

us. We can't do great research in the laboratory but then not know where the vaccine is, how to track it and to get it where it needs to be, how to have good information sources. Senator ROBERTS discussed the war game he participated in. There was a lot of confusion. We are trying to cut through that to couple research efforts with the development of a system to track and distribute both seasonal and pandemic influenza vaccine.

Mr. ROBERTS. Over the last several months, the distinguished Senator from New York and myself have worked with our colleagues in the HELP Committee to include the provisions of the bill we discuss today in the Public Health Security and Bioterrorism Preparedness and Response Act—the reauthorization of that bill—or the BioShield II bill to be considered by the committee and the full Senate.

I thank especially Senators BURR, ENZI, and KENNEDY, and their staffs for their willingness to work with us. Senator CLINTON and I strongly believe that the provisions of the bill we discuss today are absolutely relevant and critical to these discussions.

We hope—it is not hope; we are going to insist—that these provisions will be included in any legislation approved by the committee and Senate. As a matter of fact, were it parliamentarily correct, I would ask unanimous consent that the bill be read three times and passed now. We are thankful for all the attention and focus on planning for a pandemic flu, but we also believe a few more steps need to be taken to make sure we are ready. This is why we are urging our colleagues to consider our legislation, the Influenza Vaccine Security Act, and support our efforts on the bioterrorism and BioShield II bills.

I thank Senator CLINTON for her hard work, dedication, and leadership on this issue. I urge my colleagues to think about this and to support this legislation.

I yield the floor.

Mrs. CLINTON. Mr. President, I thank Senator ROBERTS. He brings to this issue the concern that he faces every day on the Intelligence Committee. I agree with him absolutely. This is a national and homeland security issue, as well as a health and economic one. I hope, working with our colleagues on both sides of the aisle in the HELP Committee, we can ensure that the provisions from our legislation will be included within the reauthorization of the bioterrorism and public health emergency legislation. We believe an ounce of prevention is truly worth a pound of cure. We stand ready to work to move this as quickly as possible so we can get a system in place that we can then work on during seasonal influenza time and be prepared for a pandemic flu.

I thank Senator ROBERTS and yield the floor.

NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2005—MOTION TO PROCEED

The PRESIDING OFFICER (Mr. ALEXANDER). Under the previous order, the Senate will resume consideration of the motion to proceed to S. 147, which the clerk will report.

The bill 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 until 12:45 p.m. will be equally divided between the two leaders or their designees.

The Republican whip.

Mr. MCCONNELL. Mr. President, the history of America has been one of racial inequity, followed by a long but sure path to reconciliation. At the time of this country's founding, a person's race could determine whether he lived in freedom or in slavery.

Fifty years ago, race could still determine where a person could live, what water fountain he could drink from, or what kind of life he could lead.

Today, thankfully, that is no longer true. We have recognized that nearly every time our Government has taken race into account when dealing with its citizens, the effects have been detrimental, if not devastating; and for that reason, as President Kennedy once said, "Race has no place in American life or law."

Unfortunately, today, the Senate is considering a bill that would wreck the progress we have made toward a color-blind society.

S. 147, the Native Hawaiian Government Reorganization Act, would not only direct the Government to establish a government based solely on race, it would also seek to confer preferences based on race. It violates the letter and the spirit of the U.S. Constitution, and it must be opposed.

When I say the bill violates the U.S. Constitution, I am referring specifically to the 14th amendment, which was ratified in 1868, after the Civil War, to address unequal treatment based on race.

The 14th amendment reads:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws.

The 14th amendment was quite clear. The way this bill tries to maneuver around its unconstitutionality is by classifying Native Hawaiians via the Federal Indian law system, and creating a new "tribe" of Native Hawaiians.

But this new "tribe" is a shell game. Native Hawaiians have never been viewed as an Indian tribe, including

when Hawaiians overwhelmingly voted for statehood in 1959.

As recently as 1998, the State of Hawaii itself acknowledged that the tribal concept has no historical basis in Hawaii. Specifically, in *Rice v. Cayetano*, the State of Hawaii wrote the following in a brief to the U.S. Supreme Court. This is what the State of Hawaii had to say at that time:

For 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.

That was in the brief of the State of Hawaii itself in a case in 1998.

Mr. President, the Senate should be an institution that brings America together. Let's not tear apart our common identity as Americans. We should not use this fiction of Indian tribe status for Native Hawaiians to divide our country.

By the way, have I mentioned that not even the people of Hawaii support this bill? According to a poll conducted by the Grassroot Institute of Hawaii, 67 percent of Hawaiians oppose it—two-thirds of the State. Hawaiians overwhelmingly oppose this bill, based upon those survey results.

The U.S. Commission on Civil Rights conducted public hearings on S. 147. They oppose it and recommend against its passage. They oppose it because they believe it is racially discriminatory and divisive. This is what the Commission on Civil Rights had to say about this measure:

The Commission recommends 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 varying degrees of privilege.

And it should be pointed out that it seems that private interests who commented on the bill opposed it, with only institutional interests submitting comments in support of the bill. Only institutional interests have advocated for it. But the people, it seems, do not want it.

That includes even some Native Hawaiians. One person who testified before the commission was a Hawaiian named Kaleihamamau Johnson. She told them:

I am of Hawaiian, Caucasian and Chinese descent . . . and do not support the Akaka bill.

Ms. Johnson went on to say that if this bill passes:

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.

Let me share some of the testimony of advocates of Hawaiian statehood from half a century ago. These comments show that Hawaiians entered the

Union with the expectation of being equal to any other of our States. Overwhelmingly, Hawaiians were eager to be Americans. Senator Wallace Bennett of Utah, the father of our good friend, the current Senator from Utah, said in 1954:

Hawaii is literally an American outpost in the Pacific, completely reflecting the American scene, with its religious variations, its cultural, business and agricultural customs, and its politics.

And former Interior Secretary Fred Seaton wrote to a Senate committee in 1959:

Hawaii is truly American in every aspect of its life.

I sure hope that is true, in the sense that being American means we do not define and divide people by race, but we transcend that. Every American, regardless of race, has equal freedom to excel. That is why we attract people of all races, from all over the world, who leave behind what they have known and start new lives here.

Because we are a multiracial, multicultural society, and because of the misfortunes that have transpired when this country has looked at its citizens through the prism of race, we must not turn racial preferences into law, as this bill would have us do.

I believe the way forward for our country is for the Government to focus less and less on race, not more and more. To treat people differently based on race implies that, on some fundamental level, race defines who we are.

I believe history has shown that idea to be bankrupt. And I believe that America has led the way in proving it so.

Let's do our best to get this country to a point where race truly has no place, not when it comes to our Government, or to our promise of equal justice under the law.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, how much time remains on our side of the aisle?

The PRESIDING OFFICER. Twenty-one minutes.

Mr. CORNYN. I ask unanimous consent that I be allotted 10 minutes out of that time.

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

Mr. CORNYN. Mr. President, yesterday, when I came to the floor and spoke on this legislation—the so-called Native Hawaiian legislation—I indicated that I had profound concerns about the constitutionality of the bill. I might add that it is not sufficient for Members of Congress to say that the courts will clean up the mess after we pass the bill. Indeed, it is our responsibility to uphold and defend the Constitution as Members of the Senate.

Yesterday, we heard a few hours of discussion from both those who support and those who oppose the bill. I have made no secret of my opposition. Simply put, I cannot and I will not support

a bill the purpose of which is to divide America and is based upon race, and which is clearly contrary to our fundamental American principle of equal justice under the law.

The bill would create a separate race-based government for Native Hawaiians to the exclusion of all other Americans. And because of its very focus on race, the legislation creates particularly troublesome constitutional problems. In fact, it appears to be designed to be an end-run around the U.S. Supreme Court decision in the year 2000, in *Rice v. Cayetano*, a Ninth Circuit Court of Appeals decision which has struck down the practice of segmenting Hawaiians based upon race. I mentioned the 2000 decision in *Rice v. Cayetano*. That was a 7-to-2 decision which struck down the ancestry requirements for voting for the Office of Native Hawaiian Affairs trustee elections. The Court found that because ancestry was a proxy for race and the election was an affair of the State, it was in violation of the Constitution, and particularly the 15th amendment to the Constitution.

Justice Kennedy, writing for the majority, makes clear why the very purpose of S. 147 creates broad constitutional concerns:

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.

Some say this bill simply equates Native Hawaiians to Indian tribes. But Congress cannot simply and arbitrarily create Indian tribes where they don't exist. The Constitution does not authorize Congress to make Indian tribes out of subsets of Americans who have no relationship whatsoever to an Indian tribe. The Supreme Court has been clear that Congress may not insulate a program from the Constitution's strict scrutiny for legal distinctions based upon race by "bring[ing] a community or body of people within the range of this [congressional] power by arbitrarily calling them an Indian tribe."

In addition, the 14th amendment precludes the use of race in making appointments—something clearly contemplated by this bill. This bill perhaps most clearly raises constitutional concerns in its direct contravention of the Supreme Court ruling in *Rice*. The legislation would require that the Department of the Interior manage a special election in which eligibility depends entirely on race. As I have pointed out before, the Court made clear that racial restrictions relating to Native Hawaiians is prohibited by the 15th amendment.

In summary, in its attempt to pigeonhole Native Hawaiians as equivalent to an Indian tribe and to create a governmental entity based entirely on

race, S. 147 runs counter to the express letter and certainly the spirit of the Constitution.

Unfortunately, despite these clear constitutional problems, it seems that some in the Senate are content to acquiesce—to accept passing an unconstitutional bill, while passing the buck to the courts to bail us out. Yet just 2 days ago, my colleagues on the other side of the aisle were talking about what they thought was "wasting time" on defending marriage, a basic institution—perhaps the most basic institution—in our society.

And yet they are willing to spend a week debating a measure that has little chance of passing and that flies squarely in the face of the Constitution. I find these inconsistencies difficult to reconcile.

The sponsors of this legislation last year wrote a Dear Colleague letter that suggests that any constitutional inquiries should be left to the courts, the implication of which is Congress should not concern itself with the bill's constitutionality. I could not disagree more.

When I came to Washington, I, like the rest of my colleagues, swore an oath to defend and uphold the Constitution of the United States. That pledge is non-negotiable and does not allow, much less require, me or any Member of the Senate to defer our obligations to pass legislation that reasonably appears to be within the four corners of the United States Constitution.

Congress is required to uphold the Constitution, as are judges. More importantly, it is imperative that we pass legislation that furthers the principles of the Constitution rather than dissolve them. A constitutional commitment to equal justice for all would be undermined should we choose today to endorse the creation of a race-based government. This is not a question that should be passed off to the courts. We should decide right here and right now.

I urge my colleagues to vote against cloture on the motion to proceed. If they are serious about working on issues that really matter, I urge them to allow the Senate to move on to consider other pressing business.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). Who yields time?

The Senator from Hawaii.

Mr. AKAKA. Mr. President, I encourage my colleagues to vote with me to invoke cloture on the motion to proceed to S. 147, the Native Hawaiian Government Reorganization Act of 2005.

I begin by expressing my deep appreciation to the cosponsors of this legislation and to the Senators who spoke in support of bringing this bill forward for debate. I especially thank the Senator from Illinois, Mr. OBAMA, and the ranking member of the Indian Affairs Committee, Senator DORGAN, for their support.

I also thank the Senators from Alaska who shared their experiences encountered 35 years ago when Alaska

Natives sought to address similar issues when Congress enacted the Alaska Natives Claims Settlement Act.

It is ironic that the same arguments used against that bill, which has been incredibly successful and has served to unite rather than divide the people of Alaska, are being used against our efforts today to bring parity in Federal policies to Hawaii's indigenous peoples.

Beginning with the debates of the Continental Congress and continuing in the records of discussion and correspondence amongst the Framers of the Constitution, it was recognized that the aboriginal indigenous people who occupied the lands now comprising the United States had a status as sovereigns that existed prior to the formation of the United States.

Based upon the recognition of that preexisting sovereignty, the U.S. Constitution, article I, section 8, clause 3, vests the Congress with authority to regulate commerce just as with foreign nations in numerous rulings of the last 215 years. The U.S. Supreme Court has repeatedly held that legislation enacted to address the special concerns and conditions of the native people of the United States is constitutional and does not constitute discrimination on the basis of race or ethnicity because the sovereign status of the Indian tribes is a basis for the government-to-government relationship that tribes have with the United States.

The court has consistently drawn a distinction between legislation that addresses the conditions of native people of the United States and legislation that addresses conditions of specific groups whose members are defined only by reference to their race or ethnicity.

According to the court decisions, the United States has a political and legal relationship with Indian tribes that is not predicated on race or ethnicity but, rather, on sovereignty.

The status that the Constitution recognizes in Indian tribes was later extended to Alaska Natives in their capacity as aboriginal indigenous people of the United States, and it is on that same basis that the Congress has enacted legislation for aboriginal indigenous people of Hawaii.

I know the senior Senator from Hawaii, Mr. INOUE, is going to address this more when he speaks, but I want to comment on a disturbing conclusion that was made by some of my colleagues yesterday.

Somehow efforts to recognize Native Hawaiians are perceived as un-American. Native Hawaiians are proud—proud—to be Americans. A number of Native Hawaiians in the Hawaiian National Guard returned from Operation Iraqi Freedom this spring, after having spent 18 months away from their families. Some of our most celebrated heroes who have died in the war have been Native Hawaiians. It is offensive to me as a veteran and as a Native Hawaiian that my efforts to ensure justice and parity for Hawaii's indigenous peoples are being characterized as un-American. I beg to differ.

A federally recognized native government does not cause an indigenous person to lose his or her status as an American citizen. The concepts are not mutually exclusive. I remind my colleagues of the 556 native governments that have federally recognized government-to-government relationships with the United States. I don't see anyone characterizing our Native American brethren as being un-American. To do so in this case is another injustice to indigenous peoples, not only from Hawaii but from our great Nation.

The Senator from Tennessee, a good friend whom I admire, argued yesterday that this bill is about sovereignty. I agree, it is about sovereignty within the bounds of existing Federal law. The political and legal relationships between Native Hawaiians and the United States already exist, as evidenced by the 160 Federal statutes that have been enacted to address conditions of Native Hawaiians.

The Federal policy of self-governance and self-determination allows for a government-to-government relationship between indigenous peoples. This is not new. It exists right now between the United States and 556 native governments. The continued representation of this bill as unprecedented new action is just plain wrong.

Native Hawaiians are the indigenous aboriginal people of the lands which now comprise the State of Hawaii. Prior to their overthrow, the native government, the Kingdom of Hawaii, was recognized by the United States. The fact that the kingdom included non-natives within its government does not make it a non-native government. It is clear that the Kingdom of Hawaii was a preexisting native Government.

Hawaii is the homeland for Native Hawaiians. That is what makes them different from other ethnic groups. That is what makes them like the 556 native governments that are federally recognized and engaged in a government-to-government relationship with the United States.

This bill embodies the goals of this Nation—fairness, justice, liberty for all. A federally recognized government-to-government relationship with the United States does not make Native Hawaiians un-American. Being Native Hawaiian and American are not mutually exclusive, no more than being an American Indian or Alaska Native and being American.

Mr. President, 556 native governments enjoy this relationship. The question is: Why not Native Hawaiians? The only argument I am hearing is that Native Hawaiians are not native enough, and I beg to differ. This is why the bill needs to be brought to the floor for debate. This is why my colleagues should vote to invoke cloture on the motion to proceed. At a minimum, it is what the people of Hawaii deserve.

My colleagues have said that Hawaii is a melting pot, perhaps the greatest melting pot in the United States, and I agree. However, I like to think of it not

as a melting pot where everyone loses their individuality, but I would like to think of it as a rainbow. Each color of the rainbow represents a different culture. The more we are in touch with our culture and tradition, the brighter and more vivid is the color. Taken together, we combine to make something very beautiful.

My colleagues, however, would rather everyone be melded into one color, monotone. I believe we are intelligent, articulate beings who are able to celebrate our nationality in addition to preserving, understanding, and practicing our culture and traditions.

One of my colleagues referred to statehood and its supposed agreement that Native Hawaiians would not be treated any differently from any other citizens. Debate transcripts from the Constitutional Convention of 1950, which developed the Constitution that was used in 1959 when Hawaii became a State, clearly show an effort to protect Native Hawaiians and their culture. The 1950 Constitutional Convention adopted as a provision the Hawaiian Homes Commission Act of 1920, passed by the Congress in 1921, which established a homesteading program for Native Hawaiians in an attempt to offset the tremendous decline in their numbers and to ensure continuation of their culture. The Convention also adopted a provision accepting a compact with the Federal Government to continue the trust obligation associated with the Hawaiian Homes Commission Act and providing that congressional consent would be required for an amendment to decrease lessee benefits or alter lessee qualifications.

Inclusion in the Constitution as early as 1950 shows recognition of Native Hawaiians as Hawaii's indigenous peoples and reflects the widespread support for the preservation of Native Hawaiian culture, custom, and tradition. Unlike many of the other Western States' enabling laws, the Hawaii Admissions Act and the Alaska Statehood Act expressly recognized and preserved the rights of the indigenous native people in those two States. The Hawaii Admissions Act not only provides for the protection of land set aside under Federal law for Native Hawaiians but further directs that revenues from lands ceded back to the State are to be used for five purposes, one of which is the betterment of the conditions of Native Hawaiians.

I would also like to address the report issued by the U.S. Commission on Civil Rights. The U.S. Commission on Civil Rights was established to serve as an independent and bipartisan fact-finding agency to investigate and report on the status of civil rights in our country. The GAO just issued a report highlighting the Commission's lack of policies to ensure that its national products—its briefings, reports, and hearings—are objective and that the Commission is sufficiently accountable for decisions made on these projects.

Take this issue, for example. In January, the Commission determined it

would hold a briefing on this legislation we are considering. The Commission failed—the Commission failed—to consult with the Hawaii State advisory committee, which is composed of experts on civil rights in Hawaii. This is not a new issue. In fact, the Hawaii State advisory committee has previously issued three reports addressing the political and legal relationship between Native Hawaiians and the United States. The Hawaii State advisory committee members tried to participate in the process, and their efforts were rebuffed. This was not a case of being overlooked; this was a case of being shut out by that Commission.

The Commission was provided with a substitute amendment that we negotiated with the executive branch in January by my staff. In addition, provisions of the amendment were discussed during that briefing. Yet in May of this year, when the Commission voted to issue its report, it based its decision on the bill as reported out of committee, not the bill we will actually be debating and voting upon.

In addition, the Commission's report has no analysis, no findings in it. The report is a summary of testimony made by witnesses and a conclusion that the legislation is race-based—again, no analysis, no findings.

Further, upon reviewing the transcript, it is clear to me that the majority of the Commissioners were not familiar with Hawaii's history, with Federal Indian law, or with the legislation itself at the briefing. Again, this is where the expertise of the Hawaii State advisory committee to the Commission would have been helpful, yet their efforts were rebuffed.

The two Commissioners who dissented read the bill. They read the bill. That was obvious in their dissents which actually analyze the bill and Hawaii's history.

I question such actions, as they leave me with little doubt that there are those who used this process for political reasons—to the detriment of Hawaii's indigenous peoples and the people of Hawaii. My conclusion is supported by the recent GAO report criticizing the Commission as lacking policies to ensure objectivity in its hearings and briefings and accountability in its conclusion. And they have issued that report.

In addition, on June 6, a Resolution of No Confidence was adopted by current and former State advisory committee chairpersons regarding the Commission's commitment to fulfilling statutory and regulatory obligations to the State advisory committees. This saddens me greatly, as many of us have tremendous respect for the Commission. And I repeat, we have tremendous respect for the Commission, but that respect is based on our reliance on the Commission as an independent, bipartisan, factfinding agency. There was little independence, bipartisanship, or factfinding in the Commission's consideration of this legislation. That an

agency with such an important mission would succumb to a political agenda is disgraceful and offensive.

Last night, the Department of Justice issued a letter expressing opposition to S. 147. This is understandable and, of course, not surprising. The administration voiced these concerns last July. That prompted 3 months of negotiations with Hawaii's congressional delegation and Governor with the Department of Justice, Office of Management and Budget, and the White House officials. The result of those negotiations is S. 3064, which the majority leader put on the calendar this week. If the Senate invokes cloture on S. 147, the language of S. 3064 will be offered as a substitute. That language, agreed to with the administration, addresses the administration's policy concerns with the original bill.

The administration's letter of last July noted constitutional concerns with the legislation. As the floor debate yesterday demonstrated, disagreement over those constitutional questions exists and, if the legislation is enacted, would rightfully be left to the courts to decide. The substitute amendment addresses liability of the United States, ensures that military readiness is preserved, prohibits gaming, and ensures that civil and criminal jurisdiction remains with the State and Federal Governments until negotiated.

I ask my colleagues who have only had the time to listen to characterizations of the bill and sound bites of perceived impacts to actually take a look at this bill. It is not often that we can get almost every policymaker in Hawaii to agree on an issue. Except for two people in the State legislature, every other policymaker in Hawaii supports authorizing a process for the reorganization and recognition of a Native Hawaiian governing entity for the purposes of a government-to-government relationship. We are the people who deal with this every day. I ask you, at a minimum, to give us an opportunity to share more information about this with you. Don't make your decision based on someone else's characterization of the bill if you have not taken the time to read it and understand it. The people of Hawaii—native and nonnative—deserve more than that.

I stand here and ask my colleagues to vote for cloture so that we can further address these matters. I ask all of you to give us the courtesy of at least a debate on this bill.

I have heard the opposition, and again I say that we have had good relationships which will continue, and I want to voice the reasons we need this bill because as we pledge daily, under God, with liberty and justice, we do this.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Tennessee.

Mr. ALEXANDER. How much time is remaining on our side?

The PRESIDING OFFICER. There is 12 minutes 50 seconds remaining.

Mr. ALEXANDER. Mr. President, I ask the Chair to notify me when 10 minutes has lapsed.

Mr. President, I wish to begin as I began yesterday, by expressing my respect for the Senators from Hawaii, and it is genuine, it is a genuine respect. I also wish to begin by making it absolutely clear that there is no question about whether Hawaiians, including Native Hawaiians, are Americans. Hawaiians, including Native Hawaiians, are Americans, as good Americans as any Americans, and that is why this bill is a bad bill.

Hawaiians became U.S. citizens in 1900. They have saluted the American flag. They have paid American taxes. They have fought in American wars. The distinguished senior Senator from Hawaii has won the highest honor our Nation gives to an American warrior. In 1959, 94 percent of Hawaiians reaffirmed that commitment to become Americans by voting to become a State. Like citizens of every other State, Hawaiians vote in national elections.

My argument is that since Hawaiians have chosen to become Americans and distinguish themselves as Americans, that is the reason we should not move forward to allow a small group of Hawaiians, who live in every State in the Nation, to form a new government, a sovereign entity, which would be empowered to negotiate, as was said yesterday on this floor, the question of secession from the United States, the question of transfer of land to this new entity, the question of the transfer of money to this new entity, and the question of civil and criminal laws to this new entity.

When we began this discussion, many Senators were saying: Wait a minute, you are mischaracterizing this bill; it is not about sovereignty, it is not about land and money, it is not about race. But I think we have clearly established—and I believe it is a fair characterization of what the Senator from Hawaii has just said—that it is about sovereignty. It is clearly about race because you can't be a member of this new government unless you have Native Hawaiian blood; it may be only a drop of blood. So it is based on race. So the only possible argument to justify doing what no group of American citizens would ever be allowed to do in the United States is that this is just another Indian tribe, just another tribe. I want to address that in just a moment.

United States law, of course, does recognize Native American tribes, and the contention here today, from the Senators from Hawaii, is that this is just another tribe. That is a different contention than the State of Hawaii made a few years ago, in 1998. There, in the case of *Rice v. Cayetano*, the brief of the State of Hawaii said, "the tribal concept has simply no place in the context of Hawaiian history." This is what the State of Hawaii said in 1998 before the Supreme Court.

Yesterday the Department of Justice Assistant Attorney General of the United States wrote a letter to the majority and minority leaders of the U.S. Senate saying that the administration strongly opposes this piece of legislation. It first discusses the constitutional objection to creating a race-based government, which clearly violates our Constitution and turns that original motto of this country, "from one, many," upside-down. The letter from the Assistant Attorney General goes on to say:

While this legislation seeks to address this issue by affording federal tribal recognition to native Hawaiians, the Supreme Court [of the United States] has noted that whether native Hawaiians are eligible for tribal status is a "matter of dispute" and of considerable moment and difficulty.

The Assistant Attorney General goes on:

Given the substantial historical structure 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.

I ask unanimous consent to have the letter from the Assistant Attorney General printed in the RECORD.

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

OFFICE OF THE ASSISTANT ATTORNEY
GENERAL,
Washington, DC, June 7, 2006.

Hon. BILL FRIST,
Majority Leader, U.S. Senate,
Washington, DC.

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.

Mr. ALEXANDER. As to the charge the U.S. Civil Rights Commission didn't review this carefully, I will ask unanimous consent to have a letter to

Senator CORNYN printed in the RECORD. It is from a member of the Commission, Peter N. Kirsanow, writing in his individual capacity, who details the careful attention, he says, that the Commission gave to the legislation.

He says, in addition, "I maintain that it is the worst piece of legislation the commission has reviewed during my tenure."

I ask unanimous consent to have that letter printed in the RECORD.

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

Hon. JOHN CORNYN,
Chairman, U.S. Senate Subcommittee on Immigration, Border Security and Citizenship.

DEAR SENATOR CORNYN: The U.S. Commission on Civil Rights ("Commission") found significant problems with the proposed Native Hawaiian Government Reorganization Act (S. 147), also known as the Akaka bill. I maintain that it is the worst piece of legislation the Commission has reviewed during my tenure.

The Commission went to great lengths to ensure that its report on the Akaka bill ("Report") was thorough, well-reasoned and objective. Much of the Report was based upon testimony from a balanced panel of expert witnesses. Public comment on the Akaka bill also was solicited and a number of responses were received from a variety of perspectives—both pro and con. The ABA, for example, issued a letter supporting the bill. Others opposed it. The Commission considered all of these responses and modified the Report based on valid concerns of those critical of some of the provisions in earlier drafts. The final Report reflects these recommendations, reaffirming its balance.

The Report was subjected to rigorous controls, several layers of review, checks and balances to insure its accuracy and integrity. Any attempt to discount the Report's findings on the basis of a GAO report that the Commission somehow lacks procedures for insuring objectivity is completely misdirected. The GAO report cited by proponents of the Akaka bill does not relate to the Report. Rather, the GAO's findings relate largely to the lack of internal controls at the Commission during and resulting from the previous management that had failed, among other things, to conduct an audit in 12 years; and was repeatedly excoriated for issuing reports perceived as biased.

Since assuming a majority on the Commission over a year ago, the Republican commissioners, along with our new Democrat colleagues, have worked vigorously to adopt all previous GAO reform recommendations and to implement a broad series of internal controls and procedures to insure the integrity of Commission reports. These procedures were adopted well before the Commission hearing on the Akaka bill and the issuance of the Report. (For example, the hearing had an equal number of witnesses on each side of the issue, something the Commission was not necessarily known for in prior years).

The Commission's Report on the Akaka bill represents a fair, rigorous and objective assessment of the bill. Although I am writing in my individual capacity, I am sure that the majority of my colleagues hope that the Senate, in its deliberations on the Akaka bill, gives the Report serious consideration.

Sincerely,

PETER N. KIRSANOW,
Commissioner,
U.S. Commission on Civil Rights.

Mr. ALEXANDER. Mr. President, what do we have here on the issue of

"just another tribe"? Under the United States law, as we have said several times, there are specific requirements for the recognition of an Indian tribe. The U.S. Government does recognize those tribes. But it has not created any tribe. This would be the creation, the establishment of a new sovereign government.

Here is what the law says:

The tribe must have operated as a sovereign for the last 100 years.

Native Hawaiians have not. It says:

Tribes must be a separate and distinct community.

Native Hawaiians are not. They live in every State of the United States of America; 160,000 live outside of Hawaii. Only 20,000 live on the Native Hawaiian homelands.

It further says:

A tribe must have had a preexisting political organization.

The Native Hawaiians did not. That is why, I suppose, the brief of the State of Hawaii acknowledged in the Supreme Court of the United States, in 1998, "The tribal concept simply has no place in the context of Hawaiian history."

In the history of our country, as it grew and developed, there have been many wrongs. The men who wrote our Constitution, setting our high goals, were only men. And women didn't even have the right to vote in the United States until 100 years ago. Those who wrote the Constitution locked out the press. The press would say today that is a wrong. Those who wrote the Constitution, many of them, owned slaves. That was a terrible wrong.

But our history is filled with reaching high goals to address and correct those wrongs, and doing it as a Nation, as Americans, all of us together. We are proud of our nationalities, of where we come from. But when we become Americans, as Hawaiians did when they became a State in 1959, we pledge allegiance to the United States of America. This bill would create a new competing government. That is what is wrong with this bill. It is the wrong way to right whatever wrongs may have happened in Hawaii.

The PRESIDING OFFICER. The Senator has consumed 10 minutes.

Mr. ALEXANDER. It is my hope that my colleagues will vote no on this bill. Perhaps there are other ways that the Congress can help the distinguished Senators from Hawaii address wrongs which may have existed in Hawaii. But if that motto means anything, "E pluribus unum," and if the constitutional prohibition against making distinctions based on race means anything, then we should not be authorizing a new sovereign government capable of negotiating secession, land, money, civil and criminal penalties—admission to which is only based upon race. The U.S. Department of Justice, the Supreme Court, the State of Hawaii itself—all have said this is not a tribe. Hawaiians are proud Americans,

which is why this bill should be rejected.

Mr. ENZI. Mr. President, I rise in strong opposition to S. 147, the Native Hawaiian Government Reorganization Act of 2006. We must celebrate racial diversity in our Nation. Racial diversity defines the cultural norms and values that make America the “melting pot” that is so amazing. America’s foundation is built upon many diverse races and cultures uniting to become one Nation, but while we can celebrate those diverse cultures, we must remember that we are all Americans and we must work to bridge gaps, not widen them.

Every day millions of Americans pledge their allegiance to our flag. They stand for the freedoms and rights guaranteed by our Constitution. One of the essential clauses of this pledge remains, “one Nation, under God, indivisible, with liberty and justice for all.” A source of our strength is our diversity, and still, despite our diversity, we are melded as one Nation, under God.

When I return to Wyoming, I often attend swearing in ceremonies. It is an honor to watch people become citizens of this great Nation. Swearing in ceremonies are moving experiences that I cherish. At a swearing in ceremony, people from every background and every nation come together to celebrate America. Every American should take the time to watch a swearing in ceremony because when they do, they will realize the privilege that comes with being an American citizen. They come in as citizens of India, China, Mexico, Germany, and many others, but they leave as Americans.

Although many citizens of this country practice and honor diverse traditions that are unique to their culture, one core similarity exists: we are all Americans. Racial diversity is important, but it should not be the rationale for the establishment of a separate sovereign government.

Wyoming is the home to the Eastern Shoshone and Northern Arapahoe Tribes on the Wind River Indian Reservation. As part of the United States, these tribes have been recognized for nearly 150 years as sovereign nations. The Eastern Shoshone community was granted sovereignty during the Treaty of Fort Laramie in 1863 before Wyoming became a State. Over the years, other Native American and Alaskan tribes gained sovereignty by meeting the criteria laid out in our laws. Native Hawaiians now seek sovereignty similar to that of Native Americans and Alaskan Natives through this legislation.

While I understand their desire to be granted sovereign immunity, the facts and circumstances surrounding Native Hawaiians are different. It does not make sense to waive or change the requirements that others had to meet.

Our Government has never created an Indian tribe. Sovereignty has only been granted to preexisting tribes and

only in special, rare circumstances after statehood.

In order to be federally recognized, a tribe must meet several criteria. A tribe must prove it existed and operated as a tribe for the past century. Additionally, the tribe must distinguish itself as a separate and distinct community both geographically and culturally. Finally, the tribe must have a preexisting political structure that is clear. Native Hawaiians do not meet these criteria.

A distinct community does not exist according to the standards outlined in the proposed legislation. Within the United States and the State of Hawaii, Native Hawaiians live integrated among all races.

During the “fall” of Queen Liliuokalani, a “Native Hawaiian” government was not present. All races coexisted under the reign of the monarchy. Non-natives even held high positions within the government.

In 1898, at the time of annexation, there was no political effort to treat Native Hawaiians similar to Alaska Natives or Native American tribes. The same held true when 94 percent of Hawaiians voted to become a State in 1959. Ninety-four percent of Hawaiians voted to become Americans. In fact, at that time, advocates of Hawaiian statehood emphasized the cohesive diversity, the “melting pot” nature of Hawaii.

In addition, in 1998, the State of Hawaii’s Supreme Court brief from the case of *Rice v. Cayetano* expressed the government’s belief that, “The Tribal concept simply has no place in the context of Hawaiian history.”

If the proposed legislation passes, the progress we have made over the past century to improve racial equality regresses. Instead of uniting the country, we divide it, and some of the darkest hours of this Nation occurred when people were separated because of race. This legislation is based solely on the ideology of race.

We are all Americans, and as such, we need to be united. Although I respect the desire of Native Hawaiians to be a federally recognized sovereign nation, I strongly urge my colleagues to oppose S. 147.

Mr. McCAIN. Mr. President, today we will vote on the motion to proceed to S. 147, the Native Hawaiian Government Reorganization Act of 2005. This legislation was passed by the Indian Affairs Committee on March 9, 2005. The bill is similar to a bill reported by the Committee during the 108th Congress that was not brought before the full Senate.

S. 147 was developed to provide Native Hawaiians with a mechanism for self-governance and self-determination, which the bill’s sponsors believe would protect from legal challenges a variety of programs and services currently in place for the benefit of Native Hawaiians. To achieve this goal, the bill would establish a process that would permit Native Hawaiians to organize a

sovereign entity that would have a legal relationship with the United States similar to that which exists today between the United States and federally recognized Indian tribes.

I recognize that this legislation has been offered in response to many legitimate concerns expressed by the members of the Hawaii delegation and the State’s Governor. The leaders of the State of Hawaii are attempting to ensure that a longstanding agreement between the Federal Government and Hawaii will not be jeopardized by litigants determined to undermine certain aspects of that agreement relating to Native Hawaiians. That does not change the fact that I have serious doubts about the wisdom of this legislation.

The sponsors reached an agreement in the 108th Congress that they would be afforded an opportunity to bring the bill to the Senate floor during this Congress. To fulfill that agreement, in my capacity as the chairman of the Indian Affairs Committee, I have worked to ensure that the legislation would be reported by the committee. I will also support the motion to proceed to the bill’s consideration because of the agreement that was reached in the last Congress. I would like the record to reflect clearly, though, that I am unequivocally opposed to this bill and that I will not support its passage should cloture be invoked.

Again, I do know how important this legislation is to the Senators from Hawaii and certainly to the very capable Governor of the 50th State. I am very much aware that one of the purposes of this legislation is to insulate current Native Hawaiian programs from constitutional attack in the courts, and I am sympathetic to that purpose. I commit to the Senators and the Governor that I remain willing to work with them to address the fundamental legal concerns facing their State. I also recognize the efforts made by Senator AKAKA to address some of the criticisms that have been leveled at this legislation. However, I still have a number of significant concerns with this measure.

Foremost among these concerns is that, if enacted, S. 147 would result in the formation of a sovereign government for Native Hawaiian people. I am sure that the sponsors have good intentions, but I cannot turn away from the fact that this bill would lead to the creation of a new nation based exclusively—not primarily, not in part, but exclusively—on race. In fact, any person with even a drop of Hawaiian blood would qualify to vote on the establishment of this new, legislatively created entity that would then negotiate with the Federal Government of the United States and the State of Hawaii on potentially unlimited topics.

As the U.S. Commission on Civil Rights stated in its recent report recommending against passage of S. 147, this bill would “discriminate on the basis of race” and “further subdivide

the American people into discrete subgroups accorded varying degrees of privilege." This is unacceptable to me, and it is unacceptable, I am sure, to most other citizens of this Nation who agree that we must continue our struggle to become and remain one people—all equal, all Americans.

Mr. REID. Mr. President, I will use my leader time now.

The PRESIDING OFFICER. The Senator is recognized.

Mr. REID. Mr. President, I have had the good fortune to serve here in Washington almost a quarter of a century. I have had the good fortune of serving with wonderful people, both when I served in the House and when I have had the opportunity to serve here in the Senate. As I look back over the delegations from the respective States here during my service in the Senate, there are no two finer men, no two finer persons who have ever served in our Senate than the two Senators who now represent the State of Hawaii. Senator AKAKA and Senator INOUE are two of the best.

Everyone knows, because I have stated here on the floor, how I feel about DAN INOUE. I have never, ever known a person for whom I have more respect and admiration than I do DAN INOUE. Think about that: A man who has earned the highest award this country can give for heroism, the Medal of Honor; DAN AKAKA, who served in the military.

We live in a country that is a Federal Government. What does that mean? It means, as I learned in college, that you have a central whole divided among self-governing parts. What are those self-governing parts? It is the State of Nevada, it is the State of Florida, it is the State of Tennessee, and it is the State of Hawaii—plus 46 others; none better than the other. Hawaii is equal to Florida, to Tennessee, to Nevada.

Let's talk about Nevada. Nevada has been a State for a long time, since 1864. Hawaii is one of the two new kids on the block, along with Alaska. But take Nevada as an example. The State of Nevada has 22 different Indian tribes and Indian entities. The State of Nevada knows they are there. It works just fine. It doesn't take away our sense that we are part of the Federal Government. We need to treat Hawaii as we do other States.

Some have said here that it is going to change the State of Hawaii. I think we should give the Senators from the State of Hawaii a little bit of credit for doing what is right for their State. We are scheduled to vote in just a short time on a motion to proceed to S. 147, the Native Hawaiian Government Reorganization Act. This vote provides all Senators an opportunity to do right by Native Hawaiians, and just as importantly by Hawaii's two very distinguished Senators, about whom I have just spoken.

A look at the historical record of Native Hawaiians demonstrates the importance of this legislation. That is

why the two Senators from Hawaii have worked tirelessly on its behalf.

I can remember when this vote was scheduled previously. It was within a day or two of when Katrina hit. In Washington at the time was the Governor of the State of Hawaii. She believed just as strongly as these two men that it was good for Hawaii. It was bipartisan. She is a Republican and these are two Democrats.

From their very first contacts with the western world more than two centuries ago to today, Native Hawaiians have endured a lot—just as the Native American Indians in Nevada endured a lot, a whole lot. While the Native Hawaiians have done so much, with such quiet dignity and courage, it should be clear to all of us that they now require our attention.

This legislation will do several things. First, it establishes a process for the reorganization of the Native Hawaiian Government Authority. There is nothing wrong with that. There is nothing different from the Pyramid Paiute tribe in northern Nevada. Pyramid is named after the lake there, Pyramid Lake.

It is no different from the Owyhee Indians in the northeastern part of our State. How would you get a name that sounds like Hawaii? Their reservation is Owyhee because well more than 100 years ago some Hawaiians came there to trap, and that is the last we heard of them. But the name never left. Hawaii, Owyhee. It is a sovereign tribe in Nevada. It has Hawaiian roots—at least the name. We are proud of them, the Indians. That reservation is made up of Shoshonis and Paiutes.

Second, this legislation, after the process has run its course and a Native Hawaiian governing entity is established, just like the tribal government, Walker River, that we have with the Paiute tribe, the bill reaffirms the special political/legal relationship between the U.S. Government and that entity, just like the Las Vegas Indian colony.

Third and perhaps more important, in the words of an editorial in Wednesday's New York Times, "this legislation offers a chance for justice in Hawaii."

Although arguments for why the Senate should address the legislation are crystal clear, I think the integrity of the U.S. Senate is on the line here. I think the integrity of the Senators who seek this opportunity merit attention. I have addressed myself to that.

The chance for justice in Hawaii—that is what this is all about. Hawaii is no different than Nevada. Native Hawaiians are no different than the Indians in Nevada.

The PRESIDING OFFICER. Who yields time? The Senator from Hawaii.

Mr. INOUE. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 6 minutes and 37 seconds.

Mr. INOUE. Mr. President, before proceeding I would like to thank my

leader, the Senator from Nevada, for his very generous remarks. I appreciate that very much.

I rise today in support of S. 147, the Native Hawaiian Government Reorganization Act and to address the outrageous mischaracterizations that some of my colleagues made yesterday about this measure. The law does not support their attempts to discriminate against Native Hawaiians so my colleagues had to resort to trying to confuse the issue.

This measure does not result in race discrimination. But discrimination will occur if this measure is not passed. It is undisputed that Native Hawaiians are the aboriginal, indigenous people of Hawaii. Yet some of my colleagues want to discriminate against them and treat them differently from other Native Americans—the American Indian and the Alaska Native. They seek to impose a new requirement for Congressional legislation to authorize the reorganization of a Native Hawaiian government even though many of these opponents have been in Congress for years and did not impose this requirement on the other aboriginal indigenous people recognized by Congress since 1978. Do not participate in these discriminatory activities.

Congress has plenary authority over the aboriginal, indigenous people of America. The Supreme Court has repeatedly upheld this. The Supreme Court has also acknowledged Congress' authority to recognize as an Indian tribe the aboriginal, indigenous people of America regardless of whether they are Indians, regardless of whether they are organized as a tribe, and regardless of whether they are located in territory of the United States. My colleagues who spoke against this measure yesterday know this. But none of them attempted to address these issues.

Rather, they are trying to distract us and the American people by claiming that this bill will strip Native Hawaiians of their American citizenship. My colleagues know better than this. They know that Indian tribes, however they are formed, are recognized as sovereign governments in the United States. They know that since the early 1800s the Supreme Court has called the Native governments of this land—domestic, dependent nations. They know that the status and existence of Native governments is recognized within our form of government. But they are relying on the fact that many of our citizens are not familiar with Native American governments so that they incite fear of racial preference, denial of rights, and secession.

Although the United States of America does not recognize dual citizenship for those who come from other countries, the United States does recognize that Native Americans can be both citizens of the United States and members of their Native government. This is true even for those Native Americans located in the lower 48, whose

tribal governments were terminated in the 1950s, or whose tribal governments were restored or recognized over the last 30 or so years. This bill will lead to a similar situation for the Native Hawaiians. It is not inconsistent with what already exists in the United States.

Native Hawaiians do live as separate and distinct communities. 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. Most of the homestead communities belong to an organization called the State Council of Hawaiian Homestead Associations. The Council is composed of 24 separate Native Hawaiian Homestead Associations. These associations are distinct and separate communities of Native Hawaiians.

Aside from living on Hawaiian homelands, there are communities that are distinctly Native Hawaiian. Through Native Hawaiian social and political institutions such as the Royal Hawaiian societies which existed during the Kingdom of Hawaii as well as the Association of Hawaiian Civic Clubs, Kamehameha Schools, and Queen Liliuokalani Children's Center, the Native Hawaiian community has maintained its distinct character as an aboriginal, native people.

Native Hawaiian culture, tradition, custom, and language has experienced a renaissance in the past 30 years. Many Native Hawaiians speak the Hawaiian language and practice the cultural practices of our kupuna, our ancestors, in health care and in education.

In another attempt to incite fear of this bill, some of my colleagues stated that this measure would lead to Hawaii seceding from the United States. Yes, a small percentage of my constituents advocate for Independence from the United States. It is an extreme view that I do not share, that the majority of Hawaii's citizens do not share, and that will not happen.

In 1959, Hawaii was admitted to become a part of the United States because the voters in the territory of Hawaii overwhelmingly voted to do so. This does not, however, erase the wrongs that were committed against this unique group of indigenous aboriginal native people. This bill does not affect Hawaii's statehood or the rights of its citizens under such statehood. This measure does, however, provide an opportunity to reorganize a Native Hawaiian government, similar to that of Alaska Native and American Indians, who are also American citizens, and it provides an opportunity to

finally resolve longstanding issues that exist in Hawaii as a result of the illegal overthrow.

The United States, in enacting Public Law 103-150, the Apology Resolution, has already recognized the fact that Native Hawaiians have never given up their inherent sovereignty. Despite the fact that Hawaii was admitted as the 50th State of the Union, Native Hawaiians neither by the government or through a plebiscite or referendum gave up their rights to inherent sovereignty. The June 27, 1959, statehood plebiscite in Hawaii only asked "Shall Hawaii immediately be admitted to the Union as a State?" Although the statehood plebiscite did not provide other options for independence or free association, it did not dissolve an inherent right to sovereignty by the indigenous people of Hawaii, Native Hawaiians.

Native Hawaiians are Americans and will continue to be American citizens upon enactment of this measure. Like other Native Americans, Native Hawaiians have honorably and overwhelmingly served in the United States military. Like their Native American brethren, they have served in numerous wars, including, World War II, Vietnam, Afghanistan, and Iraq and remain truly essential to protecting our country. Native Hawaiians will continue to do so after enactment of this measure. Native Hawaiians are truly proud to be Americans and should be.

Yesterday, some implied that this measure would abridge the right to vote and there was an attempt to somehow link the Supreme Court's decision in *Rice v. Cayetano* to this matter. This holding of this case has no bearing on the measure before us and this bill does not reverse the Court's holding. In order to fully understand what this decision did and did not say, one needs to know the facts:

The Office of Hawaiian Affairs is established pursuant to the Hawaii State Constitution as a State agency to administer programs for the benefit of Native Hawaiians. Prior to the *Rice* decision, the State limited voting for the trustees of the Office of Hawaiian Affairs, to Native Hawaiians. Mr. Rice, a non-Native Hawaiian citizen of the State of Hawaii, sued the Office of Hawaiian Affairs, a State agency, because he was not eligible to vote in the elections for the Board of Trustees that administers programs for the benefit of Native Hawaiians. Because the Office of Hawaiian Affairs is an arm of the State, the Supreme Court held that the State of Hawaii's denial of the right to vote in elections for the Board of Trustees of the Office of Hawaiian Affairs violated the Fifteenth Amendment guarantee of the right to vote.

That is what the *Rice v. Cayetano* decision held. Nothing more, nothing less.

But it appears that many of my colleagues have not read *Rice*. So I will take the liberty to cite from the decision so that my colleagues can fully

understand that this case has no bearing on the matter before us today. Because with respect to whether or not Congress may treat Native Hawaiians as it does Indian tribes, the Court left open the possibility that Congress could treat Native Hawaiians as such. At 528 U.S. 518, the Court accurately noted that it had not yet considered whether "Congress . . . has determined that native Hawaiians have a status like that of organized Indian tribes. . . ." but the Court continued by specifically stating on page 519, "We can stay far off that difficult terrain." The Court found it unnecessary to address whether Congress has treated Native Hawaiians as an Indian tribe because it found that the Office of Hawaiian Affairs is a State agency.

Although the holding of *Rice* is not relevant to the matter before us, the author of the State's brief is interesting, for the author is none other than recently confirmed Chief Justice John Roberts. Now Chief Justice Roberts clearly laid out the arguments as to how and why Native Hawaiians are a separate and distinct aboriginal, indigenous people who fall within Congress's plenary authority over Indian tribes. For instance, Chief Justice Roberts stated:

Congress's broad authority over Indian affairs reaches the shores of Hawaii, too.

The Constitution gives Congress—not the courts—authority to acknowledge and extinguish claims based on aboriginal status.

Congress has established with Hawaiians the same type of 'unique legal relationship' that exists with respect to the Indian tribes who enjoy the 'same rights and privileges' accorded Hawaiians. . . .

I urge all of my colleagues to read the excellent brief drafted by now Chief Justice Roberts.

Congress has repeatedly enacted laws that limit the right to vote in Native governmental elections to the members of that native government and it is consistent with the Constitution. In the 1930's, Congress enacted the Indian Reorganization Act and limited voting to tribal members. In the 1970's, Congress enacted the Alaska Native Claims Settlement Act and limited voting to Native shareholders and their descendants. Since 1978, Congress has enacted over 20 laws that authorized the reorganization or recognition of Indian tribes and many of those laws expressly limit voting to the members of those tribes. To listen to the opponents of this measure, the bill will create a racial preference for voting in a native government and that this has never been done before. But as I just pointed out, this bill is not forging new ground. This bill is consistent with Congress's past actions and the Supreme Court has never questioned these actions.

Another matter that my colleagues try to confuse others on is the difference between reorganizing or recognizing a native government and creating a native government. No one, not even the opponents of the measure, dispute that Native Hawaiians exercised sovereignty over the lands that now

comprise Hawaii before European contact. No one disputes that there was a Native Hawaiian Kingdom. Consequently, there was a Native Hawaiian government that the United States recognized as a sovereign. Indeed, the United States even engaged in government-to-government relations with the Kingdom of Hawaii. It is this government which will be reorganized as a domestic, dependent nation within our constitutional framework, in a manner consistent with the status of other Native Americans.

To hear the comments made yesterday, one would think that there was never a Native Hawaiian government. One of my colleagues recently attended a forum on this measure and mentioned his concern over the lack of civic education in America and the corresponding lack of knowledge about America's history. I agree with him. I urge all my colleagues to learn more about the history of Hawaii, the history of Native Hawaiians, the history of the United States, the laws enacted by Congress for the benefit of the aboriginal, indigenous people of the United States, and the laws handed down by the Supreme Court.

I am confident that once my colleagues become more informed about these matters, all will realize that enacting legislation authorizing the reorganization of a native government is within Congress authority. The Supreme Court reaffirmed this authority as recently as 2 years ago in *United States v. Lara*. In fact, the Court acknowledged that "Congress has restored previously extinguished tribal status—by re-recognizing a Tribe whose tribal existence it previously had terminated."

Once everyone obtains more education about the history and laws influencing this measure, they will realize that various history impacts the history of the United States, you will realize the difference between authorizing the reorganization of a native government and creating one out of thin air.

Claims that this bill will establish a precedent for the recognition of tribal status for Amish or Hassidic Jews or other groups are ridiculous. It is just another attempt to scare the citizens of America. Congress has the authority to recognize government-to-government relations with the aboriginal, indigenous people because of their preexisting sovereignty over the lands because of European contact. None of these other groups are preexisting sovereigns who exercised such authority.

Nor will this result in a government for the Hispanics who lived in Texas before it became a republic in 1836, or for descendants of the French citizens before the Louisiana Purchase. Again, these citizens are not aboriginal, indigenous people who exercised sovereignty before Western contact. While Congress has used its plenary authority to recognize the aboriginal, indigenous people

who reside in these former territories, Congress has never attempted to recognize the non-aboriginal, non-indigenous people as a government nor will it. We are not creating a precedent here.

Finally, I want to address the letter from the Department of Justice that was sent to Majority Leader FRIST last night. Last year, the Justice Department sent a longer letter outlining substantive policy concerns. Senator AKAKA and I, along with Governor Lingle, engaged in extensive negotiations with administration officials to address these substantive policy concerns. The result of these negotiations are contained in the substitute amendment that Senator AKAKA will be offering. There was no attempt to address the ideological concerns laid out in that letter. Therefore, Senator AKAKA and I have always known that all of the Department of Justice's concerns will not be addressed in the substitute amendment.

Before anyone relies too much on the Justice Department's letter, let me point out that the letter cites to the United States Commission on Civil Rights. I urge everyone to read the Government Accountability Office report released last week that noted the Commission's recent activities are not objective nor are there procedures in place to guarantee that they are.

While the letter correctly notes that the Supreme Court believes there is considerable dispute, it fails to acknowledge that the Supreme Court could have addressed the issue in *Rice v. Cayetano* but instead chose to put the issue aside for another day. The letter also does not mention the extensive Supreme Court case law that recognizes that it is Congress who has the authority to recognize a government-to-government relationship with a native government, not the Courts.

I urge my colleagues to vote "yes" on cloture so that this matter can be fully debated and everyone can be informed of the law supporting this measure. Do not fall victim to attempts to confuse this issue before us. Do not let your arm be twisted with threats that you should ignore your constituents and vote for the party line that is based on misinformation, not the law. All we are asking is that you allow an up or down vote on this measure.

Recently, the President of the United States George W. Bush submitted the name of John Roberts to be Chief Justice of the United States. Chief Justice Roberts was confirmed by this body because of his intellectual background and primarily because of his conservative views.

Recently, Chief Justice Roberts laid out arguments as to how and why Native Hawaiians are a separate and distinct aboriginal indigenous people who fall within Congress's plenary authority over Indian tribes. Among the many things that the Chief Justice said in his brief is the following:

Congress' broad authority over Indian affairs that reaches the shores of Hawaii too.

He went further to say:

The Constitution gives Congress—not the courts—authority to acknowledge and extinguish claims based on aboriginal status.

Chief Justice Roberts further stated:

Congress has established with Hawaiians the same type of "unique legal relationships" that exist with respect to the Indian tribes who enjoy the "same rights and privileges" accorded Hawaiians . . .

I urge all of my colleagues to read this excellent brief by now Chief Justice Roberts.

Mr. President, many things have been said about what this bill will do and will not do. Some were rather outrageous, I must say. For example, it was argued that this bill will establish a precedent for the recognition of tribal status for Amish and Hasidic Jews or other groups.

I think it is just another attempt to scare our fellow Americans.

Congress has the authority to recognize government-to-government relations with aboriginal indigenous people because of their preexisting sovereignty over lands before European contact. None of the groups that have been named, such as the Amish or the Hasidic Jews, are preexisting sovereigns who exercised such authority.

While Congress has used plenary authority to recognize aboriginal indigenous people who reside in these former territories, Congress has never attempted to recognize the nonaboriginal nonindigenous people as a government, and it will not. We are not creating any precedent here.

Finally, the letter from the Department of Justice was mentioned. It was sent to our majority leader last evening.

Last year, the Justice Department sent a longer letter outlining substantive policy concerns. As a result of that letter, Senator AKAKA and I, together with Governor Lingle, the Republican Governor of Hawaii, engaged in extensive negotiations and discussions for nearly 2 months with officials of the White House, the Justice Department, and OMB to address these policy concerns.

The result of these negotiations was contained in a substitute amendment identified as S. 364, which was introduced by Senator AKAKA. He made a formal request that this bill be considered original text for consideration in this debate. Regrettably, that offer was rejected.

This letter from the Attorney General does not refer to S. 364, which they are well aware of because they helped us draft it. They refer to the old bill, S. 147, which we intend to substitute with S. 364.

Yes, we are aware of the shortcomings of S. 147, and we met for nearly 2 months to clarify that.

I hope my colleagues will vote yes on this cloture motion so this matter can be more fully debated and everyone can

be fully informed of the laws supporting the measure.

All we are asking for is an up-or-down vote on this measure. We just want an opportunity to debate this measure.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee has 2 minutes remaining.

Mr. ALEXANDER. Mr. President, there is a fundamental shortcoming to this bill that can't be corrected by small amendments. There is no question that this legislation would—and I believe for the first time in our history—create a new, separate, independent race-based government within the borders of the United States of America. The only argument that could possibly justify such an offense to our constitutional tradition and our original motto, which says that when we became Americans we are proud of where we came from but we are prouder of being Americans, is that Native Hawaiians are just another Indian tribe. But the government of Hawaii itself, in a brief in the Supreme Court in 1998, said: "The tribal concept simply has no place in the context of Hawaiian history."

The Department of Justice, in a letter yesterday to the majority leader, with a copy to the minority leader, said: "Tribal recognition is inappropriate for native Hawaiians and would still raise difficult constitutional issues."

I have outlined in my remarks how Native Hawaiians do not constitute just another tribe. There may be wrongs to address, but this is the wrong way to right a wrong.

I urge my colleagues to vote no.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired.

Under the previous order, the clerk will report the motion to invoke cloture on the motion to proceed to Calendar No. 101, S. 147, Native Hawaiians Governing Entity.

The 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, hereby move to bring to a close the debate on the motion to proceed to Calendar No. 101, S. 147, native Hawaiians Governing entity.

Daniel K. Akaka, Daniel K. Inouye, Charles Schumer, Jack Reed, Patrick Leahy, Joe Biden, Barbara Mikulski, Evan Bayh, Barbara Boxer, Frank Lautenberg, Harry Reid, Jay Rockefeller, Richard Durbin, Jeff Bingaman, Edward Kennedy, Herb Kohl, James M. Jeffords, Mark Dayton, Jon Kyl, Norm Coleman.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to Calendar No. 101, S. 147, Native Hawaiians Governing Entity bill, be brought to a close? The yeas and nays are mandatory under rule XXII. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from New York (Mr. SCHUMER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—56 yeas, 41 nays, as follows:

[Rollcall Vote No. 165 Leg.]

YEAS—56

Akaka	Feingold	Menendez
Baucus	Feinstein	Mikulski
Bayh	Grassley	Murkowski
Biden	Hagel	Murray
Bingaman	Harkin	Nelson (FL)
Boxer	Inouye	Nelson (NE)
Byrd	Jeffords	Obama
Cantwell	Johnson	Pryor
Carper	Kennedy	Reed
Clinton	Kerry	Reid
Cochran	Kohl	Salazar
Coleman	Kyl	Sarbanes
Collins	Landrieu	Smith
Conrad	Lautenberg	Snowe
Dayton	Leahy	Specter
Dodd	Levin	Stabenow
Domenici	Lieberman	Stevens
Dorgan	Lincoln	Wyden
Durbin	McCain	

NAYS—41

Alexander	Crapo	Martinez
Allard	DeMint	McConnell
Allen	DeWine	Roberts
Bennett	Dole	Santorum
Bond	Ensign	Sessions
Brownback	Enzi	Shelby
Bunning	Frist	Sununu
Burns	Gregg	Talent
Burr	Hatch	Thomas
Chafee	Hutchison	Thune
Chambliss	Inhofe	Vitter
Coburn	Isakson	Voinovich
Cornyn	Lott	Warner
Craig	Lugar	

NOT VOTING—3

Graham	Rockefeller	Schumer
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Mr. PRESIDING OFFICER (Mr. VITTER). On this vote the yeas are 56, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. MCCONNELL. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

NOMINATION OF NOEL LAWRENCE HILLMAN TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

NOMINATION OF PETER G. SHERIDAN TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

NOMINATION OF THOMAS L. LUDINGTON TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

NOMINATION OF SEAN F. COX TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider en bloc the following nominations, which the clerk will report.

The legislative clerk read the nominations of Noel Lawrence Hillman, of New Jersey, to be United States District Judge for the District of New Jersey; Peter G. Sheridan, of New Jersey, to be United States District Judge for the District of New Jersey; Thomas L. Ludington, of Michigan, to be United States District Judge for the Eastern District of Michigan; Sean F. Cox, of Michigan, to be United States District Judge for the Eastern District of Michigan.

The PRESIDING OFFICER. Debate on these nominations shall be allocated as follows: Mr. LAUTENBERG, 10 minutes; Mr. MENENDEZ, 10 minutes; Ms. STABENOW, 10 minutes; Mr. SPECTER, 10 minutes; and Mr. LEAHY, 10 minutes.

Who yields time?

The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I ask unanimous consent to use 1 minute of the time allocated to Senator LEAHY.

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

Mr. LEVIN. Mr. President, I am very pleased that the Senate will be voting today on two Michigan jurists, Tom Ludington and Sean Cox, whom the President has nominated to the Federal bench for the Eastern District of Michigan. Both of these jurists received unanimously "well qualified" ratings from the American Bar Association to serve as Federal district judges. We are fortunate that we have jurists such as Judge Ludington and Judge Cox devoted to public service. I believe both will bring character and judicial temperament and integrity to the Eastern District of Michigan. I congratulate these jurists and their families on their nominations. I urge the Senate to confirm them.

Thomas Ludington is currently chief judge on the Circuit Court for Midland