Although Senator AKAKA explained the process established by the bill in detail, I want to briefly reiterate some of his comments. This bill establishes a

process for the reorganization of a Native Hawaiian governing entity. The process is similar to processes established for the recognition of other aboriginal, indigenous people.

Upon enactment of the bill, a Commission will be created to determine whether those who voluntarily choose to participate in the Native Hawaiian governing entity meet the eligibility criteria. The Commission will prepare a roll, which the Secretary must certify. An Interim Governing Council will be established with no powers except to prepare organic governing documents for the approval of those listed on the certified roll. Once this has been approved by the membership, it must be certified by the Secretary of the Department of the Interior.

If, and when, the Secretary certifies the organic governing documents, elections for Native Hawaiian government officials must be held in accordance with the organic governing documents. At this point, the Native Hawaiian governing entity still has no power. Instead, the Native Hawaiian governing entity must negotiate with the State of Hawaii and the Federal government for any powers and authority as well as other rights.

This will be a long, thorough process that will take years to complete. And this will not be the last time that the Congress will have an opportunity to address the power and authorities of the Native Hawaiian governing entity. Bills will need to be introduced in the Congress for the enactment of implementing legislation. They will be referred to the relevant committees of jurisdiction of each House. There will be votes in each body to approve implementing legislation and the President will have to sign such legislation into law.

A similar process will be required for changes to State law. The citizens of Hawaii, through their State representatives, will have an opportunity to be involved in any changes in State law. Any changes to the State's constitution must be submitted to the voters of the State.

Before closing, I want to address some misconceptions regarding this measure and clearly inform my colleagues about what this bill does and does not provide.

This bill does not create sovereignty or extend Federal recognition to the Native Hawaiian governing entity upon passage of this bill. Instead this bill establishes the process that I outlined. As I discussed earlier, any sovereignty by the Native Hawaiian governing entity, if and when it is recognized, is inherent and preexisted Hawaii's inclusion into the Union.

Any governmental powers and authority that the Native Hawaiian governing entity will exercise must be negotiated with the Federal and State governments.

This bill does not extend jurisdiction to the Native Hawaiian governing entity over non-Native Hawaiians. Any ju-

risdictional authority must be negotiated between the Native Hawaiian governing entity, the State of Hawaii, and the Federal government.

Any jurisdiction that may be granted through the negotiations will be within the boundaries of the State of Hawaii, not over the United States. Critics of the bill confuse the eligibility roll with the potential jurisdiction of the governing entity. Like other native governments in the United States, anyone meeting the eligibility criteria defined in the bill or the organic governing documents, regardless of where they live, are eligible for membership in the governing entity.

The bill prohibits the application of the Indian Gaming Regulatory Act, which is the only Federal authority for the exercise of gaming by Indian tribes. Additionally, the State of Hawaii is one of only two states that criminally prohibits gaming.

The bill expressly provides that Native Hawaiians will not be eligible for Indian or Alaska Native programs. It is unnecessary to include Native Hawaiians in other programs as Congress has already established programs specifically for them.

The cost of the bill is minimal. The Congressional Budget Office estimates that the bill will cost \$1 million for fiscal years 2006 through 2008, and less than \$500,000 per year thereafter. The Committee on Indian Affairs has also been informed that the enactment of this bill will not affect direct spending or revenues.

I want to make it clear to all of my colleagues that this bill does not propose anything that we have not already done for Indian tribes. Years ago, Congress recognized that it has a trust obligation to the Native Hawaiians. Congress has treated Native Hawaiians in the same manner as it has dealt with Indian tribes. It is time that Congress formally extends its policy of self-government and self-determination to Native Hawaiians.

Mr. President, I want my colleagues to know that this bill will unite Hawaii. Senate bill 147, already has the broad support of both Republicans and Democrats in Hawaii. It is now time to reach out and correct the wrong that was committed so many years ago. I hope that my colleagues will also provide their support by voting for this bill.

As a member of the territorial senate at the time of statehood, and as former majority leader of the house, I was privileged to be involved in discussions and decisions reached between the Government of the United States and the government of the territory of Hawaii. Moreover, as our State's first Member of Congress, I was actively involved in the discussions and agreements between the Government of the United States and the government of the State of Hawaii.

My parents and my grandparents lived in Hawaii through Hawaii's trying times. My grandparents were immi-

grants from Japan. In my generation, I was raised with an understanding that the Native Hawaiian people had been wronged. This is a part of history that very few of my constituents are fully aware of. But my mother, when she was at the age of 4, lost her father who was working in the fields of the plantation. She had lost her mother at the time of childbirth, so she found herself an orphan at a very early age. But fortunately, a Native Hawaiian couple learned about this, came forward to the plantation village, and took her by the hand and adopted her. And for years she lived as a Hawaiian with the Hawaiian family, and she never forgot that.

For many reasons, including that, I and other citizens of the State of Hawaii ask all of my colleagues here to do the right thing for the Native Hawaiian people. Some of our colleagues have questioned Congress's authority to deal with Native Hawaiians, but after serving for 28 years on the Committee on Indian Affairs and approximately 17 years as either the chair or the vice chair, I believe most humbly that I am sufficiently informed of the law that governs the Federal relations with the aboriginal native people of the United States. There is no question that Native Hawaiians are aboriginal, and they are native and indigenous. They were there before the first White man came. They were there before the first Americans came.

Based on my decades of study and experience, I would like to assure my colleagues that Congress does possess the authority to pass this measure.

We speak of the special relationship between the Federal Government and the native peoples, and some have suggested that this was racially discriminatory.

Mr. President, history shows that Native Hawaiians are good and patriotic Americans. The people of Hawaii are good and patriotic Americans. If you look at the records of World War II and all the wars thereafter, including the present one in Iraq, you will find a disproportionately large number of men and women from Hawaii serving in uniform and standing in harm's way for the people of the United States. In fact, for this small, little State, with about the smallest population, we have more Medals of Honor on a per capita basis than any other State. Our government recognizes the patriotism of Native Hawaiians and the people of Hawaii. In fact, the first Native Hawaiian in the Vietnam war to receive the Medal of Honor was—yes—a Native Hawaiian, and he was one of the first in the Nation to do so. They are good American citizens.

This bill, even if it becomes the ultimate law of this land, will not change the situation. Native Hawaiians will be subject to every provision in the Constitution of the United States. That is the fact. They will be subject to the laws of the State of Hawaii and the United States. They will be subject to



the laws of the county of Hawaii. If any changes are made—for example, if we decide, as we did with many Indian nations, to give them the power to arrest—if someone goes speeding through the streets—that power has to be negotiated and granted by the supersovereign, the county to the Indian tribe. It does not come naturally.

The Native Hawaiian government, if you want to call it such, will not have the authority to establish its own army. It will not have the authority to coin its own currency. Yes, they can set up businesses, establish schools if they wish to, but they will never, under this bill, pass any measure that will be in contravention with the Constitution of the United States or the laws of the United States.

This bill does not secede the State of Hawaii or any part thereof from the United States. The lands that we speak of are lands that have been set aside, not by us, but by the Government of the United States in 1920. In 1920, the Members of Congress, without the urging of Native Hawaiians, without the urging of the people of Hawaii, finally came to their senses and realized that the takeover had been illegal, and that Native Hawaiians were indigenous, aboriginal people of the territory of Hawaii at that time.

So, on their own initiative, this Congress established a law to set aside lands which they called the homestead lands. And those qualified, 50 percent Hawaiian blood, were placed on these lands. It is still there, and Native Hawaiians still live in those places. If they ever have this law in the books, these lands will become the land base of this new entity.

They are not taking away anything from the people of Hawaii. They are not taking away anything from the Government of the United States. They will continue to pay taxes. They will continue to put on the uniform of the United States. They will continue to stand in harm's way.

I want Congress to know that, if anything, this bill will unite the people of Hawaii. This bill has the broad support of Republicans and Democrats in the State. Somewhere in this gallery is the Governor of Hawaii, the Honorable Linda Lingle. And she is a Republican. She supports this measure.

The counties of Hawaii, every one them—Oahu, Kauai, Maui and Hawaii—would support this measure. The State of Hawaii legislature, the House and the Senate, unanimously support this measure.

We have heard results of polls. We are politicians. We know all about polls. I can set up a poll myself and suggest that 99 percent of the people of Hawaii support the war in Iraq, and we know that is wrong. Yes, we can set up our own polls.

But I can tell you the legislature supports it, the county governments support it, the Governor does, and all Members of the congressional delegation. I don't know why people would

say that the people of Hawaii do not support this measure.

I think it is about time that we reach out and correct the wrong that was committed in 1893. Yes, at that time the representative of the people of the United States directed a marine company on an American ship to land and take over the government. They imprisoned our queen. No crime had been committed. When the new government took over and turned itself over to the government of the United States and said, Please take us in, the President of the United States was President Cleveland at that time. He sent his envoy to Hawaii to look over the case. When he learned that the takeover had been illegal, he said this was an un-American act and we will not take over. The queen is free.

I am a proud American. I am glad that we are part of the United States of America. Senator AKAKA and I took part in World War II. We put on the uniform. He served in the Pacific. I served in Europe. We would do it again. I know our people will do it again.

I wish to discuss the report on the Native Hawaiian Government Reorganization Act which was released by the United States Commission on Civil Rights on May 4, 2006 and the ill-founded reliance on the report by some of my colleagues. It is important to note that the measure before us is supported by leading civil rights organizations, such as the Leadership Conference on Civil Rights and the National Congress of American Indians. There are many more but in the interest of time, I will only note that I am more than willing to provide any Member with a more detailed list of leading civil rights organizational support for this measure.

With respect to the Commission's report, I urge my colleagues to thoroughly examine the report and the proceedings leading to it. I say this because the majority's report lacks credibility—both procedurally and substantively. I am confident that once my colleagues learn of the serious procedural and substantive flaws of the report, they will join me in rejecting the Commission's report and supporting S. 147, the Native Hawaiian Government Reorganization Act of 2006.

The first point that my colleagues need to consider is that this report is not even based on the measure that will be before us. During the Commission's January briefing, the Commissioners were provided with a copy of the Substitute Amendment that was publicly available since last fall and that Senator AKAKA recently introduced as a separate measure. It is this language on which we will vote. Yet, even though the Commission was informed of this, the Commission based its recommendation on the bill "as reported out of committee on May 16, 2005," which is substantially different from the substitute amendment.

Perhaps some think this was an oversight on behalf of the Commission but I assure you—it was not. During the

Commission's May 4, 2006 meeting, Commissioner Taylor specifically asked to which version of the bill this report referred. After a discussion on the record in which it was readily apparent that the Commissioners had no idea which version the report was referring to, the Commission had to recess for 10 minutes so that staff could determine to which version the report was referencing. Then, after calling the meeting back to order, the Commission stated that the report pertained to the version as reported by the Committee on Indian Affairs, ignoring entirely the substitute amendment, which they had been informed would be the measure considered by the Senate.

Perhaps some may be thinking—what difference does it make? Let me assure you, the differences between the version reported by the Committee on Indian Affairs and the substitute amendment are substantively different. In fact, the measure that will be before us reflects several weeks of negotiation between the administration and congressional Members to address concerns raised by the administration.

Before moving on to the substantive flaws of the Commission's report, I want to point out that one Commissioner filed an amicus brief in *Rice v. Cayetano* without ever publicly disclosing that involvement or recusing herself from the Commission's proceedings. Apparently, actions like these are par for the course for this Commission. It is actions similar to these that led to the recent findings of the Government Accountability Office that the Commission lacked procedures to ensure objectivity in its reports.

The Commission's majority report also suffers from serious substantive flaws. Unlike the careful, thoughtful analyses contained in the dissenting opinions, the majority report is devoid of any analysis of the underlying bill or arguments. Instead, the so-called "report" is merely a summary of the briefing held in January, a one sentence recommendation, and copies of the written testimonies provided during the January briefing. It is nothing more than "he said this and she said that." Nothing in this document explains why one argument was rejected and another one accepted. I believe it is because the commissioners know what we know—the law is on our side.

Although this is apparently consistent with the way this Commission does business, it is unacceptable. The Government Accountability Office issued a report last week specific to the Commission and recommended that the Commission should strengthen its quality assurance policies and make better use of its State Advisory Committees. More specifically, the Government Accountability Office found that the Commission lacked policies for ensuring that its reports are objective. It also found that the Commission lacks accountability for some decisions made in its reports because it lacks documentation for its decisions. A review of

the Commission's report on Native Hawaiians illustrates that this lack of accountability is clearly evident in this instance, for the Commission provides no rationale for its finding on S. 147.

Another flaw with the Commission's recent report is that the Commission ignored two previous reports on related issues by the Hawaii State Advisory Committee. The Government Accountability Office acknowledged that the State Advisory Committees are the eyes and ears of the Commission. It also found that while the Commission does not have policies to ensure objectivity for its own documents, the Commission does have quality assurance policies in place for State Advisory Committee products, including a policy to incorporate balanced, varied, and opposing perspectives in their hearings and reports. The Hawaii State Advisory Committee heard from numerous witnesses and spent substantial time preparing two articulate, balanced reports on Native Hawaiian issues relevant to the measure before us. Yet the Commission ignored these reports. Imagine reports from the State Advisory Committee in your respective State—the entity with the most knowledge of local issues, that is the entity most in touch with the local communities, and that has quality assurance policies—not even being consulted or informed about a briefing on an issue that only impacts your State.

Because the Commission's recommendation was based on a version of the bill that is not before us, is void of any analysis and is not supported by Supreme Court case law, it is difficult to address any arguments that may have influenced the Commission's decisions. Thus, I will take this opportunity to clarify some misconceptions that some of the Commissioners appear to possess.

First, this matter is not race-based as the Commission's recommendation implies. Instead, the Commission appears to have a fundamental misunderstanding of Federal Indian law. It is undisputed that the Supreme Court has upheld Congress's plenary authority over Indian tribes, including those aboriginal, indigenous peoples who exercised control over land that comprise the United States even if those peoples were not called Indians, were not organized as tribes, and did not have a government at that time.

I am confident that if challenged, this measure will be upheld. For as then Attorney John Roberts, now Chief Justice Roberts, stated during oral argument in *Rice v. Cayetano*, "The Framers, when they used the word Indian, meant any of the Native inhabitants of the new-found land" and that Congress's "power does, in fact, extend to Indians who are not members of a tribe."

Second, it is absurd that there are some who think that because Congress delegated some authority to the Secretary of the Department of the Interior to develop regulations to adminis-

tratively recognize a group of people as an Indian tribe, Congress's power to exercise its own authority is now bound by those regulations. Let me remind everyone—the Congress is not subject to an agency's regulations. Congress still possesses the power to restore recognition to an Indian tribe and we have used this authority repeatedly without first determining whether a group met the criteria set forth in the Secretary's regulation.

I thank the Chair for allowing me this opportunity to educate my colleagues about the true impact of the Commission's report on this matter. I encourage my colleagues to examine the transcript of the January briefing and the May meeting, the report with the dissenting opinions, as well as the recent Government Accountability Office Report on the Commission. I am confident that after doing so, my colleagues will understand that any reliance on this report is misguided.

Mr. President, as Congress has done for many other Indian tribes, this measure merely sets up a process to formally extend the Federal policy of self-governance and self-determination to Native Hawaiians. This bill is about fairness and justice for Native Hawaiians—Native Hawaiians will finally be afforded the same respect that the Federal Government affords to other Native Americans. Given that Congress has already enacted over 160 Federal laws for the benefit of Native Hawaiians, there will be no harm to other Native Americans and equally important, there will be no negative effects on the other citizens of Hawaii.

There are some who claim that this bill is race-based and will divide Hawaii because of race-based preferences stemming from this measure. This is not true. This bill is not based on race and those who make this claim do not understand the people or history of Hawaii. As I said, in 1893, the United States participated in the illegal overthrow of the Kingdom of Hawaii, which resulted in longstanding issues in Hawaii that need to be addressed. This measure will ensure those issues are addressed fairly and equitably. It is because this measure starts the process of healing old wounds and bringing all of Hawaii's citizens together that the vast majority of Hawaii's citizens support passage of this bill.

I ask my colleagues to ignore the rhetoric and to look at the facts: The entire Hawaii Congressional delegation supports, and is actively working on, passage of this bill. Our distinguished colleagues in the House, Congressmen ABERCROMBIE and CASE, have introduced a companion measure, and both testified before the Senate Committee on Indian Affairs in support of this bill and its importance to Hawaii. As Congressman CASE stated, this bill is "the most vital single piece of legislation for our Hawaii since Statehood."

Hawaii's Republican Governor supports the bill and has stated that "this bill will be a unifying force in Hawaii"

and that it is "vital to the continued character of the State of Hawaii." Both Hawaii's State House and Senate have repeatedly and overwhelmingly approved a resolution in support of this bill. We were elected by Hawaii's citizens to represent their interests and we believe that this measure is in their best interests. We would not support a bill that would racially divide the people who elected us into office. Trust that we have the best interests of all of Hawaii's citizens in mind.

Beyond Hawaii's elected officials, Hawaii's two largest newspapers have written editorials in support of passage of this bill or condemning allegations that this bill is racially discriminatory. The Honolulu Advertiser recently stated "this measure forges a middle path, the most reasonable course toward resolution—if only Congress would give it a shot." The people of Hawaii support it because, as the Advertiser recognized, "Federal recognition would help chart a course for the difficult but necessary process of resolving festering disputes and in healing the breach caused by the overthrow of the Hawaiian monarchy."

Hawaii's business community, including the two largest banks, support passage of this bill. The vast majority of Hawaii's citizens support passage of this bill. Given this diverse and broad level of support, I do not understand how any of my colleagues can oppose passage of this measure by claiming that it will divide Hawaii based on race.

Instead, I urge my colleagues to join me in supporting this measure as it is the fair, just thing to do and all of Hawaii's citizens will benefit from this measure when the longstanding issues will be finally be put to rest. Without this measure, without your support, those issues will remain unresolved.

Mr. President, as many of my colleagues know, S. 147 does nothing more than to establish a process to formally extend the same Federal policy of self-governance and self-determination that has been extended to other Native Americans to Native Hawaiians. When one looks at the impact that this policy has had on other Native Americans, it is clear that this policy will benefit not only Native Hawaiians but also all of Hawaii's citizens.

Since the 1970s, the Federal Government has had a policy of self-determination and self-governance for Native peoples. The success of this policy has been demonstrated over and over and it is not stopping. Every day, we see improvements in native communities as a result of this policy. Every day, we see State and local communities benefiting from Native Americans exercising self-governance. It is time that Native Hawaiians, and Hawaii, also benefit from this policy.

While Native Hawaiians are not Indians nor is there Indian Country in Hawaii—nor will there be with passage of this measure—the experience of other Native Americans since the Federal

Government adopted a policy of self-governance for Indian tribes is informative. Since implementation of the Federal policy of self-determination, other Native Americans have seen a revitalization in their native languages and culture. Because of this policy, other Native Americans have experienced higher educational achievement, stronger economies, better mental and physical health and less reliance on social programs. Although other Native Americans still have a long way to go, the policy of self-governance and self-determination has repeatedly been called the most successful Federal policy for Native Americans. I am confident that Native Hawaiians will have a similar experience and that all of Hawaii's citizens will receive benefits.

Self-governance is critical to maintaining Native Hawaiian culture, language and identity. Native Hawaiians were affected by the various Federal policies the United States had towards Indian tribes. So like other Native Americans, Native Hawaiians were prohibited from speaking their native language and practicing their culture. Native Hawaiians experience similar social characteristics—often ranking the highest in the least desirable categories and the lowest in the most desirable categories. They suffer from some of the highest rates of obesity, diabetes, high blood pressure, heart disease, and other health disparities. They experience the highest rates of poverty in the State of Hawaii and have some of the lowest educational achievement. Native Hawaiian youth suffer from high rates of depression and are more likely to attempt suicide than other youth in Hawaii. Although it will not happen overnight, Native Hawaiian self-governance will reverse these trends. Testimony before the Indian Affairs Committee indicated a link between teen suicide and depression and the lack of language and culture in other native communities. Testimony also indicated that when Indian tribes exercise self-governance and take steps to regain or incorporate their language and culture into everyday life, mental health issues decrease.

Preserving and revitalizing native language, culture and identity leads to stronger personal identity and cultural awareness. Native self-governance will lead to culturally appropriate physical and mental health programs, as well as more relevant education curriculum, for Native individuals. This, in turn, will lead to better health, higher academic achievement, strong native leadership, increased employment, less poverty and decreased dependence on Federal and State social programs. Self-governance will ensure that Native Hawaiians retain their dignity.

Consequently, all people of Hawaii will benefit. Decreased reliance on social programs, fewer children needing remedial education, and more preventative, culturally appropriate health programs will result in less funding needs over the long term. But this is

not all. Hawaii is already full of rich, diverse cultures which are celebrated throughout the year but, with this measure, all of Hawaii will be able to celebrate an ever stronger native culture. Non-natives will learn more about the islands based on the traditional knowledge of Native Hawaiians gained over centuries of island occupation. Higher achieving children will no longer have to wait for their counterparts to catch up. Instead of remedial education classes, there will be more rigorous, challenging classes for our youth. Visitors already come to Hawaii to admire and appreciate the unique Hawaiian culture; with this measure, I am confident even more will come to experience the stronger, richer Native Hawaiian culture.

I invite all of my colleagues to Hawaii to experience our unique culture, diversity and spirit of aloha. This bill will enhance Native Hawaiian self-governance while benefiting all of Hawaii's citizens. This is why I am proud to co-sponsor this legislation. This is why our distinguished House colleagues, Congressmen ABERCROMBIE and CASE have introduced a companion measure. I respectfully urge my colleagues to help Hawaii by supporting S. 147.

I just hope my colleagues will not look upon Native Hawaiians as those who are trying to get out of the United States. They are not. We are just trying to tell them: Yes, we recognize the wrong we have committed. Therefore, use the lands that we have provided you. Set up a government. But this is what you may do. You may set up your schools, you may set up businesses. What is wrong with that? We are not asking to establish a government in there that will put up a fence and keep everyone out. That government will not establish an army to attack us.

This is the American thing to do; the least we can do. And, incidentally, the National Congress of American Indians, representing the Indian nations of this Nation, support this measure. Alaskan natives, Eskimos, support this measure.

Granted, there are those who oppose this measure. But I just hope that they will look into their hearts and look into the hearts of Native Hawaiians. They are good people. They just want to know that someday they can tell their grandchildren the wrong that was committed in 1830 has been rectified.

I am certain my colleagues will do so. I thank you.

The PRESIDING OFFICER. Who yields time?

Mr. INOUE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. AKAKA. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I thank my dear colleague from Hawaii, the

senior Senator, who has spoken from the heart about our bill and about what it means to our people in Hawaii, the unity of support that is there in Hawaii and also the support that is here nationally.

He mentioned NCAI, the National Congress of American Indians. He mentioned the AFN, the Alaska Federation of Natives. Also, the American Bar Association has supported our bill. These are national organizations that have studied it and have considered this bill to be worthwhile.

As I mentioned in my statement, this bill has been reviewed by the Departments of Justice and the Interior, the White House and the administration. They have made clarifications that we will include in our amendments and in our substitute amendment.

This is a bill that does not have anything to do with starting a government that would be able to do what it wants. This governing entity will be structured so that it can deal with the problems of the Hawaiian people and will give them a seat at the table. It will give them an opportunity to negotiate whatever they decide.

I should tell you, those who have spoken in opposition to this bill are good friends that we respect—and we will continue to do that—who have other reasons to oppose our bill. I do respect them very deeply. But our bill is one that will help the Hawaiians to deal with their concerns. When it was stated that I had mentioned that they could secede, the question that was asked me was whether that could happen. I pointed out that to secede, the Hawaiians would have to take it to this governing entity and this entity would decide whether they should take this to be negotiated with the State government and then with the Federal Government.

Let's say they do decide to secede as an entity. I don't think the State government, with the State laws, would agree to that. It has to be negotiated.

And let's say if—and I know it won't happen—the State of Hawaii agrees to that. Then it has to go to the Federal Government. So this is all within the law.

I have spoken to those in Hawaii who want Hawaii to be independent. I have told them you can use the governing entity to discuss it. This is what I meant. They can bring these issues to the governing entity and the governing entity will make a decision as to independence or returning to the monarchy. But all of this would be within the law of the United States, as mentioned by my senior Senator. It will be within the Constitution of the United States. But this gives the Hawaiians a governing entity to deal with their concerns and negotiate them on the State level as well as the Federal level.

Also, in the substitute amendments that we will be offering, it does have the clarifications from the administration as well.

So I rise to urge my colleagues to permit us to bring it to the floor, to

permit us to do that through cloture and then to let the Senate decide about our bill.

As I said, the United States of America is a nation that has consistently tried to keep liberty and justice alive and well. This is an opportunity to do that.

I urge my colleagues to consider their vote, give us their votes on cloture so we can then bring it to the floor and discuss it further.

Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. The Senator has 1 minute.

Mr. AKAKA. Mr. President, I just want to mention on the sovereignty rebuttal, the Federal policy of self-governance and self-determination allows for a government-to-government relationship between indigenous people. This is not new. It exists right now between the United States and 556 tribes, 556 native governments. The continued representation of this bill as an unprecedented new action is just plain wrong.

With all due respect to my colleagues, as I said earlier, Native Hawaiians are proud to be Americans. Native Hawaiians, however, are indigenous peoples and Congress has the authority to recognize indigenous peoples.

I yield.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise in opposition to this legislation. I do, however, respect the goals and the concerns that have been expressed by the Senators from Hawaii and their supporters. I certainly agree with the language used by Senator INOUE to describe the people of Hawaii. They are indeed good people. They are indeed great patriots. I think no one better exemplifies the patriotism, the support for American ideals, and the commitment to our country, than the two Senators from Hawaii, each in their service to this institution, their service to our country, and their service to our country's military.

Senator INOUE discussed the need to right wrongs, and how that was one of the objectives of this legislation. Even if we concede the importance of righting wrongs, we can argue, as I do argue, that this is the wrong way to go about that.

This bill does not create a sovereign state or a sovereign entity. That point was made by both Senators in their remarks. However, we cannot escape the fact that the legislation as written, on page 51, does describe very specifically the objective for Native Hawaiians to have an inherent right of self-determination and self-government. That clearly suggests a goal, whether it is short-term or long-term, of establishing self-governance; of establishing independence in some shape or form.

If this isn't an objective, then certainly it ought not to be included in the legislation.

This is not a question of tribal recognition. I think it is a mistake to

make that analogy because there are very specific requirements for tribal recognition, and they are not met in this case. Therefore, that concern is misplaced.

Most fundamentally, and I think most problematically, this legislation does create a very separate and distinct governing entity, and the participation within that governing entity is based upon racial and ethnic classification. We have to ask ourselves whether this is a principle or a policy which the American people would support, whether it is one which will further our shared goals as Americans. I believe the answer is no. It is a mistake to create two distinct privileges for participation in governance at any level that is based solely on one's racial or ethnic background.

The governing power of this new entity, the Native Hawaiian governing entity, is not small nor trivial. Again quoting from the legislation:

Among the general powers conferred on this governing entity are the power to negotiate or engage in negotiations designed to lead to an agreement addressing such matters as the transfer of land, natural resources and other assets, and the exercise of civil and criminal jurisdiction.

These are not small matters. I believe the suggestion that this is a modest entity, one with only very limited powers, is mistaken.

The proponents of the legislation might argue that there are intervening steps required on the part of the State government or the Federal Government to validate these negotiations. That doesn't change the fact that this governing entity has real power to negotiate that is not given to any other entity, and that the participation in that governance is based solely on one's ethnic or racial background. I believe that simply is not justified.

To the extent there are constitutional questions brought to bear, they ought to be focused on due process, on whether this restriction that one only participates in this governing entity if one has a certain racial or ethnic background is an unfair limitation on an individual American's right to participate in the electoral process.

Even if that were not a factor, balkanizing Americans, dispensing political power, or dispensing political recognition on the basis of ethnic or racial background is a mistake. It is bad precedent. It emphasizes differences that we might have. I believe it runs the risk of disenfranchising certain Americans and takes us in the wrong direction.

If there are wrongs that need to be set right, we should have a debate about what those actions were and what specific steps ought to be taken to address them. However, this is not the right vehicle. This is not the right approach. This does not send the right message.

In dealing with cases that have come before the Supreme Court which dealt with this question, the Supreme Court

cited the 15th amendment, which forbids discrimination in voting based on race or ethnic background.

To quote from that decision, the Court said:

One of the reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities. An inquiry into ancestral lines is not consistent with respect based on the unique personality each of us possesses, a respect the Constitution itself secures in its concern for persons and citizens . . . [To do so would be] odious to a free people whose institutions are founded upon the doctrine of equality.

It is an approach that runs contrary to those fundamental goals and objectives which are contained in the 15th amendment.

I think on a more personal level, it is worth understanding the impact this can have on an individual.

I wish to close by referring to several comments which were provided by residents of Hawaii themselves before the Civil Rights Commission.

Quoting from one letter:

. . . It is appropriate to say that I am of Hawaiian, Caucasian and Chinese descent only because it shall be noted that I am a descendent of the indigenous peoples of Hawaii and do not support the Akaka bill . . . If [the Akaka bill] comes to pass, I will no longer acknowledge my Hawaiian heritage as I will be forced to choose on which side of the fence to stand. I will choose the Anglo-American tradition of the right to life, liberty, property and the pursuit of happiness. This will prevent me from recognizing all that is Hawaiian in me. I consider the Akaka bill to be a proposal to violate my rights . . .

This is a resident of Hawaii testifying before the Civil Rights Commission. He wrote:

. . . I am writing to ask for the civil rights commission to oppose the Akaka Bill on the grounds that it will divide our state among racial lines . . . I am of native American blood (Nez Pierce Indian) but cannot be considered eligible for benefits such as those desired by native Hawaiians . . . The Akaka Bill will destroy our way of life in Hawaii . . .

The third letter quoted in that report to the Civil Rights Commission:

. . . I am a descendant of both: Kamehameha the Great, who united the islands and people, natives and non-natives and made Hawaii a model for the world; and the Mayflower pilgrims whose ideals of individual freedom and responsibility and self-reliance shaped the most inclusive and widely shared system of government in history: American democracy . . . The Akaka Bill would dishonor the unity and equality envisioned by Kamehameha the Great and the ideal of one nation, indivisible, composed of indestructible states, envisioned by the U.S. Constitution . . .

These are individual opinions of residents of Hawaii who have their own personal history and perspective. We shouldn't make decisions in Congress or anywhere else based on just anecdotal information, but I think they do reflect the difference of opinion, the difference of perspective, and the natural concerns possessed by even those who are supposed to benefit from this legislation because of the way the bill

treats people—not based on the content of their character, not based on their individual rights as Americans, but based on their particular ethnic or racial background.

If we can move away from the balkanization, classification, and unique treatment of people based on racial-ethnic background and move toward the consideration of every individual based on their character, their integrity, and their commitment to our shared ideals, I believe we will be a stronger and a better country.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I rise to speak on this bill with some trepidation, because, as I heard the Senator from Tennessee say earlier as I was watching the debate from my office, everyone in this Chamber has enormous respect and affection for the Senator from Hawaii. We understand how important this issue is to him and believe he is making his arguments in the best of faith.

I must say, though, that it is staggering to me to think of how important the issues are that underlie this bill. This is not a bill which just affects the State of the Senators from Hawaii; this is a bill which would potentially affect what it means to be an American.

One of the defining characteristics of this great country in which we live is that no matter where we come from, no matter what our ethnic or racial heritage might be, no matter where we were raised, once we pledged allegiance to the United States of America, we became an American, someone who believes in the ideal of America's values, including equal justice under the law. So the very concept that people would be treated differently based upon whether they are Native Hawaiians or whether they came from Ireland or whether they are some other ethnic or racial group is anathema to what it means to be an American.

This bill, it has been observed, would create a race-based and racially separate government for Native Hawaiians. It has been observed by the U.S. Supreme Court in the year 2000 in the *Rice v. Cayetano* lawsuit that this legislation is actually addressed to limit participation in a government based on one's consanguinity or bloodline, is in effect a proxy for race. What we are talking about is participating in the benefits of being a Native Hawaiian based upon race and racial differences rather than saying to anyone and everyone that America remains a nation where anyone and everyone, based upon their hard work, based upon their willingness to try to accomplish the most they can with the freedoms that we are given—it is totally in contradiction to that goal and that aspiration we have for all Americans. It is important to address some of the specific allegations that have been made.

First of all, this is equivalent to creating an Indian tribe. The State of Ha-

wai has stated in court, in 1985, the tribal concept has no place in the context of Hawaiian history.

In the *Rice v. Cayetano* case, the brief said that for Indians, the formerly independent sovereignty that governed them was for the tribe, but for the Native Hawaiians, their formally independent sovereign nation was the kingdom of Hawaii, not any particular tribe or equivalent political entity. The tribal concept, the brief went on to say, on behalf of the State of Hawaii, the tribal concept simply has no place in the context of Hawaiian history.

If we think about that, it is clear Native Hawaiians, if they are going to be identified based upon having Native Hawaiian blood, do not live on a reservation or any geographically discrete plot of land. Indeed, they are dispersed throughout Hawaii and throughout the Nation. The only defining characteristic is whether an individual has any Native Hawaiian blood.

It is completely different from Indian tribes which were, at the time of the founding of this Nation, sovereign entities unto themselves, so it was entirely appropriate that the Government negotiated relationships with those existing sovereign entities, the Indian tribes, as they exist even today.

But to say today, in 2006, we all of a sudden are going to identify some 400,000 Native Hawaiians wherever they may live in Hawaii and elsewhere and create a tribe, or a tribe equivalent, out of thin air has simply no counterpart in the way the Indian tribes are created. And, indeed, as the State of Hawaii has said for itself, the tribal concept simply has no place in the context of Hawaiian history.

As to the goals and the aspirations of this particular legislation, it is clear this bill lays down some rudimentary, I would say early, steps in the recognition of a political governing body. But as to the goals of this legislation and the supporters of this legislation, the Office of Hawaiian Affairs acknowledges what the goals are under the Akaka bill. It says:

The Native Hawaiian people may exercise their right to self-determination by selecting another form of government, including free association or total independence.

The concept of any people within the confines of the United States claiming their total independence is not unknown to our Nation's history. Six hundred thousand people died in a civil war, claiming a right to independence from the Union. There has been much bloodshed, many lives lost, to preserve this great Union that we call the United States of America.

When I say this seemingly innocuous legislation raises profound issues that affect who we are as a Nation and what we will be as a Nation, I mean that in all sincerity. This legislation would be a serious step backward for our Nation and could not be any further from the American ideal.

From the beginning, Americans have been a people bound together not by

blood or ancestry but rather by a set of ideas. These ideas are familiar to all of us: liberty, democracy, freedom, and most of all, equal justice under the law. These are the ideas that unite all Americans. They are ideas that have literally changed the course of human events.

No longer are the greatest civilizations in the world recognized or measured by how many subjects bow before a king or how many nations are conquered by armies. Today, we measure greatness of a nation to the extent that the nation's people are recognized as equal under the law. This is enshrined in our most basic documents. Thomas Jefferson's Declaration of Independence, stating "that all men are created equal."

But we know too well that those are words on paper. The long road to equality, on which we most certainly continue to travel and which continues to be a work in progress, has been costly to our Nation. As I mentioned a moment ago, it has been paid for with the blood of hundreds of thousands of American patriots. Unfortunately, the signposts along the way have been too often marked by violence and bigotry when we have seen Americans pitted against other Americans claiming special status because of the color of their skin or because of their relationships.

Today, however, America stands as a shining example of what happens when people set the ideal in their mind as the goal to work forward. As Justice Harlan noted in his classic dissent in the case *Plessy v. Ferguson*:

[O]ur Constitution is color-blind, and knows neither nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.

While it certainly took far too long in our own Nation's history to embrace the truth of Justice Harlan's position, and we certainly have more to do as a work in progress ourselves, America has made significant progress toward equality.

Unfortunately, this bill—whatever good the intentions may be, and I grant those without any argument—the bill threatens to undermine all of the progress we have made by establishing a race-based government and requiring the Federal Government enforce its creation.

There are the bill sponsors, the Governor of Hawaii, and the Attorney General, who argue that the bill does not establish a race-based government. Indeed, they say that the bill neither further balkanizes the United States nor sets up a race-based separate government in Hawaii.

With all due respect, a plain reading of the legislation indicates otherwise. The bill clearly states that only Native Hawaiians can participate in the newly established community, period. And a Native Hawaiian is defined in part as "[o]ne of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous native people."

But perhaps the most troubling description of the bill comes from our friends, the Senators from Hawaii:

. . . the first step is to create a list of Native Hawaiians eligible . . . The individuals on the list will be verified by a commission of individuals in Hawaii with demonstrated expertise and knowledge in Hawaiian genealogy. The list will be forwarded to the Secretary of the Department of Interior who is authorized to certify the list only if the Secretary is fully satisfied that the individuals meet the necessary criteria.

In other words, the legislation requires that the Federal Government hire Federal employees to serve on a race-based commission that itself would use a racial test to determine membership in the race-based so-called tribe.

I ask my colleagues to explain to me how this does not "set up a race-based separate government in Hawaii." It seems that if words have any meaning, the truth is plain to see that it does, indeed, establish a race-based system without precedent in American history.

What concerns me even more is that the proponents claim the legislation will not balkanize the United States. But this claim virtually ignores the entirety of our Nation's long and historic struggle over issues of race from slavery to Jim Crow laws and beyond, laws and policies that define our people based on race are bound to ultimately fail.

Furthermore, by claiming to create an analogy to an Indian tribe out of Native Hawaiians scattered across the planet, Congress will be giving the new government some of the same benefits as other Indian tribes. Yet the new government will operate at a very different environment with no geographic boundaries nor physical communities. The people who may be confirmed as Native Hawaiians are completely integrated with all others throughout Hawaii and throughout the 50 States. Developing this government will create a large number of structural and practical difficulties that one can only imagine.

Since time is short today, and it is my sincere hope that our colleagues will vote against cloture on this bill, I will reserve additional comments for a later time.

I conclude by saying this is an idea that runs completely counter to America as a melting pot, which has been so often used to describe our Nation as a Nation that is comprised of many races and many ethnicities, people of wildly divergent beliefs. But the one thing we do agree on is the founding ideals that have made America unique, none of which is more important than equal justice under the law. If we are to embrace for the first time in American history, as a matter of our legislative actions, race-based distinctions for Americans, it will be a day we will long rue and will be a black mark in our Nation's long march toward equal justice.

I yield the floor.

Mr. STEVENS. Can Senator AKAKA yield me some time to comment on the legislation?

Mr. AKAKA. Mr. President, I yield such time as the Senator desires from our side.

The PRESIDING OFFICER. The Senator from Alaska is recognized. The Chair notes the Senator still has 2½ minutes remaining on the majority time as well.

Mr. STEVENS. I ask unanimous consent I be allowed to speak using the time of the Senator from Hawaii. They can reserve their time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I am in support of the legislation, and I will take my time from the other side of the aisle.

The PRESIDING OFFICER. The Senator is recognized.

Mr. STEVENS. Mr. President, I am saddened to hear some of the comments I have heard today in the Senate. Most people do not understand the circumstances that existed in both of our offshore States.

I have come to the Senate to support the Native Hawaiian Government Reorganization Act introduced by my good friends from Hawaii. I support this bill not only because of my friendship and respect for Senator INOUE and Senator AKAKA but also because it is the right thing to do for the Hawaiian people. I have visited with the Hawaiian people very often on this subject.

Alaska, similar to Hawaii, has a rich history shaped by native cultures and traditions. These customs are a vital part of our heritage. My commitment to protecting and preserving the culture of Alaskan Natives spans now more than four decades. I believe Native Hawaiians deserve this protection as well.

While our Alaskan Native community still faces many challenges, their position has been improved because of legislation which clarified their relationship with our State of Alaska and with the Federal Government.

Soon after I came to the Senate—and that was in 1968—I began working to settle the unresolved claims of our Alaskan Natives. Many of the arguments against the Hawaiian bill now made by the opponents of this legislation were made by those who opposed the Alaskan Native Claims Settlement Act enacted in 1971. But time has proven them wrong. The Alaskan Native Claims Settlement Act did not create States within our State. It did not lead to secession. It did not lead to anyone trying to create a nation within our Nation. Those who argue that the bill before the Senate will lead to secession ignore the history. More than 562 Indian tribes are recognized by our Federal Government.

Not one of those tribes has sought to secede from their State or from the Nation. Federal recognition of these tribes has not prompted any State that they call home to try to secede from our Union. The Akaka bill reaffirms

our longstanding commitment to the rights of our indigenous people. It ensures that Native Hawaiians will have the same type of recognition afforded to American Indians and to Alaska natives by the act of 1971.

The U.S. Government has a responsibility to Native Hawaiians, as it does to all indigenous people under our Constitution. The Constitution vests Congress with the authority to promote the welfare of all Native American people and to help foster their success.

Like the Alaska Native Claims Settlement Act, the bill before us, when it is enacted, will create a framework which ensures Native Hawaiian groups can address their unique circumstances. ANCSA was a crucial step in responding to the concerns of Alaska natives. It empowered them to improve their own position. The Akaka bill offers Native Hawaiians the same opportunity.

Our Federal policy of self-determination and self-governance has not been formally extended to Native Hawaiians. This omission unfairly singles them out for disparate treatment from our Federal Government. It deprives them of the processes by which other native groups may negotiate and resolve issues with the Federal and State governments. In my judgment, it is time to right this wrong.

This bill will fulfill our Federal obligation to Hawaii's native people. The Akaka bill authorizes the United States, the State of Hawaii, and the Native Hawaiian Government to conduct negotiations. Their discussions will address the unique issues facing Native Hawaiians. These steps will help ensure the future prosperity of the Native Hawaiian people.

The bill offered by the Hawaiian delegation has garnered widespread support. The legislation reflects the recommendations made by the Department of Justice and the Department of the Interior in the reconciliation report they published in 2000. The Governor of Hawaii, the Hawaii State legislature, and a majority of the Hawaiian people support this bill. Both the National Congress of American Indians and the Alaska Federation of Natives have passed resolutions in support of this bill.

Just as I sought to protect the rights of Alaska natives, Senators AKAKA and INOUE are fighting for the rights of their native people in Hawaii. They have my full support. They have the support of the Alaska people. I believe they have the support of those who want to see these wrongs righted.

The time has come to fulfill our commitment to these indigenous people and to address the needs of the Native Hawaiians. We can no longer deny our Nation's responsibility to promote their welfare as much as we have promoted the welfare of the Indian people and the Alaska native people.

The Native Hawaiian Government Reorganization Act is a step towards meeting our Federal commitment to

Native Hawaiians. It is long overdue. I have come to urge our colleagues to support cloture and vote in favor of this legislation.

I am sorry we are no longer really a debating body. I would love to debate this. I would love to try to ask them to understand what happened in Alaska. The rights of Alaskans aren't the same. There were people who said: You can't do that; that will create a State within a State. There were people who said: You can't do that; they will rebel against the United States.

These people are good Americans. They serve in our military. They just have a different culture, and it has never been recognized by our government as it should. It was done in Alaska in 1971. It is long overdue here.

I ask unanimous consent that the time between 6 and 6:30 be controlled by the majority, and the time between 6:30 and 7 be controlled by the minority.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Hawaii.

Mr. AKAKA. Mr. President, I yield as much time as he needs to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, I rise in support of the Native Hawaiian Government Reorganization Act of 2005.

Although I am a proud Illinoisan, proud to be the junior Senator from Illinois, many of you know that I was born and raised in Hawaii. Anyone who has been fortunate enough to visit or call Hawaii home, as I once did, and as my grandmother and sister and adorable niece still do, anybody who has spent time in Hawaii cannot help but recognize the uniqueness of the place. In addition to its scenic landscapes and rich history, it is the living legacy of aloha—the spirit of openness and friendliness that is ingrained in the shared, local culture that shapes and enhances each island encounter and experience.

Throughout Hawaii's history, individuals of all nationalities, races and creeds have found solace in Hawaii. In large part this stems from the culture of Native Hawaiians, who have always acknowledged and celebrated diversity. This incorporation of new cultures and practices over the years has strengthened and unified the community. And as the child of a black father and a white mother, I know firsthand how important Native Hawaiian efforts are to foster a culture of acceptance and of tolerance.

For this reason, I am proud to join Senator DANIEL AKAKA to extend the Federal policy of self-governance and self-determination to Native Hawaiians. Native Hawaiians are a vital part of our Nation's cultural fabric, and they will continue to shape our country in the years to come.

The Native Hawaiian Government Reorganization Act provides both the process and opportunity for Native Ha-

waiian communities to engage themselves in and reorganize their governing entity to establish a federally recognized government-to-government relationship with the United States of America. The process set forth in the bill empowers Native Hawaiians to explore and address the longstanding issues resulting from the overthrow of the kingdom of Hawaii.

There are three main provisions of the Native Hawaiian Government Reorganization Act.

First, the bill establishes the Office of Native Hawaiian Relations in the Department of the Interior to serve as a liaison between the Native Hawaiians and the United States.

Second, the bill establishes the Native Hawaiian Interagency Coordinating Group that will be comprised of Federal officials from agencies that administer Native Hawaiian programs. These provisions are intended to increase coordination between Native Hawaiians and the Federal Government.

And third, the bill provides a process for reorganizing the Native Hawaiian government entity. Once the entity is reorganized and recognized, there is a process of negotiations to resolve longstanding issues such as the transfer of and jurisdiction over lands, natural resources, and assets.

Support for this bill comes not only from the people of Hawaii but from people all across America. This bill also is supported by the indigenous peoples of America, including American Indians and Alaska natives. As Americans, we pride ourselves in safeguarding the practice and ideas of liberty, justice, and freedom. By supporting this bill, we can continue this great American tradition and fulfill this promise by affording Native Hawaiians the opportunity to recognize their governing entity and have it recognized by the Federal Government.

As someone who grew up in Hawaii and has enormous love for the Hawaiian culture, I also think it is important, as I know the two Senators from Hawaii will acknowledge, that there have been difficulties within the community of Native Hawaiians, oftentimes despite the fact that we are visitors to Hawaii; that many times particularly young Native Hawaiians have had difficulties in terms of unemployment, in terms of being able to integrate into the economy of the islands, that some of the historical legacies of what has happened in Hawaii continue to burden the Native Hawaiians for many years into the future.

This bill gives us an opportunity not to look backward but to help all Hawaiians move forward and to make sure that the Native Hawaiians in that great State are full members and not left behind as Hawaii continues to progress.

This is an important piece of legislation. I take a minute to commend the senior Senator from Hawaii, Mr. INOUE, and most of all Senator AKAKA,

particularly, for his tireless efforts to bring this to the floor. When people all across the country didn't know about this issue, Senator AKAKA was the one who made sure we did. He has been a champion for the people of Hawaii. He is always working hard and thinking big to realize this ideal for the native population of his State. They are truly fortunate to have Senator AKAKA as their Senator.

I urge my colleagues in the Senate to vote for the Native Hawaiian Government Reorganization Act of 2005. I will be proud to add my vote to the roll call.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, before I yield time to the Senator from Alaska, I would like to say a word about secession. This bill in no way allows the State of Hawaii to secede from the United States. To reiterate my prior statement, I support addressing the legal and political relationship between Native Hawaiians and the United States within Federal law. I do not support independence. I do not support secession of the State of Hawaii from the United States.

This bill extends the Federal policy of self-governance and self-determination to Hawaii's indigenous peoples, thereby providing parity in Federal policies toward American Indians, Alaska natives, and native Hawaiians. The bill focuses solely on the relationship between the United States and Native Hawaiians within the context of Federal law.

None of the numerous federally recognized tribes have been accused of seeking to cause their State to secede from the Union because of their legal and political relationship with the United States. Such claims are false and meant to instill fear in those who are unfamiliar with the nature of government-to-government relations between tribal entities and the United States.

Given Hawaii's history, I have a small group of constituents who advocate for independence. Why? Because there hasn't been a structured process to deal with the longstanding issues resulting from the overthrow. The absence of a process to resolve the issue has led to frustration and desperation. My bill provides a structured process to begin to address these longstanding issues. Contrary to the claim of divisiveness, my bill goes a long way to preserve the unity of the people of Hawaii.

I yield time from our side to Senator MURKOWSKI of Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Ms. MURKOWSKI. I thank the Senator from Hawaii for his leadership on this issue, for his leadership on behalf of the people of Hawaii. There is so much in common that the Alaskans in the north share with our neighbors in the Pacific. I would like to take a few

moments to speak a little bit about the history and how the history of our Alaska Natives ties in with the Native Hawaiians and why I stand today in support of the legislation offered by Senator AKAKA.

As Abraham Lincoln is revered by the African American community as our first civil rights President, Richard Nixon is held in esteem by America's native people for his doctrine of self-determination. President Nixon knew that in order for the native people to break out of the despair and poverty that gripped their lives, they would need to be empowered to take control of their own destiny. One of President Nixon's legacies to America's first peoples is the Indian Self Determination and Educational Assistance Act. Another one is the Alaska Native Claims Settlement Act. These two pieces of legislation eliminated any doubt as to whether the Native people of Alaska were recognized as among the first people of our United States and were, therefore, eligible for the programs and services accorded to Native people.

Yet it took more than a century from the time the United States acquired Alaska from Russia for the legitimate claims of Alaska's native people to be resolved. One hundred and three years to be exact. President Nixon signed the Alaska Native Claims Settlement Act into law on December 18, 1971. It has been amended by Congress to clarify one ambiguity or another on numerous occasions since.

The Indian Commerce Clause of the United States Constitution, which provides the legal basis for our Nation's special relationship with its native people, speaks of the authority of Congress to regulate commerce with the Indian tribes. It is now well established that this provision of the Constitution is the legal basis for our Nation's special relationships with the Native peoples of Alaska.

Some of Alaska's native people regard themselves as Indians. But the Eskimo and Aleut peoples of Alaska, who have also been recognized by this Congress and the courts as deserving of the special relationship, most certainly would not regard themselves as Indians.

In Alaska, the basic unit of native organization is the village and while some villages refer to themselves as "tribes," many native villages do not.

The Inupiaq Eskimo villages carry names like the native village of Barrow, the native village of Kaktovik, and the regional governing body of North Slope Inupiaq Eskimos refers to itself as the Inupiaq Community of the Arctic Slope.

Alaska's native peoples are Aleuts, Eskimos and Indians and their units of organization include entities like traditional councils, village councils, village corporations, regional consortia and subregional consortia. Yet neither the Congress nor the Federal courts deny all fall within the purview of the Indian Commerce Clause.

Leading constitutional scholars, including our esteemed Chief Justice John Roberts, have argued that Native Hawaiians also fall within the purview of the Indian Commerce Clause. I think it is high time that this Congress confirm that they do.

The American Indian Law Deskbook, 2d edition, authored by the Conference of Western Attorneys General, an association of state attorneys general, quotes the U.S. Supreme Court's decision in *United States v. Antelope* for this point.

Congress may not bring a community or body of people within the range of its Indian Commerce Clause by arbitrarily calling them an Indian tribe, but . . . the questions whether, to what extent, and for what time they shall be recognized and dealt with as tribes are to be determined by the Congress, and not by the courts.

As anyone who has been to law school knows, when the courts apply arbitrariness as the standard of review, they are highly deferential to the initial decision maker, whether that decision is made by the executive branch or the legislative branch.

And the new 2005 edition of Cohen's Federal Indian Law treatise, which has historically been regarded as the definitive authority on Federal Indian Law notes that "no Congressional or executive determination of tribal status has been overturned by the courts" and indeed the Supreme Court has never refined the arbitrariness standard to which I referred.

The Alaska Native Claims Settlement Act was most importantly, a settlement of land claims. But it has turned out to be so much more for Alaska's native people. It created native owned and native controlled institutions at the regional and village level. These institutions, the Alaska Native Corporations, have functioned as leadership laboratories, helping a people who traditionally lived a subsistence lifestyle gain the skills necessary to run multi-million-dollar economic enterprises. I am not only referring to the profit-making corporations created by the act, but also the people serving institutions that manage Indian Self Determination Act programs.

The Alaska native health care delivery system is a prime example of President Nixon's self-determination policies at work. At one time the Federal Government administered the delivery of health care to the native people of Alaska through the Indian Health Service. Today, the native people administer their own health care delivery system under a self-governance compact with the Federal Government.

This healthcare system is recognized around the world as a laboratory for innovation. It is a pioneer in the use of telemedicine technology to connect clinics in remote villages to doctors at regional hospitals, and at the advanced Alaska Native Medical Center in Anchorage. Confidence in the quality of care delivered by the native healthcare system rose when native people took over the system.

But for me the most gratifying thing is to see young native people who are leading their communities into the new millennium. You see them in management and developmental positions everywhere in the Alaska native healthcare system.

The institutions created and fostered by the Alaska Native Claims Settlement Act have helped countless native young people pursue educational opportunities at the undergraduate and graduate level. Young people from the villages of rural Alaska are going off to school and returning with MBAs and degrees in law and medicine, nursing, education and social work.

As I visit the traditional native villages in my State of Alaska, it is evident to me that the Alaska Native Claims Settlement Act accomplished much more than settling land claims and creating native institutions. This legislation empowered a people. The Native people of Alaska have regained their pride in being native. Even as native people are pursuing careers that their ancestors never considered, there is a resurgence of interest in native languages and native culture in many of our native communities.

The empowerment of Alaska's Native people also enriches the broader Alaska community. Thousands of Alaskans participate in programs offered by the Alaska Native Heritage Center in Anchorage. The Athabaskan Old Time Fiddler's Festival and the World Eskimo-Indian Olympics enable the native people of Interior Alaska to share their culture with the Alaska community.

At the time the Alaska Native Claims Settlement Act became law, some believed that it would balkanize the State of Alaska and separate people from one another. As we approach the 35th anniversary of the Alaska native land claims settlement, I can state with confidence that this single step of recognizing the legitimate claims of Alaska's native peoples has made our State a better place. It strengthened our ties to the past. It strengthened our sense of community. It enables all of us, native and non-native alike to take pride in Alaska.

Some 112 years have passed since the overthrow of the Kingdom of Hawaii, depriving the Native Hawaiian people of their self-determination and their land. Some 112 years after the Native Hawaiian people came under the control of the United States, I am sad to note that their status among the aboriginal peoples of the United States remains in controversy.

This controversy persists even though the Congress has enacted more than 150 separate laws that recognize a special relationship between the Native Hawaiian people and the United States. Among these laws is the Hawaiian Homes Commission Act of 1921, which set aside lands for Native Hawaiians much like the Alaska Native Allotment Act set aside lands for Alaska Natives.



Now you would think that if Native Hawaiians were regarded as not having the status of Indian people under the Commerce Clause, that the Congress would not have set aside land for them or made them eligible for the sorts of programs and services for which native people are eligible. But the Congress has done so time and time again and Presidents continue to sign these bills into law.

I am referring to the inclusion of Native Hawaiians in laws like the Native American Programs Act of 1974 and the Native American Graves Protection and Repatriation Act, which protect the interests of all of America's native peoples.

I also refer to laws such as the Native Hawaiian Healthcare Act and the Native Hawaiian Education Act which specifically rely on Congress's plenary power over matters involving Indians for their authority.

This controversy persists even though this Senate passed by a margin of 65-34, an Apology Act in 1993 which was ultimately signed into law as Public Law 103-150. Through this Apology Act, the Congress expressed its commitment to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people.

The bill before us, S. 147, is the logical next step in the process of reconciliation. It is the product of many years of hard work by our esteemed colleagues, Senator AKAKA and Senator INOUE. It has earned the support of the Governor of Hawaii, the Honorable Linda Lingle, and the support of the Hawaii Legislature. It is endorsed by every major Indian group in our Nation—the National Congress of American Indians, the Alaska Federation of Natives and the Council on Native Hawaiian Advancement. It has been carefully considered by the Senate Committee on Indian Affairs which has reported the bill favorably to the full Senate.

First and foremost, it conclusively resolves the issue of whether Native Hawaiians are aboriginal peoples alongside American Indians and Alaska natives. This is a process that the native people of Alaska waited 108 years to resolve. It is important for the Congress to resolve these issues in order to assure that the programs we have enacted for the benefit of Native Hawaiians are free of constitutional challenge.

It provides for the organization of Native Hawaiians in a form that the adult members of that community determine by an open and transparent ballot. And it empowers that Native Hawaiian organization to negotiate with the State of Hawaii and the United States of America over the direction that Native Hawaiian self-determination may take. This is a modest piece of legislation that simply establishes a framework for negotiations to take place in the future.

Some of the opponents of this legislation have set out a parade of horrors

that will flow from its enactment. I, for one, am unwilling to speculate on the outcome of the negotiations between the United States, the State of Hawaii, and the organization of Native Hawaiians established by this legislation. This legislation on its face states that it does not authorize Indian gaming, it does not vest the Native Hawaiian organization formed under its provisions with civil or criminal jurisdiction, and it does not require that Federal programs and services to other aboriginal peoples of the United States be reduced in order to provide access to the native peoples of Hawaii. It also does not create Indian reservations in Hawaii.

Sharing and inclusion are fundamental values to the native people of Alaska. The Alaska Federation of Natives, which is the oldest and most respected organization representing all of Alaska's native peoples, strongly supports the inclusion of Native Hawaiians among our first peoples, just as it supports the legitimate claims of the Virginia tribes and those of the Lumbees of North Carolina. I ask unanimous consent that the AFN's resolution of support be printed in the RECORD.

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

#### IN SUPPORT OF THE HAWAIIAN PEOPLE

Whereas: the aboriginal people of the Hawaiian Islands, like Alaska Natives and Indians of the Lower 48 states, have long been the victims of colonial expansionism and racial discrimination; and

Whereas: the Office of Hawaiian Affairs, a unit of state government, has for years administered trust funds for the benefit of Native Hawaiians under the aegis of a Board of Directors elected by Native Hawaiians; and

Whereas: in the recent *Rice v. Cayetano* ruling, the U.S. Supreme Court held that this electoral process violates the Fifteenth Amendment to the United States Constitution, which prohibits the use of race as an eligibility factor in voting; and

Whereas: the *Rice* decision opens the door to additional lawsuits that would threaten the status and well-being of Hawaiians—and could create serious implications for Alaska Natives and other indigenous Americans; and

Whereas: the most experienced legal strategists in Hawaii, including the Governor and the Congressional Delegation, have determined that the best response to the *Rice* decision is that the United States Congress enact legislation specifically recognizing the Hawaiians as an "indigenous people" of the United States; and

Whereas: the State of Hawaii, particularly when compared to Alaska, has generally treated its indigenous population with respect and it is now making a unified effort to avoid the damage that *Rice* could do its own future; and

Whereas: there are several compelling reasons why AFN and the statewide Alaska Native community should now stand up for the Hawaiian people during the struggle for their appropriate legal status:

(1) because it is the right and just thing to do;

(2) because all Americans have a vested interest in healthy social relationships, racial tolerance, and political cohesion; and

(3) because the Hawaiian Congressional Delegation—and above all, Senators Daniel Inouye and Daniel Akaka—have always been

there for us in our long fight for Alaska Native rights, including subsistence; Now therefore be it

*Resolved*, That the Board of Directors of the Alaska Federation of Natives declares its unqualified concern for, and support of, the Hawaiian people in their quest for federal recognition as indigenous people of the United States; and be it further

*Resolved*, That the Alaska Federation of Natives' Board of Directors direct the President and staff to assist the State of Hawaii's political leadership in this critical effort, by all appropriate means.

Ms. MURKOWSKI. Celebrating the distinctive cultures and ways of our first peoples strengthens of us. The Alaska Native Claims Settlement Act has stood the test of time and proven to be a good thing for the people of Alaska—native and non-native alike.

During his introductory remarks, the Senator from Tennessee, Mr. ALEXANDER, drew some distinctions between the situation of the Native Hawaiians and those of Alaska Natives. I would like to offer a few observations for the RECORD.

It is true that some Alaska Natives now and at the time the Alaska Native Claims Settlement Act of 1971 was enacted live in Alaska Native villages. Those villages have never been regarded as Indian reservations. Non-Natives live in Alaska Native villages alongside Alaska Natives.

But more significantly, the Alaska Native Claims Settlement Act of 1971 did not require that one reside in one of the Alaska Native villages or even in the State of Alaska to be a beneficiary of the settlement. All it required it that an individual have as a result of one's ancestry a specified quantum of Aleut, Eskimo or Indian blood to be an initial shareholder in an Alaska Native Corporation. The Federal Government determined who was eligible to receive stock by formulating a roll of Alaska Natives.

Recognizing rates of intermarriage among Alaska Natives, Congress has amended this legislation to give descendants of a corporation's original shareholders an opportunity to participate in the corporations on a co-equal basis with those shareholders who had the requisite blood quantum.

At the time that the claims act was passed Alaska Natives resided in every urban center of Alaska and many resided outside of the State of Alaska. They too lived as everyone's next door neighbor and were mixed in with the State's population.

In the 34 years since the claims act was passed more and more Alaska Natives have relocated to regional hubs, to Alaska's largest cities, and to locations outside Alaska. Today, Anchorage is regarded as Alaska's largest Native village. Some even live in Hawaii. Yet they have not lost their status as Alaska Natives in fact as in law. All remain eligible for services customarily provided to American Indians and Alaska Natives under the law.

I trust in the judgment of my respected colleagues, Senator AKAKA and

Senator INOUE, and my friend, Governor Lingle, that passage of S. 147 will enrich the lives and spirits of all of the people of Hawaii.

I ask that my colleagues support cloture to enable us to debate S. 147. With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I thank the Senator from Alaska for her support. I yield whatever time is left to the Senator from Arkansas, Mrs. LINCOLN.

The PRESIDING OFFICER. The Senator has 18 seconds.

Mrs. LINCOLN. Mr. President, first of all, I compliment my colleagues from Hawaii, Senator INOUE, and Senator AKAKA especially, for sharing his time and for the incredible work they have done on behalf of the people they represent in the State of Hawaii. I wanted to take this opportunity to—

The PRESIDING OFFICER. The Senator's time has expired. The next 30 minutes, by unanimous consent, is to be controlled by the majority. Does the Senator from Arkansas have a unanimous consent request?

Mrs. LINCOLN. Yes. I ask unanimous consent to proceed for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object, and I have no desire to object, my time was starting at 6 o'clock, and then Senator SESSIONS has 10 minutes. He needs to leave by 6:20. He is not here. I think that was the original agreement.

Would the Senator be willing to start at 6:20 and have 5 minutes then?

Mrs. LINCOLN. If there is an objection, I will certainly yield.

The PRESIDING OFFICER. Is there an objection?

Mr. GREGG. That will still be on our time, as I understand it. If the Senator is agreeable, I suggest that at 6:20 she be recognized for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I apologize to the Senator, but Senator SESSIONS advised me he wants me to be completed by 6:10.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

#### REPEAL OF THE ESTATE TAX

Mr. GREGG. Mr. President, I rise today to support the effort which is being pursued in the Senate in a bipartisan way, I certainly hope, to rid ourselves of the death tax, especially as it applies to smaller estates.

The death tax makes virtually no sense from a standpoint of tax policy. Before I was elected to the Senate and before I got into public office, I was an attorney. At the time, I went back to graduate school for 3 years and got a graduate degree in tax policy and taxation, an LLM, as it is called. One of the areas I specialized in at that time was estate tax planning. It always seemed ironic to me that this was the

only tax that was energized not by economic activity—in other words, usually when you are taxed, you do something that generates economic activity. You have a job so you have income; you make an investment and make a sale of that investment, so you have capital gains. Whatever it is, it is an economic event that you energize, that you initiate, and it has generated some sort of income to you.

The death tax is the only tax we have which has nothing to do with economic events. It just has to do with an unfortunate luck of the draw. You are crossing the street and you get run over by a postal truck and die, which is enough of an action to upset your day, and then the IRS comes by and they run over you again. So you end up not only having your day totally ruined because you got run over by the postal truck to begin with, but then your family has their day ruined because they not only lost you, but they suddenly have to pay this huge tax if you are an entrepreneur.

The problem is that it hits most discriminatorily that small entrepreneur in our society who basically creates jobs—the small business person—a person who has made an investment and built an asset throughout their life. Maybe it is people who go out and start a restaurant, maybe employ 10, 15, 20 people; people who go out and start a printing business or make an investment in real estate, an apartment, build housing for people. They are just getting going, they don't have a whole lot of assets, and they are not very liquid usually—in fact, these folks are not liquid at all because it is mostly tied up in real estate—and suddenly they have this traumatic event with the key person in the family dying who maybe built this business and then they get hit with a tax.

Not only is it a tax which has nothing to do with economic activity, it is actually a tax which has the ironic and unintended consequence, I presume—but it is exactly what happens—of actually crushing economic activity and reducing economic activity and, in many cases, costing jobs because the small family business or the farm, which was being operated by this sole proprietor, in most instances, or this small family unit, suddenly can't find itself capable of meeting the costs of paying the estate tax—it didn't ever plan for that or if they did plan for that the cost of planning for that was pretty high—and so they have to sell their assets which usually means the people they employ are at risk or maybe they have to just close down the whole operation.

So the economic activity contracts, and instead of having a business that might have been growing, you end up with a forced sale, the practical effect of which is you contract economic activity.

First you have this really incomprehensible concept that you are going to tax people not for economic gain, but

simply because they had a terrible thing happen, which is they died, maybe accidentally, and then you are going to say that instead of encouraging economic activity, which is what the purpose should be of our tax laws, you are actually going to create a tax which contracts economic activity. So it is discriminatory, inappropriate, and irrational, and on top of that, to make things worse, the United States has the third highest estate tax, death tax rate of the industrialized world. In fact, our rate is so high that we are even above—and this is hard to believe—we are even above France. When you get above France in an area of taxation, you have really started to suffocate economic activity, entrepreneurship, and creativity because they are sort of the poster child for basically how to make an economy nonproductive and encourage people not to work and basically be a socialist state.

This whole concept of a death tax, first, makes no sense from the standpoint of tax policy; it is not generated by economic events, and it makes no sense from the standpoint of economic policy because it usually leads to contraction of growth rather than expansion of growth. And it certainly makes no sense that the United States, which should be a bastion of the promotion of entrepreneurship and a bastion of supporting family farmers, the family restaurant, the family gas station, the family entrepreneur, is taxing those families at a rate which is higher than the French do.

There is a proposal—in fact, really there is a series of proposals—in the Senate today and the next few days which will allow us to put in place a more rationalized approach to the death tax. To get to that point, we have to have, it appears, a cloture vote on full repeal, which was the House position. But three or four of our colleagues have put forward ideas that do not involve full repeal—I support full repeal—but these are more modest approaches. Senator KYL has been leading the effort in this area. Senator BAUCUS appears to be pursuing this effort. Senator SNOWE, I know, is pursuing it. There are options floating around the Congress—the Senate specifically—which, hopefully, can be pulled together and moved forward.

It truly is time to do this. We need to put in place a clear statement of what the tax policy is going to be if you have the unfortunate experience of being run over by a postal truck. And it should be a clear statement that if you are a small entrepreneur with a family-type business or a farm, that your family is not going to be wiped out by the IRS coming in on top of this terrible event and taking basically a disproportionate and inappropriate share of your assets and basically contracting and eliminating your business and putting your family's livelihood at risk.

The reason we need to do it now, even though most of this won't take effect until 2010, I can tell you as an estate tax planner before I took this job,

before I got into public service, you need that lead time to do it right. You just can't overnight plan for tax policy. You have to have lead time, you have to have a clear statement of what the tax policy is going to be, and consistency is critical. Putting this in place now so it will be effective in 2011, which is what most of the proposals are, is absolutely essential if we are going to have an effective reform of this death tax law which we presently have.

Mr. President, I see the Senator from Alabama is in the Chamber. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I couldn't agree more with Senator GREGG's comments. He is someone who has had experience with the estate tax. He understands these ramifications well.

My college professor, Harold Apolinsky, in Birmingham, one of the great estate tax lawyers in the country, has dedicated his career in recent years to eliminating this tax. He said it is the worst thing happening to our country, and it absolutely ought to be eliminated. He said: Even if it affects my business, I am doing this because I think it is the right thing to do. He has inspired me to be active in this area.

I would like to share three stories.

I was traveling in a small town in Alabama. A man came up to me with his son. They have three motels. He was sharing with me their frustration that they had to take out an insurance policy that cost the family \$80,000 a year because if something happened to him, they had no cash—they had built motels, they were investing in a growing economy and expanding this small business and they had no cash—and they would be faced with a death tax.

I want my colleagues to think about this: Against whom is this small business family competing? It is competing against Holiday Inn, Howard Johnson's, Courtyard Marriott, and who all else—huge international corporations that never pay a death tax—never pay it. But this closely held family business can be devastated. And if we don't change the law, as we all know, in 2011, this tax will again be 55 percent of net worth over the base amount.

We need to be encouraging these kinds of businesses. I got a call yesterday from Robert Johnson, the founder and CEO of Black Entertainment Television. He told me that the death tax was going to make it impossible for African Americans to continue to develop wealth. He said he is competing against CBS, ABC, NBC, and Fox. He is not as big as they are, but he is competing. He has made some money. If something happens to him, the family is going to have to take out of his business huge amounts of cash reserves. What then will happen? BET will be put on the sale block, and it will be bought, as he said, by some big conglomerate. It will not be bought by an African American

because they won't have the money to do it. He said we are capping off the growth rate, instead of allowing that company to devolve to his heirs so it would continue to be run in that fashion.

Think about a person who may own 5,000 acres of land, let's say. That sounds like a lot. They have managed well. They have been a good steward for 50, 60 years. They saved money. They drove an old pickup truck. They have a modest home. They are frugal. We know people like that.

What about International Paper? They own millions of acres of land. International Paper will never pay a death tax. But yet this landowner who is competing—maybe they have a forestry business—competing, in a way, directly against International Paper. But every generation of this family, Robert Johnson, the motel owner, has to pay a tax the big guys don't pay. Do you want to ask why we are seeing consolidation of wealth in America today? I submit to you that is the reason. Independent bankers, funeral home directors, they are selling out in large numbers. They can't afford to manage their business. They have to get liquid so if something happens to them, they can pay the death tax. It brings in less than 1.3 percent of the income to the United States Government. I submit the way it is working today is destroying competition. It is hurting, savaging, killing off vibrant, growing small businesses, the family-owned entities that need to be competing against the big guys.

It reminds me of going into a forest of trees and there is this little tree trying to grow up in the middle of the forest and somebody just comes in every generation and chops off the top of the little tree. How can it ever compete against the big guys if it has to pay a tax they don't pay?

I believe it is important for us for a lot of different reasons. This is why I think we ought to eliminate the whole thing: some of these companies are \$50 million, \$100 million companies, but they are tiny—\$200 million, \$300 million, but they are tiny compared to these big, international corporations. Polls show that the death tax is the most unfair tax—Americans consider it the most unfair tax because people have already paid their money. You earn money, and then you pay, if you are in the higher income bracket, a 35-percent tax rate, and then you buy an asset with it, and a few years later, you die, and Uncle Sam comes in and he wants 55 percent of it. What kind of a tax system is that? It is really a confiscation.

Also, this is very important: Any good tax should be clear, fair, easy to collect, and does not cost a lot of money to collect. When you evaluate the death tax by those standards, it is the worst tax of all.

Alicia Munnell, a professor of finance at Boston College and a former member of President Clinton's Council of Eco-

nomics Advisers, has written two times that in her opinion the cost of compliance and avoidance—as the big, wealthy people spend a lot of money trying to avoid this tax—may be as high as the revenue raised. How horrible is that, to have a tax that costs as much to collect as it brings in in revenue?

I have a deep concern about the scoring that has been produced by the Joint Tax Committee on this death tax repeal. I do not believe it is accurate. I have not believed it has been accurate for quite some time. The Wall Street Journal just devastated their analysis a couple of days ago in an article. I believe it is absolutely incorrect. I would note that they scored the reduction of the capital gains tax a few years ago, reduced it from 20 to 15 percent, as costing the Federal Government billions of dollars. The truth is, the Federal tax revenues from capital gains increased when the capital gains tax was reduced, and they missed it by more than \$80 billion. They had a reduction projected, we ended up with a substantial increase, and the difference between their projection and reality was over \$80 billion. Do you know they won't tell us how they compute this death tax cost? They will not tell the Members of this Senate what their working numbers are.

So I will give some more information on my concerns about the score, but I will again note that it brings in less than 1.3 percent of the revenue to the Government. It is time to eliminate it. It will be great for our economy. It will eliminate a tax that costs as much to administer as it does to collect. It will stop savaging small businesses. It will stop preying on families during the most painful time in their lives: the death of a loved one.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, I commend the Senator from Alabama, Mr. SESSIONS, on his remarks.

Mr. ISAKSON. Mr. President, Senator SESSIONS is absolutely correct, Senator GREGG is absolutely correct, and this Senate will be absolutely correct if we vote to go to cloture so we can proceed on the total repeal, or at least an additional repeal, of the estate tax. There are a lot of reasons, but I want to try and make my point succinctly and I want to make it briefly because I want to point out how punitive the estate tax is today.

Most Americans are employed by small business; 75, 76, 77 percent of all Americans are employed by small business. It may be a restaurant, it may be a laundry, it may be a farm, it may be a construction company, it may be a utility contractor just like the ones that are in town today lobbying all of us for the best interests of their business. Most people work a lifetime to build a business. They employ people to whom they pay income. The people to whom they pay income pay income

taxes. Yet when the tragedy of death comes, an individual owner of a small business dies, immediately they are confronted with one of the most punitive and confiscatory taxes that has ever been devised in the history of taxation.

Granted, we did a good job when we passed the accelerated improvements in the unified credit or the deduction on the estate tax. This year, based on the bill we passed a few years ago, there is a \$2 million exemption, and that is a help, and it goes to \$3.5 million in a couple of years. Then, magically, the estate tax is repealed in 2010, only to return to us a year later, to return to us at 55 percent. So we are asking people who work a lifetime to save and build a business, to plan, based on a tax that is here today, gone tomorrow, and then returns with a vengeance a year later.

To best illustrate what the estate tax does to American small business, ranchers, and family farmers, I would like to do a little demonstration on the Senate floor. For the sake of argument, let's just round the 55 percent estate tax off to 50 percent, and let's assume for a moment that a small business owner, a family farmer, passes away and dies and their estate becomes taxed at 50 percent. After the credit that is available now, or when we get back to 2011, no credit at all, the United States of America and the department of revenue, the IRS, want to tell the heirs of that estate that within 9 months of the death of that individual, they want this much of that person's estate. If one sheet of paper is the whole estate, they want half of it in taxation.

So when the first generation owner of a small business passes that business on to the second generation, after the Government gets its half, there is only this much left.

Let's assume that family is able, because of savings and because of borrowing and because of productivity, to pay that 50 percent tax without liquidating the business, and that second generation small business owner operates that business, employs the workers in that business, pays them the income that pays the taxes, but let's assume that second generation person meets their demise. And when they die, before they can pass that family business on to the next generation, once again, the IRS gets half of what is left.

So in two generations, what was a full estate ends up with three-fourths of it going to the United States Government, and one-fourth of it left to the individual or family. Of course, that is in reality not really what happens because before that last passing takes place, that business is sold or liquidated, or it is leveraged to such an extent that the amount of cost of the debt service on the leverage makes that business go from profitable to unprofitable. That is why the estate tax is punitive. That is why it is wrong for this country.

I want to address another point that Senator SESSIONS made that is so important for us to focus on as we listen to the two sides of this debate tonight and tomorrow. You will have some come and they will take that score on how much the repeal is going to cost us, and they will talk about that score, saying that is a reason we should not repeal the estate tax or the death tax. I submit, as Senator SESSIONS did, that score is dead wrong because just as the scoring of the reduction in the capital gains tax was dead wrong a few years ago, this scoring is equally dead wrong and it is wrong for this reason: If that family business that was reduced to almost nothing has to be sold, then along with what is sold is the jobs that went with it, the income that went with it, and the future taxes that were paid because of it.

Think of this for a second. If someone has stock they have to sell and liquidate in order to pay the one-time capital gains tax, then it is gone forever from the standpoint of the income production that they otherwise would pay with dividends year in and year out. Wouldn't we rather have people hold assets such as businesses and stocks and real estate and pay taxes on its profitability and its income year after year after year? Wouldn't we rather that happen than all at once to take 50 percent, cause the business to be sold, the stock to be liquidated, the real estate to be divided, and the revenue never to be paid again? It is shortsighted and it is wrong.

I hope the Members of the Senate, when we come to the cloture vote tomorrow, will recognize the death tax is the third bite of the apple. We charge people income tax when they earn income, with what is left they make investments, and then as those investments pay dividends or pay income, we tax that, and then we say: When you die, we want half of that asset. It is wrong. It is wrong for individuals, it is wrong for family farmers, it is wrong for landowners, and it is wrong for America.

I urge all of my colleagues when the cloture vote comes tomorrow to vote yes to bring about a meaningful debate on the repeal of the estate tax or the death tax, and let's take that third bite of the apple away from the Government and put it back in the hands of the people, so those assets, farms, and investments can be productive, not just for one year, but for a lifetime.

I yield the floor.

The PRESIDING OFFICER. Who seeks time?

Mr. ISAKSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator should note that he is on majority time by a previous unanimous consent agreement. Is there objection to the Senator proceeding? There being no objection, the Senator from Connecticut is recognized.

Mr. DODD. Will the Chair repeat his statement?

The PRESIDING OFFICER. The Senator is speaking under the majority time previously agreed to under a unanimous consent agreement. I presume there is no objection to the Senator proceeding.

Mr. DODD. I hear no objection, Mr. President. Since no one is on the floor, obviously, that makes it easier.

#### MARRIAGE PROTECTION AMENDMENT

Mr. DODD. Mr. President, if I can, I wanted to spend a couple of minutes on a matter that this body voted on this morning. I was unavoidably absent this morning at a family matter in Rhode Island, so I was not here for the vote. But I wanted to just take a minute or so here to say to my colleagues and to others that had I been present this morning, I would have voted no on the motion for cloture, and had cloture been invoked, I would have voted against the amendment. I am speaking of the proposed constitutional amendment that would have banned same-sex marriages.

Like many of my colleagues who have spoken on this matter, I believe this is a matter that belongs in the States. This is not a matter that ought to be a part of the Constitution. I have been here for a number of years in the Senate, and over the history of this great country of ours there have been over 11,000—more than 11,000 proposed constitutional amendments. The Congress and the Nation in its wisdom over the years have adopted only a handful of those proposals—27 is the number of amendments that have been adopted since the formation of our country. The reason for that, of course, is the Founders insisted that it be not an easy matter to amend the Constitution and that we ought to amend the Constitution to correct problems in the governmental structures or to expand the category of individual rights such as the first 10 amendments achieved in our Nation.

Our Nation's constitutional history clearly demonstrates that change to our Constitution is appropriate on only the rarest occasions—specifically, to correct problems in the government structure or to expand the category of individual rights such as the first 10 amendments which compose the Bill of Rights. Notably, the amendment to establish prohibition is the only time that the Federal Constitution was amended for a reason other than those I just mentioned.

It was repealed 13 years after its enactment and has been judged by history to be a failure insofar as it sought to restrict personal liberty.

The Framers deliberately made it difficult to amend the Constitution. They did not intend it to be subject to

the passions and whims of the moment. Time has proven their wisdom. Since 1789, when the first Congress was convened, there have been 11,413 proposals to amend the Constitution. Sixty-four have been offered in this Congress alone. Luckily, only 27 have been successful. If all or even a substantial fraction of these proposed amendments were adopted, our founding document would today resemble a Christmas tree, a civil and criminal code rather than a constitution, and the United States would be a very different Nation.

It is unfortunate that the majority leadership of the Senate does not share James Madison's view that the Constitution should only be amended "for certain, great, and extraordinary occasions."

Supporters of this proposed amendment would like you to believe that there is currently an "assault" on traditional marriage by some American couples and families that warrants Federal action in the form of a constitutional amendment to "protect" the institution of marriage. They have utterly failed to marshal even a minimal degree of credible facts to support such a claim.

Indeed the facts suggest that there is no such crisis. The Defense of Marriage Act, DOMA, was enacted in 1996 to provide a federal definition of marriage and to stipulate that no state should be required to give effect to a law of any other State with respect to a definition of marriage.

There has been no successful challenge to the DOMA in the decade since its enactment. Courts have never identified a Federal right to same-sex marriage. States have never been forced to recognize an out-of-state marriage that is inconsistent with its own laws.

And no church, temple, mosque, or synagogue has been forced to perform marriages inconsistent with the beliefs of those who worship in them. For Congress to step in now and dictate to the States how they ought to proceed in this matter thus runs counter to the facts. It also runs counter to the principles of federalism and personal liberty that many proponents of this constitutional amendment claim to hold dear.

I am disappointed that we find ourselves spending valuable time on the Senate floor debating this issue. Less than 2 years ago, the majority leader brought the same measure to the Floor. It failed by a vote of 48 to 50. There is no reason to think that it will not fail again.

It is no coincidence that approximately 5 months before the upcoming midterm elections the Senator floor is being held hostage by the majority's misguided priorities. I fear that some of those leading the charge on this legislation are more interested in dividing Americans for partisan gain than uniting the country to solve problems.

Make no mistake: married couples are under considerable strain these days. But the cause of that strain is

not the conduct of other American couples going about their daily private lives. Instead, married couples and all Americans are feeling the strain of high gas prices, soaring health care costs, schools in need of reform, a sluggish economy, and a war in Iraq in which American men and women are fighting with courage. Yet this administration and others in this body have little to offer to relieve these strains. Instead, they seek legislation that will only divide and distract Americans from the common challenges we should be facing together.

This proposed constitutional amendment is not the best use of our time. We should be addressing the real needs of American families. We should be legislating. That is what we are elected to do—to address issues like autism, underage drinking, the growing problem of obesity among our nation's children, and the threat of terrorism. But today we have not been afforded that opportunity. Instead, today feels like Groundhog Day.

It is another election year and we are here discussing another issue that has nothing to do with the great challenges of our time.

Only on one occasion did we deviate from that practice and that was the adoption of the amendment dealing with the prohibition of the consumption of alcoholic beverages. That was a complete deviation from the two situations in which the Founders intended that we would amend the Constitution of the United States.

I might point out that it was only a few years after the adoption of the amendment on prohibition that it was repealed by the Congress of the United States and the people across this country.

It would be a mistake, in my view, to repeat another error like that which was committed in the early part of the 20th century when we adopted the prohibition amendment.

Supporters of this amendment like to say that this debate is about an assault on the institution of marriage. I do not believe that to be the case. I do believe, however, that there is currently an assault on families. I am disappointed this body is not spending the time allocated for this debate talking about the important issues families today. For example, we could be talking about the bill dealing with autism that my colleague from Pennsylvania and I have authored and we are trying to get attention on. Obviously the issues of energy prices, education, health care—there are any number of issues I can think of that we might have spent time discussing. We should be trying to come up with some answers rather than debate a question which has marginal significance and minimal importance for most people and which ought really to be left to the States.

Let me also suggest that the motivations behind this may not be helping families but instead inciting a political debate for the elections coming up this

fall. What worries me more than anything else, however, is I think it is designed to make people angry, to divide us as a country. I am deeply concerned about the growing divisions occurring in our Nation. This is a time when we ought to be coming together, when our leadership ought to be asking us to sit down and try to come up with answers on some of the overwhelming problems we face—not problems that are so overwhelming we can't answer them. Instead, we are spending that valuable time on a matter that is clearly designed to do nothing more than inflame the passions of people in this country rather than appealing to calm, to rationality, to common sense, to good discourse as a way of addressing the underlying issues. This is a great disappointment.

Again, I would have voted no on the motion to invoke cloture. I am pleased my colleagues from both parties, in a bipartisan way, rejected that cloture motion. It was a good conclusion reached here, and I regret I was not able to be here to cast a vote along with my colleagues who expressed a similar point of view.

#### THE ESTATE TAX

If I may, I wish to turn to the matter at hand; that is, the debate regarding the estate tax. The last time this body was scheduled to consider legislation to repeal the estate tax, the majority leader decided to postpone consideration of this bill in the wake of the devastation wrought by Hurricane Katrina. The general consensus was it was unseemly for us to be talking about having one-half of one percent—and that is what we are talking about, one-half of 1 percent of the population of this country—receive a bonanza, if you will, by repealing the obligation to share part of their estates to contribute to the growth and benefit of our Nation. The decision was it would be unseemly.

In fact, my good friend from Iowa, the chairman of the Finance Committee, for whom I have a great deal of respect, said, "It's a little unseemly to be talking about doing away with or enhancing the estate tax at a time when people are suffering."

I agree with my colleague from Iowa. I agreed with him then; I agree with him now. If it was unseemly to be talking about enhancing the wealth of the wealthiest in our society at a time when the Nation was suffering from the devastation of Hurricane Katrina only a few short months ago, I suggest that problems have not abated so substantially that we can now make the case that it is no longer unseemly, if you will, to use his language, to adopt a provision here that would make it far more difficult for us to address all of our other priorities as a Nation.

I hope our colleagues will agree and join with others in voting against cloture on the motion to proceed to what I consider to be irresponsible legislation.

Today's discussion is about priorities, as it always should be. I have

supported lower taxes for working Americans, including responsible estate tax reform. I think it is wrong to have excessive estate taxes imposed on ordinary farmers and small businesses owners out there who try to leave those businesses or land to their families. Because of the modest incomes most people in these groups make, they could find it impossible to do so under an excessive tax.

I note the presence of my good friend from Arkansas on the Senate floor who speaks eloquently about the farmers in her State who have been left, generation after generation, farms and land for succeeding generations to continue their great traditions. The Presiding Officer comes from a State with a strong agricultural tradition. All of our States have strong small business components, and all of us understand the importance of allowing those families to pass on to succeeding generations the ability to continue those efforts. But I hope my colleagues agree as well, that talking about the total elimination of this estate tax is, I think, irresponsible. It goes too far when we start talking about providing such a massive benefit for only the largest one-half of 1 percent of estates.

I represent the most affluent State in the United States on a per capita basis. I presume as a percentage of my population I have a larger number of estates that would benefit from total repeal than most of the other members of this body, with the exception of my colleague, Senator LIEBERMAN. I can tell you that the few estates that can benefit as a result of the distinction we are making between reform of the estate tax and total repeal seems to go too far, considering the revenue loss it would mean to our country.

We are talking about a revenue loss on an annual basis that exceeds the entire amount of money we commit to elementary and secondary education. Think of that. The entire amount of money in the Federal budget toward elementary and secondary education would be lost as a result of the complete and total repeal, rather than a modest, intelligent, thoughtful, rational reform of this estate tax. We should not bankrupt our Nation's future for a measure that would deliver no benefit to anyone outside a few extremely wealthy estates.

I might point out that some of the most wealthy Americans, people who would benefit the most from this total repeal, have been the loudest, clearest voices urging us not to do so. We ought to take note that the Gates family, people like Warren Buffett, people like John Kluge, people who have made great fortunes in this country and made those great fortunes in their own time, through creative work, not inherited wealth, are urging us, despite the fact that they would benefit to the tune of billions of dollars with a total repeal—listen to the Warren Buffetts, the Bill Gateses, the John Kluges, when they tell you this would be an un-

wise decision to make to just completely repeal a tax that is so important for continuing our ability to meet our obligations.

Let's not forget we are a nation at war, with American troops fighting and dying in Iraq and Afghanistan, at a terrible human and monetary cost. Repealing the estate tax will cost some \$776 billion over 10 years, which would fully be applied beginning after 2011. Not a penny of this cost would be offset. It would all be added to our Nation's debt, which is already now at \$8.4 trillion.

I made the case a few weeks ago—how big is \$8.4 trillion? If we were to go out on the Capitol steps out here and hand out a hundred-dollar bill every single second, 7 days a week, 24 hours a day, how long do you think it would take to pay off \$8.4 trillion? I will tell you the answer. It would take more than 2600 years—24 hours a day, 7 days a week, a one-hundred-dollar bill every second, handing it out. It would take 2,635 years. That is the amount of debt we have accumulated over the last few years, and now we are about to add to that to the tune of almost another trillion dollars here if you take what the revenue loss would be and the added interest cost of some \$213 billion. That would be the revenue loss that would result from repealing the estate tax. More than a trillion dollars that would benefit no one at all outside the largest one-half of 1 percent of the estates in the United States; 99.5 percent of the estates in the United States would not gain at all by the proposals to have a modification or reform of the estate tax. Each year of repeal on average would cost roughly the same in today's terms as everything the Government now spends on homeland security and education.

Over the past 5½ years, the current administration has radically altered our Nation's economic and social well-being, in my view. Median incomes have stagnated, poverty rates have risen, and more and more people are living without health insurance. Our troops have struggled with inadequate body armor and other necessities of battle. Farmers, workers, and small business owners are contending with rising interest rates, higher energy and health care costs, and growing global competition. While these problems have grown, the administration has severely reduced our Nation's ability to meet them by driving our Federal budget from surplus into deep deficit.

Since the current President took office, the Federal budget has declined from a surplus of \$128 billion to a deficit of more than \$300 billion. The national debt has risen to \$8.4 trillion. In just 5 and a half years, the administration has added more debt from foreign creditors than every other President in the history of the United States combined—in the last 5 years.

Repealing the estate tax would make these problems far worse, not better, and further hurt America's ability to address our most pressing issues.

A few months ago, the administration and the majority of this body enacted a budget reconciliation bill, the so-called Deficit Reduction Act. This bill made deep cuts to health care, childcare, and education, with the burden falling most heavily on working Americans—in particular on low-income parents and children, the elderly, and people with disabilities. The American people were told these cuts were necessary because of the deep budget deficits our country was facing. Yet here we are today, having been told only a few months ago that this great budget reconciliation act was necessary, despite the fact that we are going to ask those who are the least capable in many cases of providing for their needs, feeling the tremendous pressure they are, here we are today only a few weeks later being told that we can afford to take \$1 trillion out of the budget to serve one-half of 1 percent of the estates in this great country of ours.

Where is the logic in that? Mr. President, 99.5 percent of the estates in our country would not be adversely affected by what we are talking about. They would not pay an estate tax. Only one-half of 1 percent would. Yet \$1 trillion gets lost as a result of that decision, over the next 10 years, at a time, as I mentioned earlier, when we are not paying for the war and we find ourselves in tremendous need if we start talking about education, health care, and homeland security, just to mention two or three items.

Some proponents of the estate tax repeal have propagated the myth that the estate tax disproportionately harms farmers and small businesses by forcing them to sell their family farm or business in order to pay the tax. This just is not true. It is a scare tactic used by those who will benefit from repeal to create support for their cause. In reality, when the New York Times asked the American Farm Bureau Federation for real-life examples of a family farmer forced to sell by the estate tax, not a single example could be found. Not a single one.

Contrary to the misinformation that has been spread, no one but the very largest estates would ever pay this tax on inherited wealth. This year, an individual can pass on as much as \$2 million and a couple can pass on as much as \$4 million to their heirs, completely free of any taxation whatsoever. With these exemptions, 99.5 percent of all the estates in the United States would owe no tax at all. Those that will owe, only owe on the value of their estate that exceeds the \$2 or \$4 million that I just mentioned. With the exemption levels scheduled to rise in 2009 to \$3.5 million for individuals and \$7 million for couples, the percentage who will owe a single cent in estate tax falls to a mere 0.3 percent of the population that would pay any estate tax at all.

So 99.7 percent of the American population would have no obligation whatsoever. Yet we are about to enact legislation here that would repeal this altogether.

I do not understand that at all. How do you explain to people today that your child or your spouse serving in Iraq or Afghanistan? We are being told we don't have enough money for body armor or to up-armor the vehicles they drive, or that homeland security has to be cut because we don't have the revenues to support it. Yet we turn around and do something like this? Where is the logic in this? Under these rules, the number of Americans affected by the estate tax has declined dramatically already under current law, from 50,000 people in 2000 to only 13,000 today, and by 2009 the number will fall to 7,000. Out of a nation of 300 million people, 7,000 people in our 50 States would not be obligated to pay any estate tax at all.

Seven-thousand out of three hundred million, yet we lose \$1 trillion in revenue.

Again, where is the logic or common sense in a proposal like that given the damage it would do?

As I said, my State of Connecticut ranks consistently year after year at or near the top of the Nation in per capita income and other such measures. In my State and across America, people of all incomes have worked hard, obviously, to get where they are.

I don't like class warfare. I don't like drawing those distinctions. Many of these people I mentioned, pay taxes and have worked hard, and I respect that.

I urge my colleagues to listen to some of the men and women who have accumulated the greatest wealth as a result of their ingenuity and hard work. What are they saying about this in terms of the benefit to the country and the cost it would have?

In my State, I probably have a greater percentage of constituents than almost any other State in the country who would benefit if there is a total repeal. I stand here today, telling you that an overwhelming majority of the very people who would benefit from this, think it goes too far; that we are going too far with this proposal.

I urge my colleagues to join those who have urged us to be more modest, to have a more commonsense approach than repeal or near-repeal. Again, it would be a major failure to lose the revenue equal to that which we spend on all of the education for elementary and secondary school students, all of the spending on homeland security, to once again drive us further and further into debt. I think it is a great tragedy to be passing that on to the coming generations, to say we want to give a tax break only to the top five-tenths of 1 percent, or three-tenths of 1 percent of the population. That is an indictment that future generations will look back on and ask: What were they thinking at the beginning of the 21st

century that they would take such a significant step as to deprive this Nation of the ability to have the revenue we need in order to meet our obligations?

When the vote on cloture on this matter occurs, I urge Members to vote no.

There is a way to do this, and I think many of us are willing to support responsible reform in the estate tax area. But the notion of total repeal, I think, is highly irresponsible.

I urge my colleagues to join in the condemnation of that suggestion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

#### NATIONAL HUNGER AWARENESS DAY

Mrs. LINCOLN. Mr. President, I want to take this opportunity to spend a few moments to talk about the 36 million Americans, including 13 million children, who live on the verge of hunger.

I want to divert our conversation a little bit. I have actually waited quite some time to be able to speak about it. I started yesterday trying to get just a few minutes on the floor to bring about an awareness because today is National Hunger Awareness Day.

I often think about the children and the working American families who struggle to make ends meet. But I focus my thoughts and prayers on them today because today is National Hunger Awareness Day, 1 day out of our year. I started yesterday trying to grab 5 minutes where we could bring our attention to something so incredibly important and something so easy to fix.

There is a time when Americans are called to remember the hungry children and adults living across our great Nation. Most importantly, it is a day when we are called to put our words into actions and to help end hunger in our communities and across America.

I guess the realization that I have come to in these last 24 hours is, I have searched just to capture 5 minutes on the floor of the Senate. I suppose I could have submitted my comments for the RECORD. And maybe I am foolish to think by coming to the floor I could spark just a little bit of interest in my colleagues or others across this Nation to think about an issue that affects all of us—an issue where our fellow man is hungry, or another mother has a child out there that is suffering from hunger, that we can't stop for just a moment and realize that hunger is a disease that has a cure. It has a cure—a cure that we can provide, a cure that we all know about. And, if we took the time to think about it, to address it, we could actually cure this disease.

It is hard to find 5 minutes, it is hard to come down here and really make the difference that we want to make, but I believe this day and this issue are far too important to miss again the opportunity to talk about 36 million Americans living in food insecurity.

Two years ago today, I joined with my friends and colleagues, Senator SMITH, Senator DOLE, and Senator

DURBIN to form the Senate Hunger Caucus. At that time, we pledged to raise awareness about the hunger experienced by millions of Americans, a majority of which are children and elderly, and to forge a bipartisan effort to end hunger in our Nation.

I am proud that we are working with local, State, and national antihunger organizations to raise awareness about hunger, to build partnership, and develop solutions to end hunger.

An example of a bipartisan initiative to end hunger is the Hunger Free Communities Act which I introduced along with Senators DURBIN, SMITH, and LUGAR. This bill calls for a renewed national commitment to ending hunger in the United States by 2015. Yet we find it hard to find 5 minutes to focus our attention on such an incredible issue.

It reaffirms congressional commitment to protecting the funding and integrity of Federal food and nutrition programs, and creates a national grant program to support community-based antihunger efforts in fighting the disease on the battlefield, right there at the line of attack in our communities.

I am also proud to be a cosponsor of the FEED Act, the bill that would award grants to organizations that effectively combat hunger while creating opportunity by combining "food rescue" programs with job training—not just feeding a fish but teaching a man or a woman how to fish so that they do not just eat for a day, that they feed themselves for a lifetime.

Close to one-third of the food in this country that is processed and prepared goes to waste—one-third, whether it is in places such as Washington where there are multiple receptions going on at one time, banquets and other events that happen across the country. One-third of that food goes to waste.

This bill would help organizations safely recover unserved or unused food while providing culinary skills training to unemployed individuals. Two birds with one stone—using something that otherwise would be thrown away. How simple that seems and yet how hard it is to bring it forward into the light of day and talk about making that effort a reality.

I urge my colleagues to support these worthy and commonsense pieces of legislation.

If it is so hard to find 5 minutes just to talk about it, I wonder how long it is going to take us to pass these commonsense pieces of legislation.

Some people may ask: What can I do to help end hunger in America?

I want to talk about some of the ways Americans can help join the hunger relief effort. Acting on this call to feed the hungry is important, and I urge all Americans who are able to take part in ending this disease.

One critical component of this effort is the willingness of Congress and the American people to support the Federal food and nutrition programs. These programs provide an essential

safety net to working Americans, preventing the most vulnerable among us from suffering and even dying from malnutrition. Our continued investment in these programs is vital to the health of this Nation.

Why does it come to mind right now? Think about all of those children across this great country who have received the nutrition they need in school during the school year as school lets out for the summer. Where will they go for that nutritious breakfast? Where will they go for that lunch that they need to sustain them because there is no dinner waiting at home?

These are critical and important programs. Without spending the time and the effort to not only make them a reality but properly fund them in a way where they can actually meet the needs of the children across this country will take our attention.

The most significant of these programs is the Food Stamp Program. It provides nutritious food to over 23 million Americans a year. More Americans find themselves in need of this program every single year. As their wages are stagnant, as they have less and less opportunity to climb a ladder of opportunity because they may not be getting the education they need, they are finding more and more dependency on programs like this to be able to feed their families.

I understand our current budget constraints. I know we all do. Yet I didn't create this mess. The spending that has been freewheeling in this Congress over the last several years has been unbelievable. Yet as my colleagues mentioned, we failed to adequately support and fund issues such as our veterans' benefits; issues like educating our children and providing them with the skills they need to be competitive.

I come here to talk about the main sustenance of life. I understand these budget constraints, but I believe as one man to another, as one woman to another, one human being to another, food, simple nutrition, is something we cannot turn a blind eye to. Even in these tight fiscal times, I believe that we have to maintain our commitment to feed the hungry among us. We must first protect programs such as the Food Stamp Program, the National School Breakfast and School Lunch Program, the Summer Feeding Program, the WIC, and the Children and Adult Care Food Program. These are all critical programs that keep Americans who are on the verge of hunger and destitution from finding themselves there permanently.

Another important tool for local organizations is the Community Food and Nutrition Program, and with support from this program, the Arkansas Hunger Coalition has sponsored a Web site, a quarterly newsletter, an annual conference, a mini grant program, along with many civic, school, and community presentations on hunger which raise public awareness and promote innovative solutions.

Organizations such as the Arkansas Hunger Coalition operate on limited budgets. Yet they are a vital source of information for food pantries, soup kitchens, and shelters that together work to share the importance of food security to the people of our home State of Arkansas.

I urge Americans to contact their congressional representatives to voice their support for these nutritional programs. This critical issue of ending hunger, the unbelievable number of hungry Americans is something that we have to bring greater awareness to not just today but every day.

I urge my colleagues to protect them from cuts and structural changes that will undermine their ability to serve our Nation's most vulnerable citizens.

In addition to the Federal food programs, eliminating hunger in America requires the help of community organizations. Government programs provide a basis for support, but they cannot do the work alone. Community and faith-based organizations are essential to locating and rooting out hunger wherever it persists.

We rely on the work of local food banks and food pantries, soup kitchens, and community action centers across America to go where government cannot. The reason I have stayed so persistent in coming to the floor of this Senate to talk about this issue on a day that we have designated for awareness is because I tried so desperately to put myself in the shoes of other mothers who are not perhaps as lucky as I am. When a child looks into your eyes and says: Mommy, I am hungry, they have no response, whereas I do.

This is a critical issue for us as a nation. It shows where the fabric of our community and our country lies. It shows where our priorities are, and it shows who we are as Americans and what values we truly grasp for our fellow man.

Recently, I have been so proud as my twin boys have gotten invitations to birthday parties. There is a note at the bottom of the invitation. It says: Please don't bring a gift, but in lieu of a gift would you please give to a worthy organization, our local food bank or shelter.

My children with their birthday coming up soon said: Mom, we don't need those gifts again this year. Let's add something for those people who need it the most. Let's make sure that we have fun at our party but that we don't take the gift that we don't need and instead ask our friend to help us in feeding the hungry and sheltering the homeless.

I will try, and I know my colleagues will, too, to work as hard as we can to provide the resources these community organizations need to continue with the difficult but necessary work they perform, to encourage our neighbors, our children, our schools, and others to be as actively involved as they possibly can.

Private corporations and small businesses also have a role to play in elimi-

nating hunger in our great Nation. Our corporations and small businesses generate most of our Nation's health and have throughout history supported many of our greatest endeavors. Many corporations and businesses already contribute to efforts to eliminate hunger. I hope others will begin to participate as opportunities to do so present themselves in the future.

A couple of great examples of how business and nonprofits can partner to feed hungry people occurred these past few months. Together with America's Second Harvest, Tyson Food, in my home State of Arkansas, donated 6 million pounds of protein—one of the more difficult elements of nutrition to get into food banks is protein—6 million pounds of protein from one corporate citizen. Wal-Mart raised \$10 million to support food banks all across this country. I am so grateful to these companies and to nonprofit organizations for their leadership in this effort to feed those who have limited access to food and nutrition.

I have also seen some of the important work being done by organizations in the local Washington, DC, area. We see it all around us. All we have to do is open our eyes and make sure we are aware. The Arlington Food Assistance Center works to provide food to those in need in the Arlington, VA, area. I have supported some of their efforts through the local school drive. Not only is it important in terms of providing the needs of food assistance through the Arlington food bank system and the assistance center, but think what it does for our children. It gives them a learning experience of how they, too, can give back not just to their community or their school but to their fellow man, someone desperately in need of a nutritious meal, a family who needs a nutritious breakfast.

Think of what it teaches our children. Despite the fact that Arlington County is one of the wealthiest areas in the country, plenty of local residents do not have enough to eat. The Arlington Food Assistance Center seeks to remedy the problem by distributing bread and vegetables, meat, milk, eggs, and other food items. Our church group routinely goes for a "gleaning" program where local farmers allow us to get into the fields and collect part of their crops that have been left in order to provide fresh fruits and vegetables in our area food banks.

Lastly, this effort needs the commitment of individual Americans. Our greatest national strength is the power that comes from individual initiative and the collective will of the American people. I believe we are called by a higher power to care for our fellow man and our fellow women.

As a person of faith, I feel I am called to serve the poor and the hungry. I know many of my colleagues agree. If we believe in this call, we must live it every day in our schools and in our



homes, in our workplaces and our places of worship, in our volunteering and in our prayer. This personal responsibility is a great one, but it holds tremendous power. As we have seen throughout American history, when individuals in this Nation bind together to serve a common cause, they can achieve the greatest of accomplishments. By sharing the many blessings and resources our great Nation provides, I am confident we can alleviate hunger, a disease that we know there is a cure for, both at home and abroad.

I ask all of my colleagues to take a moment to honor on this day of awareness the very brave men and women and children who live in food insecurity and whom we have an opportunity to serve.

Mr. DURBIN. Will the Senator from Arkansas yield for a question?

Mrs. LINCOLN. Absolutely, I yield to my good friend from Illinois who has done so much on the issue of hunger.

Mr. DURBIN. Let me say at the outset it is my great honor to cochair with the Senator from Arkansas this effort relative to hunger, hunger awareness. It has brought us together in terms of offering resolutions, in terms of offering legislation, filling grocery bags. We have done a lot of things together in this effort.

I am fortunate to work with Senator LINCOLN. She comes to this issue driven by her faith and her family. They are linked together in her speech today and in her life. There is hardly a decision she makes—I know from having worked with her for so many years—that is not driven by her understanding of the impact of life on her family and what it means to so many other families.

As we have met in a variety of places, filling boxes and bags with groceries, we both had cause to reflect on what leads to hunger in a prosperous Nation. How does a country so rich as America end up with hungry people? How can this be? Yet we know, as she knows, it turns out to be a lot of people are working hard to avoid hunger. It can be a mother with a low-wage, minimum wage job, a mother who has been stuck in a minimum wage that this Congress has refused to increase for 9 straight years. Think about that: \$5.15 an hour for 9 years. This poor mother, trying to keep her family together, put her kids in a babysitter's hands or daycare, and then put food on the table finds that many times one job, sometimes two jobs are not enough, and she ends up at that food pantry.

We expect the poorest of the poor to come in there and many times find the working poor. That is the face of hunger found with many of our senior citizens. I cannot imagine these poor people, many of them alone in life, struggling with medical bills and fixed incomes, never knowing where they are going to turn for a helping hand, who stumble into a food pantry where they can find a loving face, a warm embrace and a bag full of groceries to keep them going.

I found that this last week when I was up in Chicago at the Native American Center on the North Side where a lot of American Indian families rely on their pantry. I said hello to the ladies who were running it. They said, sadly: Senator, business is just too darn good here. There are a lot of people coming in from all around the city of Chicago.

I find it in my hometown, Springfield, IL, at St. John's bread line, which has been there for years. I have been over there serving food once in a while. So many people rely on them.

In Chicago, only 9 percent of the half-million people who seek services from the Chicago Food Depository are homeless. The rest have a home to go to but nothing in the refrigerator and nothing in the cupboard. These people cannot afford the food they need.

Think of that: 37 million people in America, this great and prosperous country, living in poverty; many low-income families supported by jobs that do not pay a livable wage in a country where this Congress will not enact a law to raise that minimum wage. It could be that paying for health care has caused many of these families to be unable to afford food.

America's Second Harvest released a national hunger study showing that in Chicago 41 percent of households neglected their food budget to cover utility costs. You can understand that in the cold winter in Chicago. Last year, natural gas bills went up 20 percent. We were lucky. It could have been worse. And many of these families had to decide: Pay the utility bill, risk a cutoff or buy some food? It may be a combination of factors, but the food budget is often the first thing they cut.

Today, June 7, is National Hunger Awareness Day. Senator LINCOLN and I have come to the Senate encouraging our colleagues and all those following this debate to celebrate and commend the heroic efforts of so many emergency food banks, soup kitchens, school meal programs, community pantries, and so many others that make a difference in fighting hunger.

I don't know if Senator LINCOLN's hometown is the same as mine, but there is a day each year when the letter carriers all pick up food. You put out the bags of food for them. They pick them up. God bless the letter carriers; they collect that food, give it to the pantries to give to hungry people. Here are men and women who probably are footsore from all the miles they have to walk, and they walk an extra mile for the hungry of America. My hat is off to them.

Federal nutrition programs are critically important and they are not reaching enough people. Many parents still skip meals so their kids can eat. Many kids do not have the balanced meals they deserve.

Let me add, too, I am sure the Senator, as a mother of twins, will appreciate this. When I go to school lunch programs, sometimes it is depressing. Giving kids a helping of tater tots,

next to a slice of pizza is not exactly my idea of fighting obesity, encouraging nutrition, and feeding kids the right things.

We need to have good nutrition programs. We need to work overtime to make sure the food given to these kids does make a difference. At the Nettlehorst School on Broadway Avenue in Chicago, which I visited a few weeks ago, we opened a salad bar for the kids for school lunch. Guess what. They were all crowded around, filling up their salad trays. They will eat good food if you present it in the right way. We need good nutrition programs with good food to make sure our kids grow the right way.

Hunger drains the strength of the people who, for a variety of reasons, are unable to provide enough food, or the right kinds of food, for themselves or their family. A few blocks away, near a school over on Pennsylvania Avenue, in Southeast Washington, DC, get there early enough in the morning, around 8 o'clock, stand by the drugstore and watch these kids file in to buy bags of potato chips and pop or soft drinks to eat as breakfast on the way to school. Too many of these children rely on that for their only nutrition. I wish their parents could do better or do more. I wonder, sometimes, if they are able to. I don't know if they are. But what those kids are buying costs them money. Maybe those parents could have done a better job. Maybe the school could do a better job. As a Nation, we all need to do a better job.

In a land of abundance, the kind of sacrifice that many families have to make to feed their family members is deplorable and unnecessary. We should end hunger in the United States. Working together, we can.

I salute my colleague from the State of Arkansas. The hour is late, and she has a couple of kids at home waiting for her to get home, maybe to fix dinner. But whatever the reason, she took the time to come to the Senate tonight to remind all of us of our civic responsibility, our social responsibility and our moral responsibility to view hunger as a challenge that we can face and conquer.

I see the Senator from Alabama is probably here to speak. I have another statement to make, but I will defer to him since he has been waiting. Then when he is finished, I will ask to speak again.

The PRESIDING OFFICER (Mr. DEMINT.) The Senator from Alabama.

#### DEATH TAX

Mr. SESSIONS. Mr. President, with regard to the death tax, I will be offering some remarks later in the process that deal with the estimated cost of the elimination of this tax which does not account for the lack of stepped-up basis that will not occur if the death tax is eliminated and other factors that demonstrate that the allegations being made about large losses of revenue are not true. That is an important

factor in the debate. I will not go over that tonight.

I take this moment on another subject to read to the Senate a letter we received, received by Senator FRIST, the majority leader, today, from the administration, William Moschella, U.S. Department of Justice. He deals with the Native Hawaiian bill.

I said earlier today, the Native Hawaiian legislation is exceedingly important. It has to do with whether this great republic is going to allow itself, through the vote of its own legislature, to create within its own boundaries a sovereign entity, a sovereign Nation, that, according to those who support it, even on the Web site of the State of Hawaii, indicates that it could result in an independent nation being created. So any principled approach—and the Senate, of all bodies in the Government, ought to be principled; we should think about the long-term—to dealing with this issue should convince us in the most stark way that this is not a path down which we should travel. This is not a way this Nation should go.

We should say no now and no to any other attempt to divide, balkanize or disrupt the unity of our Nation. We had a Civil War over that. The Presiding Officer is from South Carolina. I am from Alabama. That issue was settled in the 1860s. We don't need to go back to it.

It is important that we read the language of the Department of Justice and how they deal with it. It is very similar to strong language from the U.S. Civil Rights Commission that also voted to oppose this legislation.

The letter is to Majority Leader Bill Frist:

DEAR MR. LEADER: The Administration strongly opposes passage of S. 147. As noted recently by the U.S. Civil Rights Commission, this bill risks "further subdivid[ing] the American people into discrete subgroups accorded varying degrees of privilege." As the President has said, "we must honor the great American tradition of the melting pot, which has made us one nation out of many peoples." This bill would reverse that great American tradition and divide people by their race. Closely related to that policy concern, this bill raises the serious threshold constitutional issues that arise anytime legislation seeks to separate American citizens into race-related classifications rather than "according to [their] own merit[s] and essential qualities." Indeed, in the particular context of native Hawaiians, the Supreme Court and lower Federal courts have invalidated state legislation containing similar race-based qualifications for participation in government entities and programs.

While this legislation seeks to address this issue by affording federal tribal recognition to native Hawaiians, the Supreme Court has noted that whether native Hawaiians are eligible for tribal status is a "matter of dispute" and "of considerable moment and difficulty." Given the substantial historical, structural and cultural differences between native Hawaiians as a group and recognized federal Indian tribes, tribal recognition is inappropriate for native Hawaiians and would still raise difficult constitutional issues.

Sincerely,

WILLIAM E. MOSCHELLA,  
Assistant Attorney General.

I am pleased the Department of Justice has given this letter to us. It represents an opinion of the agency of Government charged with justice. The Department of Justice is well aware of equal protection requirements. They are well aware of voting rights and the 15th amendment. They are well aware of all of the issues involving tribal questions. They have to deal with that on a regular basis. They understand this. This is part of what they do. The import of this letter is to say that the Native Hawaiians do not comply with tribal requirements. Indeed, a lawyer for the State of Hawaii has admitted as much in previous filings with the Supreme Court. It is not a tribal situation. It is a unique situation.

We are going to create under the bill, if the bill were to become law—hopefully, it will not, but I am troubled by the prospect of maybe even proceeding to this bill tomorrow. It is almost breathtaking to me that that would occur. But what we will see as we go forward is that we are talking about creating an entity, a sovereign entity which will be controlled by individuals who are given a right to vote. And their right to vote in this entity will be entirely contingent upon their race.

Indian tribes were different. Indian tribes were entities with long-established governing councils. They are native groups that have had centuries of cohesion. Many of them entered into treaties with the United States and they were given certain rights and privileges. But Hawaii came into the Union; 94 percent voted to come into the Union. They bragged and were quite proud of their melting pot reputation. They never suggested that they would later want to come back and have this sovereign entity be created. The reason it is fundamentally unfair is that there was a queen in Hawaii in the 1880s, but she did not preside over a tribe. She didn't preside over a racial group. She presided over the people in her territory of all races and entities. There were Asians, Irish, Filipinos, Chinese, and others that were there. They would not get to vote in this race-based government, even if they were there at the time she was queen. And she never pretended that she was presiding only over Native Hawaiians. Of course, I don't know how you could say a third-generation Irish or Chinese American or Japanese American who was in Hawaii, they are not a Native Hawaiian anyway, but that is the way they are defining this. There is only that certain racial group.

So these would not be able to participate, even though they were multigenerational residents of Hawaii at the time they became a State, at the time the queen's government was ended.

It is not the right thing to do. It would create a precedent of far-reaching implications and would jeopardize the unity and cohesion of our Government and would, for the first time, create a sovereign entity within the

United States. You are not allowed to vote in it unless you belong a certain race.

It is a bad idea of great significance. We should not go down that road. I hope the Senate will not.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CHICAGO SCHOOLS

Mr. President, in 1932, America had suffered through three grinding years of the Great Depression. Millions of Americans were out of work and out of hope. Many people feared that capitalism, as we knew it, and democracy had failed. Campaigning for President that year, Franklin Delano Roosevelt promised the American people bold, persistent experimentation to alleviate the crisis facing this Nation.

He said: It is commonsense to take a method and try it. If it fails, admit it frankly and try another. But above all, try something.

I have just finished a book by Jonathan Alter of Newsweek about the first 100 days of Franklin Roosevelt's Presidency. If there is one thing that really was the hallmark of that Presidency, it was Franklin Roosevelt's boldness, his willingness to try new ideas. He just wasn't going to give up on America. He believed that there was no crisis, no challenge we face that could not be overcome.

For the last 5 years, the Chicago public schools have been led by a team of visionary leaders who also believe in bold, persistent experimentation. Through their hard work and willingness to try to find new solutions, Chicago Public School Board President Michael Scott and Chicago public schools CEO Arne Duncan have helped transform Chicago's school system into a national model for public school reform.

This past weekend, Michael Scott, my friend, announced that he will be leaving his position as president of the Chicago public school board this summer. Earlier today I met with him and Arne Duncan in my office in the Capitol. I have every confidence that Chicago public schools will remain a national model for improvement under the leadership of Arne Duncan and whoever the next school board president may be. I look forward to updating the Senate in the future about Chicago's continued progress and our determination to truly leave no child behind.

Some may not remember, but former Secretary of Education William Bennett went to Chicago and pronounced that school district as the worst in America. That may have been an exaggeration at the time, but not by much. Some would have given up at that

point, and many cities have. But not the city of Chicago. They made a conscious decision to change that school system.

Mayor Daley, Paul Valles, Arne Duncan, Michael Scott, and Gary Chico, these were all names of leaders who stepped up, with many professionals giving them support, and accepted the challenge to turn that school district around.

Let me speak about Michael Scott in particular. His service has meant so much to the Chicago public schools, to the city of Chicago, and I believe, with his example, to the Nation. Michael Scott grew up on the west side of Chicago, the Lawndale neighborhood. He didn't train himself to be an educator. He went to Fordham University in New York where he earned a degree in urban planning. He moved back to the west side after his college years.

He started in Chicago politics as a housing activist in the same Lawndale neighborhood where he was born and raised. In the tumultuous time he lived, Michael Scott stood out as a consensus builder. Eventually he served under three different Chicago mayors: Jane Byrne, Harold Washington, and Richard Daley. Five years ago tomorrow, Mayor Daley tapped Michael Scott as the first member of a new team charged with the daunting mission of keeping Chicago public schools a national model for reform.

At the time he was a successful businessman and executive of AT&T. When Michael Scott's appointment was announced, he said: This is not about me; it's about the children.

For the past 5 years, Michael Scott has kept his word. Listen to these statistics, if you want to understand how far the Chicago public schools have advanced due to the hard work of the people I mentioned earlier and Michael Scott.

In 1992, nearly half of Chicago's elementary schoolchildren tested in the lowest 20 percent in reading and math compared to other students across America. Now fast forward 12 years to 2004. Less than 25 percent of Chicago's students tested in the bottom 20 percent and student performance has improved since 2004. That is real progress, real progress against great challenges. Michael Scott believes that parents are the children's first and best teachers, and he has worked hard to make parents active partners in the education of their children.

An annual 2-day conference that he personally founded, entitled "The Power of Parents Conference," has been attended by more than 4,000 Chicago parents since 2002. The belief that every child in every neighborhood has the right to attend a good public school, along with a commitment to bold persistent experimentation, are the foundation of Mayor Daley's Renaissance 2010 School Improvement Plan.

Under that plan and with the leadership of Mayor Daley, Michael Scott and

Arne Duncan, Chicago has pushed to replace approximately 207 underperforming schools with 100 new innovative schools, including charter and small schools.

Michael Scott is a product of the Chicago public school system himself. Michael brought an unusually broad range of experience to his job as one of the leaders of that system. His resume includes work in community advocacy, corporate management, urban development, and local government administration. He built new partnerships with all of those worlds to help improve Chicago's public schools.

In 2003, the Chicago public school system established the privately funded Chicago board of education textbook scholarship program. The program awards a \$1,000 scholarship to one graduating student from each of the city's 85 public high schools. The scholarships are funded by private business, many of which donated money on the spot when they heard Michael Scott make his appeal to fund this program.

Also under Michael Scott's leadership, Chicago public schools established a new office of business diversity to help Chicago's minority and women-owned businesses navigate the system's complex bidding process and ensure that they can compete fairly for contracts.

While student scores have gone up, spending in some areas has gone down, thanks to the improved fiscal management in the public schools. One example: By restructuring the transportation system, Chicago public schools saved \$14 million—\$14 million more that can be spent to teach the kids.

Under Michael Scott's leadership, the bond rating for the Chicago public schools was upgraded from A to A-plus, which will produce even more savings for taxpayers and more funds for the kids. Someone once said that the real test of faith in the future is to plant a tree. Before signing on as school board president, Michael Scott served as president of the Chicago Park District. In that job, he saw that plenty of trees were planted. He strengthened the park district's finances, which is widely accredited with making neighborhood parks one of the best features of one of the best cities in America.

As board president of Chicago public schools, Michael Scott helped plant something even more important to our future than trees. He helped plant the seeds of knowledge in the minds of tens of thousands of young people. Together with Chicago students, parents, educators, and business and community and political leaders, he has produced a model for public school improvement from which all of America can learn.

While Chicago public schools will miss his leadership, they and the children who depend on him will continue to benefit for years from Michael Scott's outstanding public service these past 5 years.

In closing, I will quote from an editorial that appeared in the Chicago De-

fender newspaper on April 28, 2003, about a third of the way through Michael Scott's tenure. The editorial was entitled "Successful students will be Scott's, Duncan's Monument."

Michael Scott and Arne Duncan are monument makers. Not in the usual sense—the one that explains the ancient pleasure taken by politicians who create structures commemorating something that's a recreation of their self image.

Nor in the sense that Mesopotamia's Nebuchadnezzar built Babylon's Hanging Gardens in the sixth century B.C., one of the seven wonders of the world. Nor in the sense that his successor Saddam Hussein erected bronze statues of himself, monuments that came tumbling down recently with a noticeably historic thump.

Scott, President of the Chicago Board of Education, and his chief executive, Arne Duncan, are building neither stone nor bronze images.

The two educators are building a human monument that will rise and flourish in the term of educated, productive graduates of Chicago's public schools. . . . Future students will thrive in each newly renovated school. . . . That will be Scott's and Duncan's monument.

As Michael Scott's tenure closes at the Chicago public school system, I want to acknowledge the fine contribution he made with his public service, both in the park district and the Chicago public schools. He is such a talented man that he has brought his talent and given his time to help others time and time again. That is the true definition of public service.

I wish Michael the very best in his next endeavor. I am sure it will include not only the private sector, but also a public commitment because he is a person who believes that is part of our civic responsibility. I thank him for all of his leadership in the Chicago public school system, and I wish him and his family the very best in the years to come.

#### ESTATE TAX

Mr. President, at this moment in history, we are considering the estate tax. It is one of the many taxes that Americans face. Some have characterized it, with a very effective public relations campaign, as the "death tax." They have been so good at describing it as a death tax as to convince many people across America that when you die, you pay a tax to your Federal Government. And unless you have been through a death in the family that you followed closely, you might be misled into believing that.

In fact, the public relations campaign has been so good in characterizing the Federal estate tax as a death tax that I had an experience a couple years ago that I shared with my colleagues in the Senate. I drove out to Chicago O'Hare to take a flight to Washington. I stopped at the sidewalk there, United Airlines, and handed over a bag to be checked in. The person checking my bag took a look at me and looked at the bag and said, "Senator, please, if you don't do anything else, get rid of the death tax." I didn't have the heart to tell that baggage handler that unless he won the Powerball or the Mega-

million lottery soon, he would not have to worry about it because, you see, the so-called death tax is an estate tax that is paid by 2 or 3 out of every 1,000 people who die in America each year. That is .2 or .3 percent of the people who die in America pay the tax. It is a very narrowly gauged and narrowly directed tax to the wealthiest people in America.

If you listen to the argument by the Republicans on the floor of the Senate, you think that this is an onerous, unfair tax, borne by some of the most deserving, hard-working, common people in this country, who struggle day to day to get by, and then find after they have passed away that the greedy hands of Government reach into their estate and yank thousands of dollars out of it. That is not even close to reality. So we are actually going to debate on the floor of the Senate the notion that we need to, if not repeal, virtually repeal the estate tax in America.

It is interesting to note that this estate tax is one that affects very few. It is also interesting to note the context of this debate. This was supposed to come up about 9 months ago. We were supposed to repeal the estate tax on the wealthiest people in America, but then God intervened. Hurricane Katrina struck the Gulf coast. For 24 hours, we watched on live television as our neighbors, fellow Americans, suffered. Some died, some drowned. Many were perched on their roofs praying to be rescued. Then we saw the devastation of the flood.

The sponsors of this estate tax repeal decided this may not be the best moment to cut taxes on the wealthiest in America. Senator CHUCK GRASSLEY of Iowa, a man I greatly respect, said as follows on September 14 of last year:

It's a little unseemly to be talking about eliminating the estate tax at a time when people are suffering.

Senator GRASSLEY was right. But I say to him that it is still a little unseemly to bring up this issue of eliminating the estate tax on the wealthiest people in America when so many people are still suffering around this country. We know what is happening in New Orleans, that devastation still has been unaddressed and people are still out of their homes, hospitals are unopened, schools are unopened, and families are still separated from communities and neighborhoods that they called home. It is still there.

Senator GRASSLEY's point is still there as well. It is unseemly for us to be reducing the revenues of this country by cutting taxes on the wealthiest people at a time when there is so much need.

People ask, what could we do with this estate tax? If you took the revenues that we will be taking out of the Federal Treasury by this reduction in the estate tax, here is what you could do with those revenues: You could provide health insurance for every uninsured child in America and have

enough left over to give them full college scholarships or give every family in America a \$500 tax cut or eliminate 75 percent of the shortfall in Social Security, thus buying years of longevity and stability for Social Security, or provide clean food and water to the 800 million people on Earth who lack it or pay for the war in Iraq for the next 10 years.

It is not an insignificant amount of money that we are talking about here. The elimination of the estate tax would take from the Federal Treasury funds which could have been used for tax relief for working families. Instead, this Republican proposal is to give a tax cut to the wealthiest people in America.

How many people pay this estate tax? This pie chart tells it all. In 2009, only .2 percent of estates in America will be subject to the tax. Two or, at most, 3 out of every 1,000 people who die will pay any estate tax whatsoever. And now the Republican leadership has decided these people need a break.

Senator LAUTENBERG of New Jersey decided to find out how repealing the estate tax would affect three people. The first one was the Vice President. Under this proposed estate tax cut from the Republican side, it means more than \$12 million in Federal tax liability will be eliminated for the Vice President. And then Paris Hilton, with her little Chihuahua there, it is \$14 million for her. Lee Raymond, former CEO of Exxon, a man who was given a \$400 million going-away gift at his retirement by ExxonMobil—well, the repeal of the estate tax gives Mr. Raymond another going-away gift of \$164 million in tax breaks.

These are truly deserving people, don't get me wrong. When I look at Ms. Hilton, who looks like a lovely young lady, I can see how this \$14 million could have a significant positive impact on her otherwise very spare and Spartan lifestyle.

You wonder how in good conscience we can be debating tax cuts for the wealthiest people in America when there are so many things, so many compelling reasons for us to be more serious about in the work that we do in the Senate. This effort reflects the same twisted priorities that the Republican leadership continues to bring to the floor of the Senate.

We just have spent—wasted, I might add—the better part of the week of the Senate's time on the so-called marriage protection amendment. It was called for a vote after all sorts of fanfare and announcements from the White House, and the final vote was 49-to-48. This proposal for a constitutional amendment didn't even win a majority of the Senators voting; only 49 voted for it. It certainly didn't come up with the 60 votes it needed to move forward in debate. It wasn't even close to the 67 votes that are needed to enact it.

Why did we waste our time? Because the Republican leadership in the Sen-

ate knew that for political reasons they had to appeal to those folks who believe this is a critically important issue. They want to fire them up for the next election. Even though the American people, when asked, said that this so-called gay marriage amendment ranked 33rd on their list of priorities, they had to move it forward.

Now comes another plank in their platform for the November election, the estate tax. The wealthiest people in America are pushing hard for this estate tax. This morning, the Wall Street Journal printed an article that said that 18 families—listen closely—18 families in the United States of America have spent \$200 million lobbying to pass this change in the estate tax—18 families.

Ask yourself why. Why would they spend \$200 million? Because they will earn a lot more if this estate tax is repealed. But the cost of the estate tax is dramatic in terms of America's debts. If we repeal the estate tax, we will have \$776 billion as the cost of the estate tax repeal in the first 10-year period fully in effect from 2012 to 2021. The cost of the estate tax repeal explodes under the proposal that is before us, meaning, of course, this red ink is more debt for America.

Already we are facing a dramatically deteriorating budget picture in America. Go back to the close of the previous administration, which shows a \$128-billion surplus under President Clinton as he left office, and then look at the debt that has been built up under the years of the Bush administration, a debt that will explode even higher with the repeal of the estate tax on the wealthiest people in America, a debt which, unfortunately, we will have to pass on to our children.

Look at the wall of debt. When President Bush took office, the gross national debt of America—this is our mortgage I am talking about—was \$5.8 trillion. Now, by 2006, it is up to \$8.6 trillion. How did he manage that, almost a 50-percent increase in the debt of America in a matter of 5 years? And now look where it is headed. By the year 2011, because of the Bush-Cheney tax policies, this national debt will be up to \$11.8 trillion—\$11.8 trillion for our national mortgage. This President has virtually doubled the debt of America with his policies in a matter of 8 years. How can he accomplish this? He can do it with terrible policies, and this is one of them.

President George W. Bush is the first President in the history of the United States of America to cut taxes in the midst of a war—the first. Why? It defies common sense. We have a war that costs us between \$2 billion and \$3 billion a week. It is an expense for our Nation over and above all the other expenses we commonly face.

Every previous President, when faced with that challenge, has called on Americans to sacrifice, save, and pay more in taxes to pay for the war, but not President Bush. The Bush-Cheney

policy is, in the midst of a war with skyrocketing costs, cut taxes—meaning, of course, driving us deeper and deeper into debt, pushing more of that debt burden on our children.

This is not a tax cut which the Republicans are proposing, it is a tax deferral. They want to cut the taxes on the wealthiest estates in America and put a greater tax burden on our children and grandchildren. That is the legacy of the Bush-Cheney tax policy.

But how does this President take care of the debt? First consider this: As Senator CONRAD has brought this chart to the floor before, President Bush has decided that the way to deal with our debt is to borrow from others. President Bush has more than doubled foreign-held debt in 5 years. It took 42 Presidents, including his father, 224 years to build up the same level of foreign-held debt as President George W. Bush has done in 5 years. For 224 years, we had about \$1 trillion in debt held by foreign governments. Under President George W. Bush, that figure has virtually doubled in just 5 years.

The obvious question is, Who are these mortgage holders? Which foreign governments are financing America's debt? The top 10 foreign holders of our national debt are Japan, \$640 billion, China—no surprise—\$321 billion, United Kingdom, oil exporters, South Korea, Taiwan, Caribbean banking centers, Hong Kong, Germany, Mexico, and the list goes on and on.

It is no surprise that the same countries, which are our mortgagors, which are holding the debt of America, are the same countries which are eating our lunch when it comes to sucking jobs out of the United States and pushing imports into the United States. They are the same countries. That is what we are dealing with. And the Republican recipe for this imbalance in this debt is to make it worse: Cut the estate tax in the midst of a war. It is not only unseemly, going back to Senator GRASSLEY's quote, it is unthinkable that at a time when we are asking for so much sacrifice from our soldiers—130,000 of them today risking their lives in Iraq, another 20,000 or 30,000 in Afghanistan, all their families at home praying for their safe return, the anxiety of their friends and relatives as they worry over them each day—at a time when so many in America are giving so much and sacrificing so much, comes the Republican majority and says: Let us give the most comfortable, the most well-off people with the cushiest lives in America a tax break—a tax break.

What are we thinking? Why would we be cutting taxes in the midst of a war? Why would we be heaping debt on our children? Why? So that 2 or 3 people out of every 1,000 who have huge estates worth millions of dollars can escape paying their Federal taxes. It is incredible to me, but true, that when you look at this chart, the number of taxable estates in the year 2000 was 50,000 nationwide. Under this bill, the

number of taxable estates has gone down to 13,000 and will be reduced to 7,000. So this tax responsibility that once applied to 50,000 taxable estates annually in the United States will be a tiny fraction of that when it is over.

We also have to reflect on another reality as to why this issue is before us. I mentioned this to my Democratic colleagues, and I say this with some understanding that it is an indictment on our political system, of which I am a part. Why is it that we are so focused on helping the wealthiest people in America instead of focused on helping the hardest working, the working families, the middle-income families? The explanation is sad but true. We spend a lot of our time as Members of the Senate and House of Representatives in the company of very wealthy people. We run across them in the ordinary course of Senate business, but there is another part of our lives as well. We are out raising money for political campaigns that cost millions of dollars. People who can afford to help us are often very wealthy themselves. Some are very wonderful folks, very generous, very helpful to each one of us. But we spend a lot of time in their lifestyle seeing where they live, how they spend their time, understanding their hobbies and their lifestyles and naturally developing a friendship and empathy with the wealthiest people in America.

Our campaign financing system draws us into these situations. It is understandable that with this empathy comes an understanding that some of them are going to face taxes when they die for all the money and the wealth they have accumulated. Their pleas have not fallen on deaf ears in the Senate. Their pleas to repeal the estate tax have resulted in this bill before us now.

I think it really is a testament to campaign financing in America that instead of spending time with average people, working people struggling to get by, dealing with their issues and their concerns, we would instead draw the attention of the Senate to the most well-off people in this country and how we can reduce their tax burden and their responsibility to this Nation.

There are a few wealthy people who stand out in this debate. One of them is a gentleman by the name of Warren Buffett who is with Berkshire Hathaway, a company out of Omaha, NE, one of my favorite wealthy people, the second wealthiest person in America. He is the first to say our tax system in this debate is an outrage and disgraceful. He said at a luncheon he attended not long ago that it is true that America is engaged in class warfare, and as the second wealthiest person in America, his class was winning. It is pretty clear he is doing pretty well.

But Warren Buffett understands something which many of the families that are pushing for this estate tax repeal don't understand. He understands he is the luckiest person alive because he was born in America. He was given

an opportunity people around this world people would die for. He was given the opportunity to prove himself and succeed, and he has done it. He was given a chance to accumulate his wealth and use it wisely, and he is now given a chance to pay back to this country, which has given him such a great opportunity, something for all he has benefited. And Warren Buffett considers that a pretty fair trade. I think it is, too.

To hear the Republicans on the other side of the aisle say the wealthiest people in America who live the most comfortable lives should be asked to not pay taxes back to support schools, to support health care, to support the defense of our country, to say that somehow they need more disposable income—\$14 million for Paris Hilton, I can understand that—from the Republican point of view, that is really helping the truly needy. But from the point of view of most Americans, it is ridiculous that we would consider this kind of a tax cut at a time when this country is facing mounting deficits, at a time when we are at war, at a time when we are asking so much sacrifice from so many wonderful American families.

So, Mr. President, I am opposed to this resolution. I hope we come to our senses. I hope we understand that we were elected to this body to do more than just provide for those with great lobbyists and those with big bankrolls and those who come here in the corridors of power and catch our attention. We were elected to represent the people who are not here—the voiceless, the powerless, the disenfranchised, the homeless. The people expect us to step up on behalf of the entire American family, not just those who are well off but the entire American family, and do our best to help.

I hope we defeat this effort. I hope we stop it in its tracks. I hope we put an end to this tax policy of the Bush-Cheney administration which has driven America to depths of indebtedness that one could never have imagined. I hope we will put an end to this accumulation of national debt which we are passing along to our children with abandon. I hope we will put an end to this foreign borrowing with which this administration has become so enamored which has made us servile to some of the other nations around the world that would readily exploit our economy, our businesses, and our workers.

If we are going to do that, we have to make a stand—a stand for sensible tax policy, a stand for prudence, a stand for something which was once known as fiscal conservatism—fiscal conservatism. It is a great concept. It used to be the concept of the Republican Party, but that was before they discovered supply-side economics and this whole concept of the Bush-Cheney tax policy.

I urge my colleagues, when this comes up for a vote tomorrow, to vote

against cloture, vote against this giveaway to a handful of families that are already doing quite well, thank you.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

#### ORDER OF PROCEDURE

Mr. SESSIONS. Mr. President, on behalf of the majority leader, I ask unanimous consent that immediately following the leader's remarks on Thursday morning, the Senate resume the motion to proceed to H.R. 8, regarding the death tax. I further ask unanimous consent that there be 1 hour equally divided between the two leaders or their designees for debate, with 10 minutes of the minority time reserved for Senator DURBIN and 10 minutes reserved for Senator DORGAN prior to the vote on invoking cloture on the motion to proceed; provided further that the last 20 minutes be reserved for the Democratic leader to be followed by the majority leader. I further ask unanimous consent that regardless of the outcome of that vote, Senators ROBERTS and CLINTON be recognized to speak as in morning business for up to 25 minutes equally divided. I further ask unanimous consent that following that debate, the time until 12:45 p.m. be equally divided again between the two leaders or their designees, with a vote on invoking cloture on the motion to proceed to S. 147 occurring at 12:45 p.m. on Thursday; provided further that if cloture is not invoked on both of the motions to proceed, the Senate then proceed to executive session for consideration en bloc of the following nominations on the Executive Calendar: No. 627, Noel Hillman, U.S. District Judge for New Jersey; No. 628, Peter Sheridan, U.S. District Judge for New Jersey; No. 633, Thomas Ludington, U.S. District Judge for the Eastern District of Michigan; No. 634, Sean Cox, U.S. District Judge for the Eastern District of Michigan; provided there be 10 minutes of debate for each of the Senators from New Jersey, 10 minutes for Senator STABENOW, and 10 minutes each for the chairman and ranking member. Following the use or yielding back of time, I ask that the Senate proceed to consecutive votes on the nominations as listed; however, no earlier than 2 p.m.

I further ask unanimous consent that following those votes, the Senate proceed to the consideration of Executive Calendar No. 663, Susan C. Schwab, to be the United States Trade Representative. I further ask unanimous consent there be 30 minutes for Senator DORGAN, 15 minutes for Senator CONRAD, 10 minutes for Senator BAUCUS, 30 minutes for the chairman. I further ask unanimous consent that following the use or yielding back of time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate; finally, I ask unanimous consent that following that vote the President be immediately notified of all of the Senate's previous ac-

tion and the Senate resume legislative session.

I further ask unanimous consent that if cloture has been invoked on the motion to proceed to H.R. 8, the Senate resume debate at this time with all time consumed to this point counting against cloture and the bill not be displaced upon the adoption of that motion if cloture is invoked on a motion to proceed to S. 147. If cloture is invoked on the motion to proceed to S. 147, then the Senate begin consideration of that under the provisions of rule XXII upon the disposition of H.R. 8.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### EXECUTIVE SESSION

##### NOMINATION OF RICHARD STICKLER TO BE ASSISTANT SECRETARY OF LABOR FOR MINE SAFETY AND HEALTH

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate proceed to executive session for the consideration of Executive Calendar No. 553, Richard Stickler.

The PRESIDING OFFICER. The nomination will be stated.

The assistant legislative clerk read the nomination of Richard Stickler, of West Virginia, to be Assistant Secretary of Labor for Mine Safety and Health.

##### CLOTURE MOTION

Mr. SESSIONS. Mr. President, the nomination has been held up since March 8 when it was reported by the HELP Committee. Therefore, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

##### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 553, the nomination of Richard Stickler, of West Virginia, to be Assistant Secretary of Labor for Mine Safety and Health.

Bill Frist, Michael B. Enzi, Judd Gregg, Elizabeth Dole, Sam Brownback, Rick Santorum, Chuck Grassley, John McCain, David Vitter, Jim DeMint, Jim Bunning, Norm Coleman, Richard Shelby, Thad Cochran, John Cornyn, Orrin Hatch, Kay Bailey Hutchison.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the mandatory quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### LEGISLATIVE SESSION

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, today is National Hunger Awareness Day, and I rise to recognize the importance of ending domestic hunger.

Domestic hunger has affected the lives of more than 38 million people in the United States annually. This includes over 14 million children who live below the poverty line.

The face of hunger is diverse. In Illinois, one in every ten people is food insecure. Homeless people are often hungry, but so are single mothers working two jobs to make ends meet. So are our senior citizens whose income does not allow them to eat adequately.

In Chicago, only 9 percent of the half-million people who seek services from the Chicago Food Depository are homeless. Many people simply cannot afford the food they need and often seek emergency food programs.

How can this happen in a country as privileged as ours?

Remember that 37 million Americans are living in poverty.

Many low-income families are supported by jobs that do not pay livable wages.

It could be that paying the health care or housing bills is more than they can manage.

America's Second Harvest released a National Hunger Study showing that in Chicago, 41 percent of households neglect their food budget to cover utility costs.

It may be a combination of factors, but the food budget is often the first thing they cut.

Today, we celebrate and commend the heroic efforts of emergency food banks, soup kitchens, school meal programs and community pantries working to ease the pain of hunger.

Federal nutrition programs work, but they are not reaching enough homes. Many parents are still skipping meals so their children can eat.

Hunger drains the strength of people who, for a variety of reasons, are unable to provide enough food or the right kinds of food for themselves or their families. In a land of abundance, this kind of sacrifice is as deplorable as it is unnecessary.

We should end hunger in the United States and, working together, we can.

Mrs. DOLE. Mr. President, for the past 3 years I have come to the Senate floor on National Hunger Awareness Day to help raise concerns about the far too prevalent problem of hunger, both here in the United States and around the world. In fact, as a freshman Senator, I delivered my maiden speech on this topic and have since made it one of my top priorities in the Senate. Two years ago on Hunger Awareness Day, Senators SMITH, DURBIN, LINCOLN, and I launched the Senate Hunger Caucus, with the express