

Jenkins	McNerney	Sanchez, Loretta
Johnson (GA)	Meeks (NY)	Sarbanes
Johnson (IL)	Melancon	Scalise
Johnson, E. B.	Mica	Schakowsky
Johnson, Sam	Michaud	Schauer
Jones	Miller (FL)	Schiff
Jordan (OH)	Miller (MI)	Schmidt
Kagen	Miller (NC)	Schock
Kanjorski	Miller, Gary	Schrader
Kaptur	Mitchell	Schwartz
Kennedy	Mollohan	Scott (GA)
Kildee	Moore (KS)	Scott (VA)
Kilpatrick (MI)	Moore (WI)	Sensenbrenner
Kilroy	Moran (VA)	Serrano
Kind	Murphy (CT)	Sessions
King (IA)	Murphy (NY)	Sestak
King (NY)	Murphy, Patrick	Shadegg
Kingston	Murphy, Tim	Shea-Porter
Kirk	Myrick	Sherman
Kirkpatrick (AZ)	Napolitano	Shimkus
Kissell	Neal (MA)	Shuler
Klein (FL)	Neugebauer	Shuster
Kline (MN)	Nunes	Simpson
Kosmas	Nye	Skelton
Kratovil	Oberstar	Slaughter
Kucinich	Obey	Smith (NE)
Lamborn	Olson	Smith (NJ)
Lance	Olver	Smith (TX)
Langevin	Ortiz	Smith (WA)
Larsen (WA)	Owens	Snyder
Larson (CT)	Pallone	Souder
Latham	Pascarell	Speier
LaTourette	Pastor (AZ)	Spratt
Latta	Paul	Stearns
Lee (CA)	Paulsen	Stupak
Lee (NY)	Pence	Sullivan
Levin	Perlmutter	Sutton
Lewis (CA)	Perriello	Tanner
Lewis (GA)	Peters	Taylor
Lipinski	Peterson	Teague
LoBiondo	Petri	Terry
Loeback	Pingree (ME)	Thompson (CA)
Lofgren, Zoe	Pitts	Thompson (MS)
Lowe	Platts	Thompson (PA)
Lucas	Poe (TX)	Thornberry
Luetkemeyer	Polis (CO)	Tiberi
Lujan	Pomeroy	Tierney
Lummis	Posey	Titus
Lungren, Daniel E.	Price (NC)	Tonko
Lynch	Putnam	Towns
Maffei	Quigley	Tsongas
Maloney	Rahall	Turner
Manzullo	Rangel	Upton
Marchant	Rehberg	Van Hollen
Markey (CO)	Reyes	Velázquez
Markey (MA)	Richardson	Visclosky
Marshall	Rodriguez	Walden
Massa	Roe (TN)	Walz
Matheson	Rogers (AL)	Wasserman
Matsui	Rogers (KY)	Schultz
McCarthy (CA)	Rogers (MI)	Waters
McCarthy (NY)	Rohrabacher	Watson
McCaul	Rooney	Watt
McClintock	Ros-Lehtinen	Weiner
McCollum	Roskam	Welch
McCotter	Ross	Westmoreland
McDermott	Rothman (NJ)	Whitfield
McGovern	Roybal-Allard	Wilson (SC)
McHenry	Royce	Wittman
McIntyre	Ruppersberger	Wolf
McKeon	Rush	Woolsey
McMahon	Ryan (WI)	Wu
McMorris	Salazar	Yarmuth
Rodgers	Sánchez, Linda T.	Young (AK)
		Young (FL)

## NOT VOTING—30

Andrews	Hoekstra	Radanovich
Barrett (SC)	Linder	Reichert
Blunt	Mack	Ryan (OH)
Bono Mack	Meek (FL)	Sires
Capps	Miller, George	Space
Carnahan	Minnick	Stark
Costello	Moran (KS)	Tiahrt
Culberson	Nadler (NY)	Wamp
Hinojosa	Payne	Waxman
Hodes	Price (GA)	Wilson (OH)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are reminded they have 2 minutes remaining on this vote.

□ 1740

So (two-thirds being in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER  
AS COSPONSOR OF H. RES. 648

Mr. ROGERS of Kentucky. Mr. Speaker, I ask unanimous consent to be removed as a cosponsor of H. Res. 648.

The SPEAKER pro tempore (Mr. DRIEHAUS). Is there objection to the request of the gentleman from Kentucky?

There was no objection.

NATIVE HAWAIIAN GOVERNMENT  
REORGANIZATION ACT OF 2009

Mr. RAHALL. Mr. Speaker, pursuant to House Resolution 1083, I call up the bill (H.R. 2314) 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, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1083, the bill is considered read.

The text of the bill is as follows:

H.R. 2314

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SECTION 1. SHORT TITLE.

This Act may be cited as the “Native Hawaiian Government Reorganization Act of 2009”.

## SEC. 2. FINDINGS.

Congress finds that—

(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States;

(2) Native Hawaiians, the native people of the Hawaiian archipelago that is now part of the United States, are indigenous, native people of the United States;

(3) the United States has a special political and legal relationship to promote the welfare of the native people of the United States, including Native Hawaiians;

(4) under the treaty making power of the United States, Congress exercised its constitutional authority to confirm treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1893, the United States—

(A) recognized the sovereignty of the Kingdom of Hawaii;

(B) accorded full diplomatic recognition to the Kingdom of Hawaii; and

(C) entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land to address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii;

(6) by setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community

in maintaining distinct native settlements throughout the State of Hawaii;

(7) approximately 6,800 Native Hawaiian families reside on the Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;

(8)(A) in 1959, as part of the compact with the United States admitting Hawaii into the Union, Congress established a public trust (commonly known as the “ceded lands trust”), for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians;

(B) the public trust consists of lands, including submerged lands, natural resources, and the revenues derived from the lands; and

(C) the assets of this public trust have never been completely inventoried or segregated;

(9) Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities throughout the State;

(10) the Hawaiian Home Lands and other ceded lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival and economic self-sufficiency of the Native Hawaiian people;

(11) Native Hawaiians continue to maintain other distinctly native areas in Hawaii;

(12) on November 23, 1993, Public Law 103–150 (107 Stat. 1510) (commonly known as the “Apology Resolution”) was enacted into law, extending an apology on behalf of the United States to the native people of Hawaii for the United States role in the overthrow of the Kingdom of Hawaii;

(13) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum;

(14) the Apology Resolution expresses the commitment of Congress and the President—

(A) to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii;

(B) to support reconciliation efforts between the United States and Native Hawaiians; and

(C) to consult with Native Hawaiians on the reconciliation process as called for in the Apology Resolution;

(15) despite the overthrow of the Government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a single distinct native community through cultural, social, and political institutions, and to give expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency;

(16) Native Hawaiians have also given expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency—

(A) through the provision of governmental services to Native Hawaiians, including the provision of—

- (i) health care services;
- (ii) educational programs;
- (iii) employment and training programs;
- (iv) economic development assistance programs;
- (v) children’s services;
- (vi) conservation programs;
- (vii) fish and wildlife protection;
- (viii) agricultural programs;
- (ix) native language immersion programs;

(x) native language immersion schools from kindergarten through high school;

(xi) college and master's degree programs in native language immersion instruction; and

(xii) traditional justice programs; and

(B) by continuing their efforts to enhance Native Hawaiian self-determination and local control;

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources;

(18) The Native Hawaiian people wish to preserve, develop, and transmit to future generations of Native Hawaiians their lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, to control and manage their own lands, including ceded lands, and to achieve greater self-determination over their own affairs;

(19) This Act provides a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a single Native Hawaiian governing entity for the purpose of giving expression to their rights as native people to self-determination and self-governance;

(20) Congress—

(A) has declared that the United States has a special political and legal relationship for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted scores of statutes on their behalf; and

(C) has delegated broad authority to the State of Hawaii to administer some of the United States responsibilities as they relate to the Native Hawaiian people and their lands;

(21) the United States has recognized and reaffirmed the special political and legal relationship with the Native Hawaiian people through the enactment of the Act entitled, “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (Public Law 86-3; 73 Stat. 4), by—

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the exclusive right of the United States to consent to any actions affecting the lands included in the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

(22) the United States has continually recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the indigenous, native people of a

once-sovereign nation with whom the United States has a special political and legal relationship; and

(D) the special relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States; and

(23) the State of Hawaii supports the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003, and March 1, 2005.

### SEC. 3. DEFINITIONS.

In this Act:

(1) **ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.**—The term “aboriginal, indigenous, native people” means people whom Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States.

(2) **ADULT MEMBER.**—The term “adult member” means a Native Hawaiian who has attained the age of 18 and who elects to participate in the reorganization of the Native Hawaiian governing entity.

(3) **APOLOGY RESOLUTION.**—The term “Apology Resolution” means Public Law 103-150 (107 Stat. 1510), a Joint Resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893, overthrow of the Kingdom of Hawaii.

(4) **COMMISSION.**—The term “commission” means the Commission established under section 7(b) to provide for the certification that those adult members of the Native Hawaiian community listed on the roll meet the definition of Native Hawaiian set forth in paragraph (10).

(5) **COUNCIL.**—The term “council” means the Native Hawaiian Interim Governing Council established under section 7(c)(2).

(6) **INDIAN PROGRAM OR SERVICE.**—

(A) **IN GENERAL.**—The term “Indian program or service” means any federally funded or authorized program or service provided to an Indian tribe (or member of an Indian tribe) because of the status of the members of the Indian tribe as Indians.

(B) **INCLUSIONS.**—The term “Indian program or service” includes a program or service provided by the Bureau of Indian Affairs, the Indian Health Service, or any other Federal agency.

(7) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(8) **INDIGENOUS, NATIVE PEOPLE.**—The term “indigenous, native people” means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(9) **INTERAGENCY COORDINATING GROUP.**—The term “Interagency Coordinating Group” means the Native Hawaiian Interagency Coordinating Group established under section 6.

(10) **NATIVE HAWAIIAN.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), for the purpose of establishing the roll authorized under section 7(c)(1) and before the reaffirmation of the special political and legal relationship between the United States and the Native Hawaiian governing entity, the term “Native Hawaiian” means—

(i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—

(I) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(II) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(ii) an individual who is 1 of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendant of that individual.

(B) **NO EFFECT ON OTHER DEFINITIONS.**—Nothing in this paragraph affects the definition of the term “Native Hawaiian” under any other Federal or State law (including a regulation).

(11) **NATIVE HAWAIIAN GOVERNING ENTITY.**—The term “Native Hawaiian Governing Entity” means the governing entity organized by the Native Hawaiian people pursuant to this Act.

(12) **NATIVE HAWAIIAN PROGRAM OR SERVICE.**—The term “Native Hawaiian program or service” means any program or service provided to Native Hawaiians because of their status as Native Hawaiians.

(13) **OFFICE.**—The term “Office” means the United States Office for Native Hawaiian Relations established by section 5(a).

(14) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(15) **SPECIAL POLITICAL AND LEGAL RELATIONSHIP.**—The term “special political and legal relationship” shall refer, except where differences are specifically indicated elsewhere in the Act, to the type of and nature of relationship the United States has with the several federally recognized Indian tribes.

### SEC. 4. UNITED STATES POLICY AND PURPOSE.

(a) **POLICY.**—The United States reaffirms that—

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

(2) the United States has a special political and legal relationship with the Native Hawaiian people which includes promoting the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution, including but not limited to Article I, section 8, clause 3, to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of—

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

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

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have—

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

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

(C) the right to reorganize a Native Hawaiian governing entity; and

(D) the right to become economically self-sufficient; and

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

(b) **PURPOSE.**—The purpose of this Act is to provide a process for the reorganization of the single Native Hawaiian governing entity and the reaffirmation of the special political and legal relationship between the United States and that Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

# SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(a) **ESTABLISHMENT.**—There is established within the Office of the Secretary, the United States Office for Native Hawaiian Relations.

(b) **DUTIES.**—The Office shall—

(1) continue the process of reconciliation with the Native Hawaiian people in furtherance of the Apology Resolution;

(2) upon the reaffirmation of the special political and legal relationship between the single Native Hawaiian governing entity and the United States, effectuate and coordinate the special political and legal relationship between the Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with, the Native Hawaiian people and the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, and the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to Federal law or regulations promulgated under the authority of Federal law.

(c) **APPLICABILITY TO DEPARTMENT OF DEFENSE.**—This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Office.

# SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

(a) **ESTABLISHMENT.**—In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the “Native Hawaiian Interagency Coordinating Group”.

(b) **COMPOSITION.**—The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from—

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact Native Hawaiian resources, rights, or lands; and

(2) the Office.

(c) **LEAD AGENCY.**—

(1) **IN GENERAL.**—The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group.

(2) **MEETINGS.**—The Secretary shall convene meetings of the Interagency Coordinating Group.

(d) **DUTIES.**—The Interagency Coordinating Group shall—

(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;

(2) consult with the Native Hawaiian governing entity, through the coordination referred to in section 6(d)(1), but the consultation obligation established in this provision shall apply only after the satisfaction of all of the conditions referred to in section 7(c)(6); and

(3) ensure the participation of each Federal agency in the development of the report to Congress authorized in section 5(b)(5).

(e) **APPLICABILITY TO DEPARTMENT OF DEFENSE.**—This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Interagency Coordinating Group.

# SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY AND THE REAFFIRMATION OF THE SPECIAL POLITICAL AND LEGAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE NATIVE HAWAIIAN GOVERNING ENTITY.

(a) **RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.**—The right of the Native Hawaiian people to reorganize the single Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) **COMMISSION.**—

(1) **IN GENERAL.**—There is authorized to be established a Commission to be composed of 9 members for the purposes of—

(A) preparing and maintaining a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the single Native Hawaiian governing entity; and

(B) certifying that the adult members of the Native Hawaiian community proposed for inclusion on the roll meet the definition of Native Hawaiian in section 3(10).

(2) **MEMBERSHIP.**—

(A) **APPOINTMENT.**—

(i) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subparagraph (B).

(ii) **CONSIDERATION.**—In making an appointment under clause (i), the Secretary may take into consideration a recommendation made by any Native Hawaiian organization.

(B) **REQUIREMENTS.**—Each member of the Commission shall demonstrate, as determined by the Secretary—

(i) not less than 10 years of experience in the study and determination of Native Hawaiian genealogy; and

(ii) an ability to read and translate into English documents written in the Hawaiian language.

(C) **VACANCIES.**—A vacancy on the Commission—

(i) shall not affect the powers of the Commission; and

(ii) shall be filled in the same manner as the original appointment.

(3) **EXPENSES.**—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(4) **DUTIES.**—The Commission shall—

(A) prepare and maintain a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and

(B) certify that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10).

(5) **STAFF.**—

(A) **IN GENERAL.**—The Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(B) **COMPENSATION.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) **MAXIMUM RATE OF PAY.**—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(6) **DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.**—

(A) **IN GENERAL.**—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(B) **CIVIL SERVICE STATUS.**—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(7) **PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.**—The Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(8) **EXPIRATION.**—The Secretary shall dissolve the Commission upon the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States.

(c) **PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.**—

(1) **ROLL.**—

(A) **CONTENTS.**—The roll shall include the names of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity and are certified to be Native Hawaiian as defined in section 3(10) by the Commission.

(B) **FORMATION OF ROLL.**—Each adult member of the Native Hawaiian community who elects to participate in the reorganization of the Native Hawaiian governing entity shall submit to the Commission documentation in the form established by the Commission that is sufficient to enable the Commission to determine whether the individual meets the definition of Native Hawaiian in section 3(10).

(C) **DOCUMENTATION.**—The Commission shall—

(i) identify the types of documentation that may be submitted to the Commission that would enable the Commission to determine whether an individual meets the definition of Native Hawaiian in section 3(10);

(ii) establish a standard format for the submission of documentation; and

(iii) publish information related to clauses (i) and (ii) in the Federal Register.

(D) **CONSULTATION.**—In making determinations that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10), the Commission may consult with Native Hawaiian organizations, agencies of the State of Hawaii including but not limited to the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and the State Department of Health, and other entities with expertise

and experience in the determination of Native Hawaiian ancestry and lineal descendancy.

(E) CERTIFICATION AND SUBMITTAL OF ROLL TO SECRETARY.—The Commission shall—

(i) submit the roll containing the names of the adult members of the Native Hawaiian community who meet the definition of Native Hawaiian in section 3(10) to the Secretary within 2 years from the date on which the Commission is fully composed; and

(ii) certify to the Secretary that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10).

(F) PUBLICATION.—Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of Native Hawaiian in section 3(10), the Secretary shall publish the roll in the Federal Register.

(G) APPEAL.—The Secretary may establish a mechanism for an appeal for any person whose name is excluded from the roll who claims to meet the definition of Native Hawaiian in section 3(10) and to be 18 years of age or older.

(H) PUBLICATION; UPDATE.—The Secretary shall—

(i) publish the roll regardless of whether appeals are pending;

(ii) update the roll and the publication of the roll on the final disposition of any appeal; and

(iii) update the roll to include any Native Hawaiian who has attained the age of 18 and who has been certified by the Commission as meeting the definition of Native Hawaiian in section 3(10) after the initial publication of the roll or after any subsequent publications of the roll.

(I) FAILURE TO ACT.—If the Secretary fails to publish the roll, not later than 90 days after the date on which the roll is submitted to the Secretary, the Commission shall publish the roll notwithstanding any order or directive issued by the Secretary or any other official of the Department of the Interior to the contrary.

(J) EFFECT OF PUBLICATION.—The publication of the initial and updated roll shall serve as the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.

(2) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—

(A) ORGANIZATION.—The adult members of the Native Hawaiian community listed on the roll published under this section may—

(i) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;

(ii) determine the structure of the Council; and

(iii) elect members from individuals listed on the roll published under this subsection to the Council.

(B) POWERS.—

(i) IN GENERAL.—The Council—

(I) may represent those listed on the roll published under this section in the implementation of this Act; and

(II) shall have no powers other than powers given to the Council under this Act.

(ii) FUNDING.—The Council may enter into a contract with, or obtain a grant from, any Federal or State agency to carry out clause (iii).

(iii) ACTIVITIES.—

(I) IN GENERAL.—The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed elements of the organic governing documents of

the Native Hawaiian governing entity, including but not limited to—

(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;

(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native Hawaiian governing entity;

(cc) the proposed civil rights and protection of the rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity; and

(dd) other issues determined appropriate by the Council.

(II) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.

(III) DISTRIBUTION.—The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection—

(aa) a copy of the proposed organic governing documents, as drafted by the Council; and

(bb) a brief impartial description of the proposed organic governing documents;

(IV) ELECTIONS.—The Council may hold elections for the purpose of ratifying the proposed organic governing documents, and on certification of the organic governing documents by the Secretary in accordance with paragraph (4), hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).

(3) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.—Following the reorganization of the Native Hawaiian governing entity and the adoption of organic governing documents, the Council shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(4) CERTIFICATIONS.—

(A) IN GENERAL.—Within the context of the future negotiations to be conducted under the authority of section 8(b)(1), and the subsequent actions by the Congress and the State of Hawaii to enact legislation to implement the agreements of the 3 governments, not later than 90 days after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

(i) establish the criteria for citizenship in the Native Hawaiian governing entity;

(ii) were adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll published by the Secretary;

(iii) provide authority for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;

(iv) provide for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be delegated to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 8(b)(1) and the enactment of legislation to implement the agreements of the 3 governments;

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;

(vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity; and

(vii) are consistent with applicable Federal law and the special political and legal relationship between the United States and the indigenous, native people of the United States; provided that the provisions of Public Law 103-454, 25 U.S.C. 479a, shall not apply.

(B) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (A).—

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part of the documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the organic governing documents to the Council, along with a justification for each of the Secretary's findings as to why the provisions are not in full compliance.

(ii) AMENDMENT AND RESUBMISSION OF ORGANIC GOVERNING DOCUMENTS.—If the organic governing documents are resubmitted to the Council by the Secretary under clause (i), the Council shall—

(I) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.

(C) CERTIFICATIONS DEEMED MADE.—The certifications under paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(5) ELECTIONS.—On completion of the certifications by the Secretary under paragraph (4), the Council may hold elections of the officers of the Native Hawaiian governing entity.

(6) REAFFIRMATION.—Notwithstanding any other provision of law, upon the certifications required under paragraph (4) and the election of the officers of the Native Hawaiian governing entity, the special political and legal relationship between the United States and the Native Hawaiian governing entity is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

#### SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS; CLAIMS.

(a) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union” approved March 18, 1959 (Public Law 86-3, 73 Stat. 4), is reaffirmed.

(b) NEGOTIATIONS.—

(1) IN GENERAL.—Upon the reaffirmation of the special political and legal relationship between the United States and the Native Hawaiian governing entity, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters as—

(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 other assets, including land use;

(C) the exercise of civil and criminal jurisdiction;

(D) the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawaii;

(E) any residual responsibilities of the United States and the State of Hawaii; and

(F) grievances regarding assertions of historical wrongs committed against Native Hawaiians by the United States or by the State of Hawaii.

(2) AMENDMENTS TO EXISTING LAWS.—Upon agreement on any matter or matters negotiated with the United States, the State of Hawaii, and the Native Hawaiian governing entity, the parties are authorized to submit—

(A) to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives, recommendations for proposed amendments to Federal law that will enable the implementation of agreements reached between the 3 governments; and

(B) to the Governor and the legislature of the State of Hawaii, recommendations for proposed amendments to State law that will enable the implementation of agreements reached between the 3 governments.

(3) GOVERNMENTAL AUTHORITY AND POWER.—Any governmental authority or power to be exercised by the Native Hawaiian governing entity which is currently exercised by the State or Federal Governments shall be exercised by the Native Hawaiian governing entity only as agreed to in negotiations pursuant to section 8(b)(1) of this Act and beginning on the date on which legislation to implement such agreement has been enacted by the United States Congress, when applicable, and by the State of Hawaii, when applicable. This includes any required modifications to the Hawaii State Constitution in accordance with the Hawaii Revised Statutes.

(C) CLAIMS.—

(1) DISCLAIMERS.—Nothing in this Act—

(A) creates a cause of action against the United States or any other entity or person;

(B) alters existing law, including existing case law, regarding obligations on the part of the United States or the State of Hawaii with regard to Native Hawaiians or any Native Hawaiian entity;

(C) creates obligations that did not exist in any source of Federal law prior to the date of enactment of this Act; or

(D) establishes authority for the recognition of Native Hawaiian groups other than the single Native Hawaiian Governing Entity.

(2) FEDERAL SOVEREIGN IMMUNITY.—

(A) SPECIFIC PURPOSE.—Nothing in this Act is intended to create or allow to be maintained in any court any potential breach-of-trust actions, land claims, resource-protection or resource-management claims, or similar types of claims brought by or on behalf of Native Hawaiians or the Native Hawaiian governing entity for equitable, monetary, or Administrative Procedure Act-based relief against the United States or the State of Hawaii, whether or not such claims specifically assert an alleged breach of trust, call for an accounting, seek declaratory relief, or seek the recovery of or compensation for lands once held by Native Hawaiians.

(B) ESTABLISHMENT AND RETENTION OF SOVEREIGN IMMUNITY.—To effectuate the ends expressed in section 8(c)(1) and 8(c)(2)(A), and notwithstanding any other provision of Federal law, the United States retains its sovereign immunity to any claim that existed prior to the enactment of this Act (including, but not limited to, any claim based in whole or in part on past events), and which could be brought by Native Hawaiians or any Native Hawaiian governing entity. Nor shall any preexisting waiver of sovereign immunity (including, but not limited to, waivers set forth in chapter 7 of part I of title 5, United States Code, and sections 1505 and 2409a of title 28, United States Code) be ap-

plicable to any such claims. This complete retention or reclaiming of sovereign immunity also applies to every claim that might attempt to rely on this Act for support, without regard to the source of law under which any such claim might be asserted.

(C) EFFECT.—It is the general effect of section 8(c)(2)(B) that any claims that may already have accrued and might be brought against the United States, including any claims of the types specifically referred to in section 8(c)(2)(A), along with both claims of a similar nature and claims arising out of the same nucleus of operative facts as could give rise to claims of the specific types referred to in section 8(c)(2)(A), be rendered nonjusticiable in suits brought by plaintiffs other than the Federal Government.

(3) STATE SOVEREIGNTY IMMUNITY.—

(A) Notwithstanding any other provision of Federal law, the State retains its sovereign immunity, unless waived in accord with State law, to any claim, established under any source of law, regarding Native Hawaiians, that existed prior to the enactment of this Act.

(B) Nothing in this Act shall be construed to constitute an override pursuant to section 5 of the Fourteenth Amendment of State sovereign immunity held under the Eleventh Amendment.

#### SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(A) INDIAN GAMING REGULATORY ACT.—

(1) The Native Hawaiian governing entity and Native Hawaiians may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

(2) The foregoing prohibition in section 9(a)(1) on the use of Indian Gaming Regulatory Act and inherent authority to game apply regardless of whether gaming by Native Hawaiians or the Native Hawaiian governing entity would be located on land within the State of Hawaii or within any other State or Territory of the United States.

(b) TAKING LAND INTO TRUST.—Notwithstanding any other provision of law, including but not limited to part 151 of title 25, Code of Federal Regulations, the Secretary shall not take land into trust on behalf of individuals or groups claiming to be Native Hawaiian or on behalf of the native Hawaiian governing entity.

(c) REAL PROPERTY TRANSFERS.—The Indian Trade and Intercourse Act (25 U.S.C. 177), does not, has never, and will not apply after enactment to lands or lands transfers present, past, or future, in the State of Hawaii. If despite the expression of this intent herein, a court were to construe the Trade and Intercourse Act to apply to lands or land transfers in Hawaii before the date of enactment of this Act, then any transfer of land or natural resources located within the State of Hawaii prior to the date of enactment of this Act, by or on behalf of the Native Hawaiian people, or individual Native Hawaiians, shall be deemed to have been made in accordance with the Indian Trade and Intercourse Act and any other provision of Federal law that specifically applies to transfers of land or natural resources from, by, or on behalf of an Indian tribe, Native Hawaiians, or Native Hawaiian entities.

(d) SINGLE GOVERNING ENTITY.—This Act will result in the recognition of the single Native Hawaiian governing entity. Additional Native Hawaiian groups shall not be eligible for acknowledgment pursuant to the Federal Acknowledgment Process set forth in part 83 of title 25 of the Code of Federal Regulations or any other administrative acknowledgment or recognition process.

(e) JURISDICTION.—Nothing in this Act alters the civil or criminal jurisdiction of the United States or the State of Hawaii over lands and persons within the State of Hawaii. The status quo of Federal and State jurisdiction can change only as a result of further legislation, if any, enacted after the conclusion, in relevant part, of the negotiation process established in section 8(b).

(f) INDIAN PROGRAMS AND SERVICES.—Notwithstanding section 7(c)(6), because of the eligibility of the Native Hawaiian governing entity and its citizens for Native Hawaiian programs and services in accordance with subsection (g), nothing in this Act provides an authorization for eligibility to participate in any Indian program or service to any individual or entity not otherwise eligible for the program or service under applicable Federal law.

(g) NATIVE HAWAIIAN PROGRAMS AND SERVICES.—The Native Hawaiian governing entity and its citizens shall be eligible for Native Hawaiian programs and services to the extent and in the manner provided by other applicable laws.

#### SEC. 10. SEVERABILITY.

If any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions shall continue in full force and effect.

#### SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The SPEAKER pro tempore. After 1 hour of debate on the bill, it shall be in order to consider the amendment in the nature of a substitute printed in part A of House Report 111-413, if offered by the gentleman from Hawaii (Mr. ABERCROMBIE) or his designee, which shall be considered as read, and shall be separately debatable for 30 minutes equally divided and controlled by the proponent and an opponent.

The amendments to the amendment in the nature of a substitute printed in part B of House Report 111-413, each of which may be offered only by a Member designated in the report, shall be considered as read and shall be separately debatable for 10 minutes equally divided and controlled by the proponent and an opponent.

The gentleman from West Virginia (Mr. RAHALL) and the gentleman from Washington (Mr. HASTINGS) each will control 30 minutes.

The Chair recognizes the gentleman from West Virginia.

□ 1745

#### GENERAL LEAVE

Mr. RAHALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and insert extraneous material on H.R. 2134.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. RAHALL. Mr. Speaker, the history of these United States is replete with glory. From the moment we broke the bonds of tyranny and declared independence to the severe tests we endured to maintain our union of States during the Civil War, to developments in science, medicine, and technology,

we as a Nation advanced for the benefit of the entire world. But throughout much of this history, our treatment of indigenous populations has been found wanting. The very policy that the United States advanced toward Native Americans from destruction to assimilation to reservation were conflicting and did not usually produce favorable results, at least from the perspective of the Native American.

Today, we are considering a measure which seeks to rectify a wrong that occurred 117 years ago. On January 17, 1893, the legitimate Kingdom of Hawaii was overthrown by American speculators with the active participation of the U.S. military. Five years after this overthrow, Hawaii was annexed to the United States and the lands of the indigenous population were lost to sugar plantations. Their health, education, and economic standing diminished greatly, a saga that has been repeated again and again with respect to Native Americans throughout our country.

The measure we are considering today is not a restitution measure, nor is it an outright recognition measure. What it would do is create a process by which the Native Hawaiian governing body would be reorganized, and the political and legal relationship with the United States would be reaffirmed.

I think it is important to note what this bill does not do: It does not allow for gaming; it does not provide for the transfer of any lands; it does not change civil or criminal jurisdiction by the State or Federal Governments; and it does not provide for any new eligibility into Indian programs.

Following reorganization of a governing body, the bill authorizes negotiation among the Federal, State, and Native Hawaiian governing entities to address certain powers and authorities. Any changes in these areas would require enactment of additional Federal and possibly State legislation.

Beginning in 1920, Congress began passing legislation specifically for the benefit of Native Hawaiians. To date, over 160 laws have been enacted to provide the Native Hawaiian community with everything from housing to repatriation of Hawaiian human remains from the Nation's museums. In each case, Congress understood its right and responsibility to enact laws affecting the native peoples of Hawaii similar to natives of the other 49 States. This is not a matter of race; it is a matter of Congress properly dealing with the indigenous populations as expressly sanctioned by the Constitution of the United States.

To allege that the Congress cannot engage in legislation of the pending nature regarding Native Hawaiians is to ignore the fact that there are 564 Federally recognized Indian tribes in this country. The bill before us today is similar legislation that has passed the House in previous Congresses. During the 106th Congress, we passed a similar bill under suspension of the rules when the Republicans held the majority.

That was under Tom DeLay's watch, but what a different tune we will hear today from the other side. Similar legislation also passed during last Congress by a large majority.

So I urge my colleagues to vote to fulfill our constitutional responsibility toward indigenous people residing in the United States and vote for this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HASTINGS of Washington asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Washington. Mr. Speaker, I rise in opposition to H.R. 2314 and the substitute text that will be offered by my good friend from Hawaii (Mr. ABERCROMBIE).

Mr. Speaker, at the outset of this debate, it is important for all Members to understand that the substitute text that they will ultimately be voting on today is fundamentally changed from the original underlying bill that the House voted on in 2007. This rewritten text, the Abercrombie substitute, was drafted behind closed doors away from public view. It was unveiled less than 48 hours before we in the House were to be debating and voting on that substitute. Regrettably, Mr. Speaker, this lack of transparency has become the standard operating procedure for this Democratic-controlled House.

Mr. Speaker, I am certain we will hear appeals from the bill's advocates that the vote on this bill should not be a partisan matter. I would agree. This is not a partisan matter; rather, it is a question of what is right and constitutional. But appeals to nonpartisanship ring hollow when the bill was rewritten in secret by just one party and then rushed to the floor with little time for scrutiny by the minority, but more importantly, Mr. Speaker, little time for scrutiny by the American people or the citizens of Hawaii.

There is nothing more troubling about the House voting on a fundamentally rewritten bill than the position made public by the Governor of Hawaii. Something is very wrong when that Governor, a longtime vocal advocate of Native Hawaiian recognition, feels compelled to issue a statement last night that she can't support this rewritten bill.

Now, the Governor and I disagree on the fundamental question of recognition, I want to make that clear, just as I fundamentally disagree with my good friend from Hawaii (Mr. ABERCROMBIE) but I also strongly disagree with the House acting to impose a changed bill on one of the 50 States over their Governor's objections, especially when this Governor has long supported, as I mentioned, the concept of Native Hawaiian recognition and the original text of the bill.

Let me explain the difference between the underlying bill, which is basically what the House passed in the

110th Congress, and the Abercrombie amendment in the nature of a substitute. This is very important, Mr. Speaker. The original bill extended recognition to the Native Hawaiian entity but withheld any tribal powers and privileges, such as immunity from lawsuit and State jurisdiction, until after negotiations with—and the consent of—the State of Hawaii and this Congress. Though this does not resolve my fundamental objection to the bill, it was an arrangement that drew the strong support of Governor Lingle of Hawaii.

In contrast, the substitute alters this fundamental nature of the bill. Let me quote the words that the Governor of Hawaii, Governor Linda Lingle, used to describe this rewrite: "The current bill establishes that the Native Hawaiian governing entity would start with broad governmental powers and authorities, with negotiations to follow." Again, the original bill starts with negotiations, followed by a grant of powers and authorities that are subject to the consent of the State. But the substitute starts with the grant of powers and authorities without the consent of the State, followed by negotiations for yet more benefits and powers.

Let me be specific, Mr. Speaker, in two instances. First, section 9 of the substitute clearly spells out the powers granted to the Native American governing entity before negotiations without the consent of the State; it is immunity from any lawsuit in any Federal or State court, with only minor exceptions. Second, it is that "governmental" activities pursued by the entity or its officers and employees shall not be subject to State regulatory or taxation authority. The wording of this section suggests that the State criminal authority will not even apply to officers and employees of the Native Hawaiian governing entity as long as they are acting within the scope of their duties.

To once again quote from the Governor of Hawaii's statement from last night, "I do not believe such a structure, of two completely different sets of rules—one for 'governmental' activities of the Native Hawaiian governing entity and its officers and employees, and one for everyone else—makes sense for Hawaii."

Quoting further, "In addition, under the current bill, the Native Hawaiian governing entity has almost complete sovereign immunity from lawsuits, including from ordinary tort and contract lawsuits, and I do not believe this makes sense for the people of Hawaii." And I am quoting from Governor Lingle.

Without question, this rewritten bill strikes at the heart of the State of Hawaii's authority to enforce health and environmental regulations, taxes, and criminal law enforcement equally among its citizens. Congress should not be party to imposing this upon this State, or for that matter any State. Yet, despite the State of Hawaii's concerns with the rewritten bill, here we



are tonight debating it on the floor of the House of Representatives. This legislation violates also, in my view, the United States Constitution because it establishes a separate, race-based government of Native Hawaiians.

The authors and advocates of this bill have argued that Native Hawaiian recognition is no different than Congress recognizing an Indian tribe, and yet, Mr. Speaker, there are very important and real differences. Native Hawaiians are not and never have been members of an Indian tribe. Native Hawaiians do not share the same political and legal history as Federally recognized Indian tribes. The historical record on this point is very, very clear. For example, in the Hawaii Organic Act of 1900, section 4 states that all persons who were citizens of the Republic of Hawaii in 1898 were declared citizens of the United States and citizens of the Territory of Hawaii.

Mr. Speaker, if Congress then believed it was recognizing the existence of a separate Native Hawaiian community, the Organic Act would have expressly reflected this; instead, all Hawaiians were recognized as full citizens. Mr. Speaker, this is in stark contrast to our Nation's history of less than equal treatment of individual Indians and Indian tribes.

But try as we might, Congress cannot revise historical and political facts. H.R. 2314 attempts to do just this, to rewrite legal history. Mr. Speaker, this observation is shared by constitutional and civil rights experts. For example, in its 7-2 decision, the Supreme Court in *Rice v. Cayetano* commented on the proposition of Native Hawaiian recognition, saying that it, and I quote from that case, "would raise questions of considerable moment and difficulty. It is a matter of some dispute whether Congress may treat the Native Hawaiians as it does the Indian tribes."

Just yesterday, the U.S. Commission on Civil Rights reiterated its standing opposition to any legislation, and I quote from the commission, "that would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups according to varying degrees of privilege."

Mr. Speaker, in 1959 a vote was taken in Hawaii on the question of becoming a State. Over 94 percent voted in favor of statehood. In other words, citizens of Hawaii voted overwhelmingly to join our Union as one unified State.

□ 1800

Today, under this bill, Congress will vote on dividing the State of Hawaii through the creation of a separate governing entity based solely on race. If Congress is going to impose this division on Hawaii over the objections of its Governor, then I believe the citizens of Hawaii themselves deserve to have a vote on this matter.

In a Zogby poll from December 2009, a couple of months ago, only 34 percent of Hawaiians supported the concept of

the Federal Government's imposing a new racially based subpopulation of citizens on the islands. Like their fellow Hawaiians who voted overwhelmingly for Statehood in 1959, Hawaiians today want a say in the future of their archipelago. The same poll found that 58 percent want a Statewide vote on this issue.

So, Mr. Speaker, I have an amendment that will be offered which would require just such a Statewide vote, and I hope all Members will join me in adopting that amendment.

As I noted at the outset of my remarks, the House last voted on Native Hawaiian recognition in 2007. I want to reiterate today, Mr. Speaker, that we will be voting on a different bill today. The 2007 legislation was rewritten. I believe the changes today are so fundamentally different that those Members who voted "yes" in 2007 should take the time to reconsider their votes.

There is another compelling reason for reconsideration when the Governor of Hawaii, the State that is impacted, has gone from an enthusiastic supporter of the 2007 bill to not supporting the rewritten bill. I hope many of my colleagues will recognize this dramatic change from just 3 years ago. The Governor remains a committed supporter of Native Hawaiian recognition. Her position has not changed. It is the bill that has been fundamentally changed and rewritten. Like the Governor, who supported the 2007 bill, they, too, have good reason to oppose this rewritten version today.

Now, Mr. Speaker, before concluding my opening statement, I want to take a moment to publicly state that I have a great deal of respect and affection for my colleague from Hawaii, NEIL ABERCROMBIE. He is departing the House at the end of this week, and I do regret that I am leading the opposition to his bill in his final days here in the House. To be very honest, Mr. Speaker, I would much rather be on the floor supporting his bipartisan legislation to write into law a 5-year plan to develop America's offshore oil and gas reserves. Regrettably, such reasonable legislation stands no chance of making it to the floor in this Congress, and I do regret that.

So I hope that my good friend knows that my opposition to this recognition bill is based on my view of the matter and is not a reflection of the high regard for which I hold him as my friend. I want to wish him well in his future endeavors—well, maybe not real, real well.

Mr. ABERCROMBIE. Will the gentleman yield?

Mr. HASTINGS of Washington. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. I am deeply touched by your remarks. Your friendship is something I treasure and value. I am so taken by it, as a matter of fact, that I wonder if you would allow me to present you with a token of my esteem and my regard for you. These chocolate-covered macadamia nuts from Ha-

waii, I think, are just what you need right now. If you would allow me to come over and present them to you, that will give you an opportunity to contemplate as to whether or not, out of regard for our friendship and affection for each other, you will actually support the bill.

Mr. HASTINGS of Washington. Reclaiming my time, I hope the gentleman has checked with the Ethics Committee; but having been a longtime member, I gladly accept that from my good friend.

Mr. ABERCROMBIE. Mr. Speaker, I can assure you that the Ethics Committee, the Parliamentarian and the Speaker of the House of Representatives have assured me that, if you can consume it on the premises, it's okay.

Mr. HASTINGS of Washington. Mr. Speaker, I reserve the balance of my time.

Mr. RAHALL. Mr. Speaker, before I yield to the author of the pending legislation, I would like to make a couple of comments and praise him for his hard work and for his determination, persistence and patience on the pending matter.

For 20 years, NEIL ABERCROMBIE and I have served together on our Natural Resources Committee. We have fought many battles together, and I have always been proud to call him my friend—a unique friend, I might add at that—and I'm not even getting any chocolate-covered macadamia nuts this evening.

He has always been able to work together with Members of differing views and backgrounds. He has always remained decent, fair-minded, able to reach across the aisle both politically and philosophically, and I find that a truly commendable feature of this gentleman.

As we have already heard from the minority side, he will be leaving the Congress at the end of this week, but I can tell him that his mark on this institution will live on much longer after he has returned to his beloved Hawaii and to his other pursuits. He has been a champion of all Native Americans during his time in this Congress. It is a testament to NEIL that he will spend his last days in this body fighting for the rights of Native Hawaiians.

It is now, indeed, my honor to yield 5 minutes to the gentleman from Hawaii (Mr. ABERCROMBIE).

Mr. ABERCROMBIE. Thank you, Mr. Chairman. Thank you, DOC. My regard for you and for all of the Members is, of course, something that, I trust, is understood by all. I see my good friend DON YOUNG there as well.

Mr. Speaker, this bill is an enabling bill. It establishes a process. The core of this bill assures that a Native Hawaiian Government has the same powers and sovereign immunity as other native governments, and this is consistent with the history of the legal discussions and court cases that have taken place over such a long period of time.

Since the passage of the bill in the Resources Committee, we have had 2 months of discussions with the Hawaii State Attorney General. As a result, we have made numerous changes in the substitute amendment, and have added several pages of new text to make the State more comfortable with how a native government interacts with the State government.

This is, in fact, my amendment, and I wanted to assure the minority on the floor—I don't think there is a minority here. Doc is quite right. It's not a question of Republican versus Democrat or majority versus minority. It is a question of perspective as to what is appropriate with regard to Native Hawaiians and other native people and how they establish relationships both with local governments and State governments in the United States of America.

So this has not been something behind closed doors. Quite the opposite. It has been a full and complete discussion with the Governor and with the Attorney General, and I think that is reflected in the Governor's statement.

In conversation with Governor Lingle today, we concluded that we would agree to disagree. As Representative HASTINGS has indicated, she continues to support the legislative object of the bill, and I want to assure the House that her administration will not be disadvantaged in any way in any negotiations undertaken upon the passage and signing of this bill.

As a candidate for Governor myself, I am completely comfortable with the language of the substitute, and believe that no Governor, regardless of who it may be, will be disadvantaged. The substitute amendment treats a Native Hawaiian entity as any other native government, and it follows literally centuries of existing Native American law.

Native Hawaiians are not a race. They are a native indigenous people of the United States. The United States Supreme Court has repeatedly held that legislation enacted to address the special concerns and conditions of native people of the United States does not constitute discrimination on the basis of race or ethnicity. The sovereign status of Indian tribes, recognized by the Constitution, was later extended to Alaska natives as indigenous people, and Representative YOUNG can attest to that in his remarks. On this same basis then, Congress has enacted legislation on multiple occasions for the aboriginal, indigenous people of Hawaii.

Absent the substitute, H.R. 2314 would unduly limit the power of the Native Hawaiian governing entity, upon recognition, to accomplish the ordinary and customary activities of any other native organization, such as providing for the welfare of their children or for the health care of its members. The substitute amendment then will ensure that the Native Hawaiian governing entity will have the same powers and authorities that other tribal governments exercise today.

The Native Hawaiian Government will have sovereign immunity, as I indicated, the same as other native governments—no more, no less. This is not a new provision. Under the bill passed by the House in the last Congress, the Native Hawaiian governing entity would also have had sovereign immunity once it had been federally recognized.

In support of this bill are the Congressional Delegation of Hawaii, the National Congress of American Indians, the Alaska Federation of Natives, et cetera, et cetera. The Native American Caucus, under Representatives KILDEE and COLE, as caucus Chairs, are supportive as are the Native Hawaiian organizations, such as the Sovereign Council of Hawaiian Homestead Organizations, the Council for Native Hawaiian Advancement and the Office of Hawaiian Affairs. Local political leaders in both houses of the legislature and numerous resolutions from both of those bodies are in support.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. RAHALL. I yield the gentleman 2 additional minutes.

Mr. ABERCROMBIE. I could not take leave of the floor, Mr. Speaker, without mentioning the following:

It is one thing for Representative HASTINGS or YOUNG or RAHALL or myself and others to take to the floor, but without staff support, it simply couldn't be done.

Our friend, an institutional giant of the Resources Committee, Marie Howard, is retiring from the Natural Resources Committee. I want to commend her, not just for the work on this bill, but for all of the devotion that she has had to the House.

Janet Erickson is taking her place as staff director for Indian Affairs.

In addition to Marie and Janet, Rick Healy and Jim Zoia have been heavily involved in bringing this bill to the floor. Their efforts are deeply appreciated by everyone.

Countless hours of staff time in the administration—both departmental and within the White House—have been put forward.

As has been indicated, Mr. Speaker, this bill has passed out of the House Natural Resources Committee four times already. It has passed from the House floor twice under the leadership of as diverse a group of Chairs as Jim Hansen, DON YOUNG, GEORGE MILLER, and NICK RAHALL. I note as well that the bill has passed under the leadership of Speaker Dennis Hastert and under the leadership of my good friend Tom DeLay. It is not ideological. It is non-partisan. It is the culmination of a legislative lifetime for me, and it is the last occasion I will have to address the House as I take my leave.

Mr. Speaker, I love this House. I admire and respect every Member. It has been a privilege for me to be first sworn in as the last person to be sworn in by Speaker Tip O'Neill. I take my leave today with profound respect, ad-

miration and affection for every Member of this House of Representatives. This is the people's House. You can only enter it upon the fact of having been elected by your constituents. They have placed their faith and trust in us, and I extend my faith and trust that this House will continue the great tradition of democracy.

I want to say to one and all that I love you, and I love this House.

Mr. Speaker, I rise today in support of H.R. 2314, the Native Hawaiian Government Reorganization Act of 2009 and a substitute amendment that I will offer on the House floor. This is legislation that the Hawaii Congressional delegation has been working on for more than 10 years and it is a privilege to see this progress through the legislative process as my time in Congress comes to an end.

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

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

I would also like to provide supporting documentation on the sections of H.R. 2314 primarily affected by the amendment in the nature of a substitute that I am offering on the House floor today. The following is additional language on Sections 3, 9 and 10.

#### SEC 3. DEFINITIONS

The definition of "Native Hawaiian Membership Organization" identifies organizations through which Native Hawaiians have sought to preserve their culture, native traditions, and self-governance. These organizations are an important (though not the exclusive) means through which Native Hawaiians have succeeded in maintaining their native traditions and culture, and given expression to their rights to self-determination and self-governance. Indeed, Congress has relied on such organizations to function as official representatives of the Native Hawaiian community in other statutory contexts. In the Native American Graves Protection and Repatriation Act, for example, Native Hawaiian organizations function as representatives of the Native Hawaiian community with respect to Native Hawaiian remains and funerary objects, just as federally-recognized Indian tribes represent their communities with respect to Indian remains and objects. See 25 U.S.C. §3001 et seq.

The definition of "qualified Native Hawaiian constituent" identifies adult U.S. citizens who, subject to the procedures and provisions of Section 8 of the Act, will be eligible to participate in the initial reorganization of the Native Hawaiian governing entity. The definition of "qualified Native Hawaiian constituent" differs from similar definitions in prior versions of this legislation in that it requires not only descent from the aboriginal, indigenous, native inhabitants of Hawaii, but also maintenance of "a significant cultural, social, or civic connection to the Native Hawaiian community."



An individual must demonstrate this connection by satisfying at least two of the ten listed criteria, which include residence in Hawaii, residence on Hawaiian Homes Commission Act (HHCA) lands (or status as the child or grandchild of such a resident), eligibility to be a beneficiary of Hawaiian Homes Commission Act programs, status as the child or grandchild of a person with such eligibility, residence or ownership interest in "kuleana land" that is owned in whole or in part by a verified lineal descendant of the person who received original title to such land (or status as a child or grandchild of a person with such a residence or ownership interest), attendance for at least one school year at a school or program taught through the medium of the Hawaiian language or at a school founded and operated primarily or exclusively for the benefit of Native Hawaiians (or status as the child or grandchild of a person who attended such a program), membership in a Native Hawaiian organization, or recognition as Native Hawaiian and as the son or daughter of a person recognized as Native Hawaiian by other members of the Native Hawaiian community.

The inclusion of these criteria will ensure that the persons who participate in the reorganization of the Native Hawaiian governing entity are persons with Native Hawaiian ancestry who have established ties to the Native Hawaiian community, as evidenced through, for example, connection to Native Hawaiian traditional lands, whether HHCA lands or kuleana lands, or a combination of residence in Hawaii and connections with Hawaiian-language schools or Native Hawaiian associations and organizations—both of which are means through which the Native Hawaiian community has sought to preserve and give expression to its culture and traditions. There is precedent for using associative factors such as kinship, land, and participation in native organizations in determining tribal membership. See, e.g., 25 CFR §83.7(b)(1)(vii) & (2)(iv) (including "language" and "kinship organization[s]" among the criteria the Department of the Interior considers in determining whether petitioning tribes can establish that they are a distinct native community). The last criterion, recognition as Native Hawaiian by the Native Hawaiian community, is also akin to criteria used to define membership in a native community in other contexts. See, e.g., 43 U.S.C. §1602(b) (Alaska Native Claims Settlement Act ("ANCSA")). The definition of "qualified Native Hawaiian constituent" will ensure that the persons who participate in that reorganization are appropriately connected to the Native Hawaiian community.

Once the Native Hawaiian governing entity is reorganized, the United States will recognize and affirm the entity's inherent power and authority (akin to the inherent power and authority of any Indian tribe) to determine its own membership criteria, to determine its own membership, and to grant, deny, revoke, or qualify membership without regard to whether any person was or was not deemed to be a "qualified Native Hawaiian constituent" under this Act. Membership criteria set forth in the Native Hawaiian governing entity's organic governing documents should provide that membership is voluntary and can be relinquished, as is typically the case with Indian tribes.

SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY TO STATE OF HAWAII; GOVERNMENTAL AUTHORITY AND POWER; NEGOTIATIONS; CLAIMS

Section 9 affirms the inherent powers and privileges that will vest with the Native Hawaiian governing entity upon federal recognition, and clarifies the respective powers

and immunities that this entity, the State of Hawaii, and United States will have during the interim period immediately following recognition but before the three sovereigns have negotiated a long-term agreement or agreements and enacted any implementing legislation.

The demarcations of authority between the State, the new Native Hawaiian sovereign, and the United States are most appropriately determined by agreement between those three sovereigns, as provided for by section 9(c). Recognition of the Native Hawaiian sovereign is a necessary precondition to the development of such an agreement. Thus, it is necessary for Congress to provide, not only for the inherent authorities of the Native Hawaiian sovereign, but also for an interim set of rules to demarcate its authority from that of the State. Those interim rules will cease to have any effect once the three sovereigns have negotiated, and their legislatures have adopted, an agreed set of superseding rules.

SEC. 9(B) & (C) GOVERNMENTAL AUTHORITY AND POWER; NEGOTIATIONS

This section affirms the inherent authority of the Native Hawaiian government, consistent with existing federal law. Historically, when Congress has enacted legislation allowing for the reorganization of native governments, it has recognized that those governments are vested with inherent tribal authority under existing federal law. See Indian Reorganization Act of 1934, 25 U.S.C. §476(e)-(h); Amendment to Indian Reorganization Act for Alaska (1936), 25 U.S.C. §473a. Congress retains the ability to modify the contours of inherent tribal sovereignty. *United States v. Lara*, 541 U.S. 193 (2004); *United States v. John*, 437 U.S. 634 (1978). The inherent power of the Native Hawaiian governing entity may be modified by agreement between the Native Hawaiian governing entity, the United States, and the State of Hawaii pursuant to the negotiations authorized in paragraph (1) of section 9(c), and subject to the enactment of implementing legislation.

The inherent powers and privileges of self-government that vest in the Native Hawaiian governing entity include Native Hawaiians' inherent right to autonomy in their internal affairs, and the inherent right to self-determination and self-governance. The powers with which the Native Hawaiian governing entity would be vested at the time of its federal recognition would be inherent, internal powers of self-government, such as the power to operate under a form of government of the Native Hawaiians' choosing; the power to define conditions of membership, see *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978); the authority to regulate domestic relations of members, see *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382, 38–39 (1976) (per curiam); and the power to provide governmental programs and services to members.

In addition, upon federal recognition, the Native Hawaiian governing entity would be entitled to sovereign immunity from suit. See *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1997); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). In upholding tribal sovereign immunity, courts have recognized Congress's desire, expressed through legislation, to promote the "goal of Indian self-government, including its 'overriding goal' of encouraging tribal self-sufficiency and economic development." *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 510 (1991) (quoting *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 (1987)).

The common-law sovereign immunity possessed by tribes is a corollary to Indian sov-

ereignty and self-governance. Three Affiliated Tribes of Fort Berthold Reservation v. *Wold Engineering*, 476 U.S. 877, 890 (1986) (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)). Immunities have a range of functions, including preventing "distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service." *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982). Accordingly, the Native Hawaiian sovereign should enjoy the same immunity from lawsuits in federal and state courts as sovereign Indian tribes in the continental United States enjoy. (Under the Indian Civil Rights Act, 25 U.S.C. §1303, this immunity does not extend to federal habeas petitions brought by persons alleging that they have been detained in violation of their federal civil rights. See *Santa Clara Pueblo*, 436 U.S. at 58–59.)

Likewise, the officers and employees of the Native Hawaiian governing entity should enjoy the same common-law immunities as the officers and employees of any Indian tribe. As with Indian tribal officers, officers of the Native Hawaiian governing entity might be sued for declaratory or injunctive relief under principles akin to the doctrine of *Ex parte Young*, 209 U.S. 123 (1908). As is also the case with Indian tribal officers, an official of the Native Hawaiian sovereign that acts outside the scope of his or her authority may be liable to a suit for money damages. Notably, there will not be Indian country in Hawaii in the initial period after the Native Hawaiian governing entity is organized, which will limit the scope of authority and associated immunity that such officials may assert. There will certainly be immunity in some instances: for example, a Native Hawaiian legislator could not be sued for libel based on statements made in the course of the deliberations of the sovereign's legislative body, as the immunity of the Native Hawaiian sovereign would encompass such conduct. But if an official of the Native Hawaiian governing entity were to defraud a state agency for personal profit in violation of state law, he or she would not have individual immunity for such conduct.

Membership in the Native Hawaiian governing entity will be voluntary, paralleling the applicable rule for tribes. Accordingly, no person could be involuntarily subject to the governing entity's inherent powers and privileges.

Moreover, because there is currently no "Indian country" in Hawaii and because this legislation neither creates "Indian country" or authorizes the United States to take land into trust for the benefit of the Native Hawaiian governing entity or its members, the Native Hawaiian governing entity, at the time of its recognition by the United States, would be able to exercise jurisdiction based on membership, but not based on territory. The "inherent powers and privileges" exercised by the Native Hawaiian government thus would not generally extend to non-natives.

In the absence of Indian country, a court established by the Native Hawaiian governing entity would have no civil jurisdiction over non-natives unless they expressly submitted to the court's jurisdiction. Absent such consent, the governing entity's civil adjudicative jurisdiction could not exceed its civil legislative jurisdiction, which would not extend to regulating the behavior of non-natives.

Nothing in this Act would alter or preempt the State of Hawaii's existing legislative, regulatory, or taxation authority over individuals who are members of the Native Hawaiian governing entity or their property. And state and federal courts, again in the absence of Indian country in Hawaii, would

continue to exercise criminal and civil jurisdiction as they currently do. If the Native Hawaiian governing entity established a court, its criminal and civil jurisdiction over members of the Native Hawaiian governing entity would therefore be concurrent, not exclusive.

At some point after the United States' initial recognition of the newly reorganized Native Hawaiian governing entity, negotiations among the three sovereigns—the United States, the State of Hawaii, and the Native Hawaiian governing entity—could alter many of these ground rules. For example, if the three sovereigns eventually agreed to the creation of Indian country within the State of Hawaii (and legislation was then enacted to implement that agreement), then it is possible that the Native Hawaiian governing entity could then exercise certain types of authority or jurisdiction over nonmembers (even without their express consent).

#### SEC. 9(D) CLAIMS

The language in this provision is intended to ensure that this legislation does not extinguish, revive, or alter any claim. Similarly, this legislation does not affect existing defenses to claims, nor does it provide a new basis to bring otherwise time-barred claims.

This legislation does not provide the basis for the Native Hawaiian governing entity or other Native Hawaiian groups to re-litigate claims that have already been resolved by the courts or to retroactively impose new obligations on the federal government or the State of Hawaii. These provisions are necessary because Native Hawaiians are differently situated than other entities that have been federally recognized. Native Hawaiian claims—in contrast to those of most newly recognized tribes—have been extensively litigated over the past 100 years. There has been extensive litigation relating to land claims, claims for money damages, and other types of claims, dating back at least to 1910. Issues concerning asserted historic or moral claims may be the subject of negotiations among the new Native Hawaiian governing entity, the State of Hawaii, and the United States, together with the other issues encompassed within the process set forth in section 9(c) of this Act, and that such negotiations will provide an appropriate forum in which to address these claims questions.

The language will not limit claims by the Native Hawaiian governing entity that first arise after recognition of the Native Hawaiian governing entity.

#### SEC. 10(C)(3) INDIAN CIVIL RIGHTS ACT

This provision expressly makes the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301–1303, applicable to the Council and the Native Hawaiian governing entity. The Indian Civil Rights Act (ICRA) provides certain civil-rights protections similar to those under the Bill of Rights and the Fourteenth Amendment, including the rights to a speedy trial, to a jury trial (in certain criminal cases), to confront witnesses, and to avoid double jeopardy. See 25 U.S.C. §1302. Importantly, because this provision makes ICRA expressly applicable to the Native Hawaiian governing entity, a person would be able to file a habeas corpus petition in federal court to challenge the legality of his detention by an order of the Native Hawaiian governing entity. *Id.* 1303. Without express application of ICRA's habeas corpus provision to the Native Hawaiian governing entity, it would be unclear whether a person could challenge in federal court a detention ordered by a Native Hawaiian court. While ICRA allows a person to bring a habeas action, and thus serves as a limited waiver of the Native Hawaiian governing entity's sovereign immunity, it is not a general waiver of the entity's sovereign

immunity as to ICRA claims. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58–59 (1978).

One provision of ICRA operates to reaffirm the authority of tribal courts “to exercise jurisdiction over all Indians.” It is anticipated, upon recognition, the Native Hawaiian sovereign will have jurisdiction only over its own members, for reasons explained in the discussion of sections 9(b) and (c). It is not intended, in providing for the applicability of ICRA, that the courts of the Native Hawaiian sovereign thereby acquire jurisdiction over nonmembers.

#### SEC. 10(C)(1) & (2) STATUTES AND REGULATIONS REFERENCING “INDIANS” AND “TRIBES”

This language is intended to avoid uncertainty, and potential litigation, as to whether Native Hawaiians are properly considered “Indians,” or the Native Hawaiian sovereign is properly considered an “Indian tribe” under every existing statute involving Indians and Indian tribes. These terms occur throughout the United States Code and associated implementing regulations. Such references to “Indians” and “tribes” do not generally encompass Native Hawaiians. When Congress wishes to reference Native Hawaiians, it has done so expressly. There is an extensive body of federal Indian statutes and regulations specifically addressing Native Hawaiians, often in conjunction with other Native Americans. E.g., American Indian Religious Freedom Act, 42 U.S.C. §1996; Native American Graves Protection and Repatriation Act, 25 U.S.C. §§3001–3013; Native American Programs Act of 1974, 42 U.S.C. §2991–2992.

By incorporating only those statutes that expressly reference Native Hawaiians, section 10(c)(2) provides clear direction to federal agencies regarding which programs and statutes are available to Native Hawaiians and avoids statute-by-statute litigation over the scope of these statutes. It is anticipated that a body of law addressing Native Hawaiians will develop over time, based on currently existing statutory and regulatory provisions and new legislation and court decisions.

#### SEC. 10(D) REAL PROPERTY TRANSFERS

The Trade and Intercourse Act, first enacted in 1790, requires congressional assent to transfers of Indian land title to third parties. The Trade and Intercourse Act has never been thought to apply to the alienation of Native Hawaiian lands. As a result, parties have not sought congressional ratification pursuant to 25 U.S.C. §177 prior to the transfer of these lands. To apply the Trade and Intercourse Act retroactively could impose significant liabilities on land owners in Hawaii, as well as on the State of Hawaii. The language in section 10(d) clarifies that Congress approves all prior land transactions in Hawaii, which eliminates the possibility of a cloud on title issuing from the Trade and Intercourse Act.

Section 10(d) is primarily directed to the State and private parties, but the language is written to include all transactions, including those involving the federal government, to avoid future uncertainty and litigation.

After recognition of the Native Hawaiian governing entity pursuant to this legislation, it is not Congress's intent that the Trade and Intercourse Act would apply to future land transactions by individual Native Hawaiians. See *United States v. Dann*, 873 F.2d 1189 (9th Cir.), cert. denied 493 U.S. 890 (1989).

I would like to thank Chairman RAHALL and the House Leadership for their assistance and support on this legislation. I ask my colleagues to advance the reconciliation process for the State of Hawaii by supporting my substitute amendment and final passage of H.R. 2314.

Mr. HASTINGS of Washington. Mr. Speaker, as I said in my remarks, the gentleman from Hawaii certainly will be missed.

With that, Mr. Speaker, I yield 3 minutes to the gentleman from Alaska (Mr. YOUNG).

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, I can only say I am losing a good friend who will go to better and greater places.

You have been an ally to myself and to the feeling of working bipartisan work with the chairman on both sides of the aisle. We have always talked to one another, and we have recognized the importance of being “the” Congressman and of listening to the Congressman from that district. I have sponsored this bill every time it has come out of the committee—while I was chairman, before I was chairman, after I was chairman—and I will continue to do that.

I understand minority Member Doc HASTINGS and his position and why he opposes it; but as we talk about this politically, we have to think about the people whom we are affecting by our words. They have been patient, patient, patient, and it is time for us to take the step forward.

Is this bill perfect? No. I think it's better after the amendment is adopted. I think it does solve the problems. There is no Indian Country in Hawaii. Land cannot be taken into trusts. A Native Hawaiian governing entity may not exercise jurisdiction over non-Native Hawaiians. The State of Hawaii shall retain regulatory and taxation authority over Native Hawaiians.

Yet these are Native Hawaiians, and I can speak with a great deal of pride as to what happened in Alaska. In 1971, we passed the Alaska Native Lands Act where we recognized the natives of Alaska, Alaska natives—distinct and different from those natives in the lower 48—but Alaska natives.

□ 1815

And the progress they have made and the contribution they have made to the State is amazing. They are the number one, I would say, economic driving force in the State today. From a large group of people, 13 basic different tribes, regions, they are from a group that wasn't recognized other than the fact that they were natives, that they really did not fit well. But they were part of this State before we long came there, my State, and their contribution, because they were recognized, is just awesome. And I'm hoping this happens in the State of Hawaii.

For those in Hawaii that may oppose this, open your hearts. Open your minds. Maybe do a little something a little different in Hawaii, as we did in Alaska, and see the benefit to the individual, not only the natives but everybody else. This legislation is a step forward. Is it perfect? The Governor says

no. I think it's open for debate. But if we don't do something, if we don't move forward, those people will be neglected again.

So I ask my colleagues on my side and on the other side to consider moving on something that is humanely the right thing to do for a group of people that are Americans. They are aboriginals to the State of Hawaii. They are brothers to Alaska. We've worked together. We will continue to do that.

So I compliment, again, my good friend NEIL for his work and his dedication to this House, representing his people. That's what we're here for. And thank God we do have people like that left.

I will miss you, NEIL.

Mr. RAHALL. Mr. Speaker, I am very proud at this moment to yield 6 minutes to the gentlewoman from Hawaii (Ms. HIRONO), who has been instrumental as well in passing this legislation and bringing it, that is, to the point that we are now experiencing.

Ms. HIRONO. Mr. Speaker, I rise today in strong support of H.R. 2314, the Native Hawaiian Government Reorganization Act, and I thank my good friend Congressman YOUNG from Alaska for his remarks.

Long denied the recognition and rights accorded to America's other indigenous people, this bill will finally enable Native Hawaiians to embark on their long-awaited process of achieving self-determination. I would like to thank Chairman RAHALL for his leadership and general support of this important bill. And, of course, I want to recognize and thank my friend Congressman ABERCROMBIE, the bill's chief sponsor, for his years of advocacy for this bill and for his dedicated service to our State and to our country. It is fitting that one of his last legislative actions before his departure from this body will be on the Native Hawaiian Government Reorganization Act, a bill that we both care deeply about.

How we treat our native indigenous people reflects our values and who we are as a country. Clearly there is much in the history of our interactions with the native people of what is now the United States that makes us less than proud. The American Indians, Alaska Natives, and Native Hawaiians, all indigenous people, have suffered at the hands of our government. But one of the great attributes of America has always been the ability to look objectively at our history, learn from it, and, when possible, to make amends.

H.R. 2314 has been more than 10 years in the making. It has been a deliberative and open legislative process. There have been 12 congressional hearings on this bill, five of which were held in Hawaii. It has been marked up by committees in both Chambers. The House has passed this bill twice, in 2000 and again in 2007. We have a bill now that is constitutional and one that the House should again pass.

The goals and purposes of this bill are consistent with the history of the

Native Hawaiian people and the record of the United States' involvement in Hawaii. The bill is also consistent with the over 160 existing Federal laws that promote the welfare of the Native Hawaiian people by, among other things, helping them to preserve their culture and return to their lands. Building on that history, H.R. 2314 will formalize the special political and legal relationship between the United States and the Native Hawaiians by providing a process through which the Native Hawaiian community can reorganize its governing entity within this relationship.

The Kingdom of Hawaii was overthrown in 1893. Hawaii's last monarch, Queen Liliuokalani, was deposed by an armed group of businessmen and sugar planters, who were American by birth or heritage, with the critical support of the U.S. troops. The queen agreed to relinquish her throne under protest to avoid bloodshed. She believed the United States, with which Hawaii had diplomatic relations, would do the right thing and restore her to the throne.

It's important to note that the sovereign nation of Hawaii had treaties with other nations besides the United States, including Great Britain, France, Germany, Italy, Japan, and Russia. As we now know, despite the objections of U.S. President Grover Cleveland, the injustice of the overthrow of an independent sovereign nation was allowed to stand and the Republic of Hawaii was established.

In 1898, the United States annexed Hawaii. Prior to annexation, a petition drive organized by Native Hawaiians secured signatures of almost two-thirds of the Native Hawaiian population who opposed annexation. The total was 29,000 signatures out of an estimated Native Hawaiian population of 40,000. As a further historical note, the Native Hawaiian population prior to Western contact numbered between a conservative estimate of 300,000 to as many as 1 million Native Hawaiians.

The siege of Native Hawaiian culture continued after annexation. The Republic of Hawaii prohibited the use of the Hawaiian language in schools. Everyday use of the Hawaiian language diminished greatly and was in danger of dying out. Hula dancing, which had been suppressed by the missionaries and then restored by King Kalakaua, who preceded Queen Liliuokalani, survived but did not flourish. Hawaiians were pressured to assimilate and much of their vibrant culture was lost or went underground.

In 1903, Prince Jonah Kuhio Kalaniana'ole was elected to serve as Hawaii's delegate to Congress. And one of his most notable achievements was the passage of the Hawaiian Homes Commission Act of 1920, which set aside some 200,000 acres of land for Native Hawaiians. The reason for the legislation was the landless status of so many Native Hawaiians who were displaced by newcomers to the islands and who became the most disadvantaged

population in their native land. Congress passed the Hawaiian Homes Commission Act, which is still in force, in recognition of its responsibility toward Native Hawaiians.

As with other indigenous people, Native Hawaiian views on land tenure were different from that of the newcomers, resulting in loss of much of the land that had been traditionally occupied and cultivated by Native Hawaiians. They lost these lands to these newcomers.

Hawaii became a State in 1959. Beginning in the late 1960s and early 1970s, a Native Hawaiian cultural rediscovery began in music, hula, language, and other aspects of the culture. This cultural renaissance was inspired by hula masters or kumu hula who helped bring back ancient and traditional hula, musicians and vocalists who brought back traditional music and sang in the Hawaiian language, and political leaders who sought to protect Hawaii's sacred places and natural beauty.

This flourishing of Hawaiian culture was not met with fear in Hawaii but with joy and celebration and an increased connection with each other. People of all ethnicities in Hawaii respect and honor the Native Hawaiian culture. The idea of self-determination by Native Hawaiians is regarded by most of our residents as just because we understand Hawaii's history and the importance of our host culture.

The SPEAKER pro tempore (Mr. YARMUTH). The time of the gentlewoman has expired.

Mr. RAHALL. I yield the gentlewoman an additional 1 minute.

Ms. HIRONO. In closing, it is well established that the United States Constitution grants Congress broad general powers to legislate and respect the native people, and these are powers that the U.S. Supreme Court has consistently described as "plenary and exclusive." Congress's plenary authority over Indian affairs includes the power to authorize and prescribe the process by which Indian tribes and aboriginal people organize or reorganize for purposes of carrying out a government-to-government relationship with the United States.

The State of Hawaii motto, which was also the motto of the Kingdom of Hawaii, is "Ua mau ke ea o ka aina i ka pono," which translates to "the life of the land is perpetuated in righteousness." Native Hawaiians, like American Indians and Alaska Natives, have an inherent sovereignty based on their status as indigenous, aboriginal people. I urge your support of H.R. 2314.

Mahalo nui loa. Thank you.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from California (Mr. MCCLINTOCK).

Mr. MCCLINTOCK. I thank the gentleman for yielding.

Mr. Speaker, it pains me to rise in opposition to the valedictory measure of the gentleman from Hawaii, but

there's no blinking at the fact that this bill strikes at the very foundation of a Nation that's dedicated to the concept of equality under law.

It establishes a different set of laws, a different set of rights, and a different government for one group of Americans based solely upon their race. Two American families living next door to each other would be afforded two different sets of rights enforced by two separate sovereignties all based entirely upon accident of birth.

Ever since *Brown v. Board of Education* buried the "separate but equal" doctrine of *Plessy v. Ferguson*, the Supreme Court has consistently ruled that such an arrangement is fundamentally incompatible with the American Constitution.

Ten years ago in the case of *Rice v. Cayetano*, the Supreme Court, in a 7-2 decision, struck down identical race-based voting qualifications for the Office of Hawaiian Affairs. The State argued that it could impose race-based voting qualifications based upon the precedent of Indian tribes that we've just heard today. Here's how the Court responded. They said:

"Even were we to take the substantial step of finding authority in Congress, delegated to the State, to treat Hawaiians or Native Hawaiians as tribes, Congress may not authorize a State to create a voting scheme of this sort."

That's exactly what this bill does. This bill establishes a precedent that will allow any distinct group within our Nation to demand its own separate organic rights and government. Were we to pass this bill, there would be no grounds to deny any other racial group with historic grievances their own separatist government and exclusive rights.

Having enacted this law, on what basis do we deny every other demand to tear our country apart? This is a precedent that is enormously damaging to a multiracial Nation founded upon the principles of *e pluribus unum* and equal justice under the law.

How exactly do we establish two separate governing systems and two separate populations with two separate sets of civil and legal rights all within the same territory? Under whose law are competing claims to be settled?

This bill explicitly provides that the new Native Hawaiian Government and its official acts cannot be challenged in an American court. And how exactly can Congress cede by statute the very essence of its constitutional authority, requiring civil and criminal jurisdictions and property rights to be negotiated away to this new governing entity that's defined solely by the race of its members?

The analogy with American Indian tribes is absurd both historically and legally. Historically, American Indian tribes never voted to join the Union. They were conquered by force and extended by treaty certain lands in which they could exercise sovereignty, and

they maintained continuous self-government.

Whatever the circumstances involved in the revolution of 1893 and the annexation of 1898, those circumstances became irrelevant in 1959 when the people of Hawaii voted by a 17-1 margin, nearly 95 percent, to join the Union and to become an integral and indivisible part of the American Nation.

The Admissions Act never contemplated the establishment of a separatist government. The provision the proponents cite merely provided an option of land for homes and small farms for a very small number of Hawaiians with 50 percent native ancestry. The Admissions Act did not contemplate establishment of a separatist government. It did contemplate assuming the full provisions of the American Constitution and the Constitution's prohibition against race-based separatism and race-based rights.

□ 1830

Legally, a tribe exists only when it has a government that has exercised substantial authority over its members from before western contact continuously until the present, and when its members mostly live separate and apart from surrounding populations. The sovereignty of that government is limited to the trust lands of the tribe. These long-established criteria are entirely inapplicable to American citizens of Hawaiian descent, 40 percent of whom don't even live in Hawaii according to the 2000 census.

Mr. Speaker, there is no more effective way to destroy a nation than to divide its people by race and accord them different rates and different government based upon their race. That is exactly what this bill does.

Mr. RAHALL. Mr. Speaker, I am very pleased at this time to yield 5 minutes to another valued member of our Natural Resources Committee, the gentleman from American Samoa, Mr. Eni Faleomavaega.

(Mr. FALEOMAVAEGA asked and was given permission to revise and extend his remarks.)

Mr. FALEOMAVAEGA. I thank the chairman for yielding.

Mr. Speaker, I rise in strong support of the Native Hawaiian Government Reorganization Act of 2009. This important piece of legislation is to reaffirm the special political and legal relationship between the United States and the indigenous Native Hawaiians for purposes of continuing a government-to-government relationship.

I certainly want to thank Chairman NICK RAHALL and the members of our Natural Resources Committee for their support. I especially want to thank and recognize my good friend and colleague, the gentleman from the State of Hawaii (Mr. ABERCROMBIE) for his leadership and tireless efforts in bringing this legislation to the floor for consideration.

For some 20 years I have had the privilege and honor of working closely

with Mr. ABERCROMBIE on legislation that have benefited not only my constituents, but certainly the great State of Hawaii. I also want to thank my colleague and my dear friend, Ms. HIRONO, and other Members for cosponsoring this important legislation.

Mr. Speaker, the legislation before us is very important for many reasons, but none more critically important than for Congress to extend proper and appropriate recognition for some 400,000 indigenous Native Hawaiians in the State of Hawaii and those living outside of Hawaii. Constitutionally, Congress has the authority to address the conditions of the native people of the United States. And the indigenous people of the Hawaiian Islands are a distinctively native community that for many years existed as a sovereign entity.

History shows us from 1826 until 1893, the United States Government recognized the Kingdom of Hawaii as a sovereign and independent nation. It was accorded full diplomatic recognition. The kingdom entered into treaties and conventions of peace, friendship, and commerce with the Kingdom of Hawaii, governing trade, commerce, and even navigation in the years 1826, 1842, 1849, 1875, 1887. Mr. Speaker, yes, even our government, the United States of America, was party to these treaties and conventions with the sovereign Kingdom of Hawaii.

Mr. Speaker, more than 100 years ago ambitious descendants of U.S. missionaries and sugar planters, aided by an unauthorized and illegal use of U.S. military forces, overthrew the sovereign Kingdom of Hawaii, which at that time was ruled by Queen Lili'uokalani. In 1993, Congress reaffirmed such a travesty on the Kingdom of Hawaii when they passed a joint resolution to acknowledge and apologize on behalf of the United States for the illegal and unlawful overthrow of the Hawaiian kingdom in 1893, and for the deprivation of the rights and privileges of the indigenous Native Hawaiians to self-determination.

To this day, Mr. Speaker, the status of indigenous Native Hawaiians was never properly addressed by the United States Congress. And it is within Congress's constitutional authority to do so. Congress and the U.S. Supreme Court decisions properly determined that American Indians of the lower 48 States are an indigenous people. In fact, recognition of the Native Alaskans as indigenous people of the U.S. demonstrates this constitutional authority. And even the U.S. Supreme Court has recognized this constitutional authority and has accepted a broader conceptualization of indigenous peoples, allowing Congress to recognize indigenous groups, even those who are culturally and genealogically distinct from the narrow concept of being an Indian or as a tribe.

In the Hawaiian Homes Commission Act of 1921, Congress expressed and reaffirmed the special and trust relationship between the United States and the

Native Hawaiians. In addition, the act also recognized the Native Hawaiians as a distinct and unique indigenous people. Native Hawaiians are in fact indigenous, aboriginal people living within what is now the borders of the United States and those living in the State of Hawaii, and it is unfortunate that even today the status of some 400,000 indigenous Native Hawaiians have yet to be afforded the same recognition as our first Americans.

Mr. Speaker, over the years the treatment of indigenous Native Hawaiians by the U.S. Government has been piecemeal at best. There is estimated over 150 laws that have been passed by the Congress related to the social, educational, economic, and cultural needs of the indigenous Native Hawaiians. This proposed bill sets the institutional framework for the establishment of a relationship between the United States and the indigenous Native Hawaiians, just as Congress has done for the indigenous American Indians and indigenous Native Alaskans.

I submit, Mr. Speaker, there are only three distinct indigenous groups under the U.S. sovereignty: American Indians within the continental United States, Native Alaskans, and Native Hawaiians.

Mr. Speaker, the bill we have before us today will continue the long but necessary road towards full recognition by the Congress of the rights of the indigenous Native Hawaiians.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. RAHALL. I yield the gentleman 30 additional seconds.

Mr. FALEOMAVAEGA. The underlying issue in this piece of legislation is not about the existence of Native Hawaiians. That much has been already determined. This bill is to establish a process giving the indigenous Native Hawaiians the same status that we have done for the indigenous American Indians and the indigenous Native Alaskans. Nothing to do with race. It is about giving proper recognition, and also as a moral imperative on the part of our government, give proper recognition to the Native Hawaiians. They deserve this. They are not begging for anything. Just give them proper recognition. I ask my colleagues to support this bill.

Mr. Speaker, I rise in strong support of the "Native Hawaiian Government Reorganization Act of 2009." This important piece of legislation is to reaffirm the special political and legal relationship between the United States and the indigenous Native Hawaiians for purposes of continuing a government-to-government relationship. I want to thank Chairman NICK RAHALL and members of the Committee on Natural Resources for their support. I especially want to commend and recognize my good friend and colleague, the gentleman from Hawaii, Mr. ABERCROMBIE, for his leadership and tireless efforts in bringing this legislation to the floor for consideration. For some 20

years, I've had the privilege of working closely with Mr. ABERCROMBIE on legislation that has benefited both constituents and the great State of Hawaii. I also want to commend my good friend, Ms. HIRONO, and other Members for their cosponsoring this legislation.

The legislation before us is very important for many reasons, but none more critical than for Congress to extend full recognition to some 400,000 indigenous Native Hawaiians in the State of Hawaii. Constitutionally, Congress has the authority to address the conditions of the native people of the United States and the indigenous people of the Hawaiian Islands are a distinctly native community that for many years existed as a sovereign entity. History shows that from 1826 until 1893, the United States government recognized the Kingdom of Hawaii as a sovereign and independent nation; accorded full diplomatic recognition to the Kingdom of Hawaii; and entered into treaties and conventions of peace, friendship and commerce with the Kingdom of Hawaii to govern trade, commerce, and navigation in 1826, 1842, 1849, 1875 and 1887. Yes, even our government, the United States of America was a party to these treaties and conventions with the Sovereign Kingdom of Hawaii.

Mr. Speaker, more than 100 years ago, ambitious descendants of U.S. missionaries and sugar planters, aided by the unauthorized and illegal use of U.S. military forces, overthrew the sovereign Kingdom of Hawaii which at that time was ruled by Queen Lili'uokalani. In 1993, Congress reaffirmed such a travesty on the Kingdom of Hawaii when they passed a joint resolution to acknowledge and apologize on behalf of the United States for the illegal and unlawful overthrow of the Hawaiian Kingdom in 1893, and for the deprivation of the rights of the indigenous Native Hawaiians to self-determination.

To this day, the status of the indigenous Native Hawaiians was never properly addressed by the United States Congress. And it is within Congress' constitutional authority to do so. Congress and U.S. Supreme Court decisions have properly determined that American Indians of the lower 48 States are an indigenous people. In fact, recognition of the Native Alaskans as indigenous people of the U.S. demonstrates this constitutional power. And even the U.S. Supreme Court has recognized this constitutional authority and has accepted a broader conceptualization of indigenous people, allowing Congress to recognize indigenous groups, even those who are culturally and genealogically distinct from the narrow concept of being an "Indian" and "tribe."

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), adopting special legislation to deal with Native Alaskans' land claims and creating a governing structure (corporations) through which to manage the federal relationship with the indigenous group even though the Alaska Natives differed culturally, historically, and genealogically from American Indians. In the ANCSA, "Native" is defined to mean "a citizen of the U.S. who is a person of one-fourth degree or more Alaska Indian, Eskimo, Aleut blood, or combination thereof" and "Native Group" to mean "any tribe, band, clan, village, commu-

nity, or village of Natives in Alaska." The indigenous Native Hawaiians also meet these definitions.

In the Hawaiian Homes Commission Act of 1921, Congress expressed and reaffirmed the "special" and "trust" relationship between the United States and the Native Hawaiians. In addition, the Act also recognized Native Hawaiians as "a distinct and unique indigenous people." Native Hawaiians are, in fact, indigenous, aboriginal people living within what are now the borders of the U.S. and it is unfortunate that even today the status of some 400,000 indigenous Native Hawaiians have yet to be afforded this same recognition as our First Americans.

Although *Rice vs. Cayetano* has no bearing on this legislation, I should note that the Supreme Court's decision states, "Congress . . . has determined that native Hawaiians have a status like that of organized Indian tribes." Even the author of the State's brief, now Chief Justice John Roberts of the U.S. Supreme Court, clearly explained that the Congress has plenary authority that is not limited to only American Indians by stating the following:

Congress is constitutionally empowered to deal with Hawaiians, has recognized such a "special relationship," and—"in recognition of that special relationship"—"has extended to Native Hawaiians the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities." 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 under these laws.

Over the years, the treatment of indigenous Native Hawaiians by the U.S. government has been piecemeal at best. There is estimated over 160 laws that have been passed by the Congress related to the social, educational, economic, and cultural needs of the indigenous Native Hawaiians. This proposed bill sets the institutional framework for the establishment of a relationship between the U.S. and the indigenous Native Hawaiians just as Congress has done for the indigenous American Indians and indigenous Native Alaskans. I submit, there are only three, distinct indigenous peoples, under U.S. sovereignty—American Indians within the continental United States, Native Alaskans and Native Hawaiians.

Mr. Speaker, the proposed bill that we have before us today will continue the long but necessary road towards full recognition by Congress of the indigenous Native Hawaiians. The underlying issue in this piece of legislation is not about the existence of the Native Hawaiians. That much has already been determined. This bill however is to establish a process by giving the indigenous Native Hawaiians the same status as we have done for the indigenous American Indians and the indigenous Native Alaskans.

I respectfully urge my fellow colleagues to support this bill.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Oklahoma (Mr. COLE).

Mr. COLE. I thank the gentleman for yielding.

Mr. Speaker, I want to begin by thanking my good friend Mr. ABERCROMBIE for his distinguished career

and our good friendship. And the fact that I am rising in support of this bill and my good friend Mr. YOUNG has risen in support of this bill is certainly an indication it is not a partisan measure. Frankly, our side did not decide to whip this. So this really is a non-partisan question before the Congress. It is not an issue of race, as some would argue. It is not an issue of States' rights, as some would argue.

It is actually, in the end, a question of Federal authority and how the Federal Government chooses to treat indigenous peoples. And frankly, if we want to look at that, we ought to be guided by our own Constitution, our own legal traditions, and our own actions as a Congress. Over 200 years of American history has taught us from the very beginning, from the foundation of the Constitution, that we had decided we will treat native peoples as individual subordinate sovereign units, and we will negotiate our relationships with them.

Now, we haven't always lived up to that idea, no question about it. Over the course of our history there has been efforts to destroy native nations. There has been efforts to remove them from their homeland. There has been efforts at forced assimilation. But when we have adhered to our constitutional traditions, and negotiated and dealt with native peoples on a government to government basis, the relationship has been a good and productive one.

The facts of this case are very clear. From the very beginning, we recognized Native Hawaiians as a distinct and separate group. We have passed over 160 statutes in the Congress of the United States. And frankly, this measure before us is not going to reshape Hawaii. It will regularize the relationship between Native Hawaiians and their State and Federal Government and allow a negotiation to take place.

Now, I make no bones about the fact that I favored the original 2007 bill. I did that not because it was necessarily a superior bill, but because it allowed a negotiated process that I thought would actually ease this transition. But at the end of the day, the question is one of constitutional propriety and sovereign rights and appropriate procedure. And this bill meets all of those tests.

So I look forward to its passage, and I look forward to the fact that it will have broad bipartisanship support, and I look forward, Mr. Speaker, to once again reflecting on our own remarkable traditions as a country and as a people. We don't always do the right thing, but eventually we do the just thing. And in this situation, recognizing Native Hawaiians is the just thing to do. I urge support for this legislation.

Mr. RAHALL. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. HONDA).

Mr. HONDA. I want to thank the chairman for this opportunity.

For those who are in this debate, I think this is what Congress is all

about, where we talk about very substantive issues. And this is one of those most important issues because it affects our relationship with other countries, other States, and other indigenous people. And in this case, indigenous people who are considered sovereign entities. And this is what we are trying to accomplish for the Native Hawaiians in Hawaii.

This is not about race. I think when we use race and other things it sort of muddies up the issues. And I think that our colleague, Congressman COLE, explains it very clearly. And as a teacher, and I am not a lawyer, but as a teacher and as a very simple person not understanding all the laws and all the terminologies in law, how he explains it is very clear.

I think the people of this country understand clear talk. When they hear clear talk they understand that when we are talking about justice and equality and recognizing indigenous people, it becomes very, very evident which way we should go.

This is, like Congressman COLE said, this is about Federal authority under the Constitution. And the 48 States had already done this with indigenous people. Some people call them Indian tribes, but nonetheless, they were indigenous people. Mr. YOUNG, from the 49th State, indicates the same sentiment. And that when they became the 49th State, their considerations to indigenous people, or Indian tribes, they accorded them the same kind of consideration of self-determination. Hawaii is trying to do the same thing, the 50th State.

And so it seems like if the previous 49 States are able to do this, this is one of replication, and there is a lot of things being established. And Chairman RAHALL had indicated what this bill is not about. And that should just clearly set aside any kinds of arguments against this kind of an effort.

I appreciate the work of both Mr. ABERCROMBIE and Ms. HIRONO. And I think that under the Constitution and under the eyes of justice, and for those who are clear thinkers in the Congress, this should be a no brainer. We should approve this bill and make it into law and finally recognize the people of Hawaii, the indigenous people of Hawaii as who they are, a self-determining indigenous group.

The Federal courts did not talk about when it was brought up about the moneys being used for the native tribes.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. HONDA. If I could have 30 seconds.

Mr. RAHALL. I yield the gentleman 5 seconds.

Mr. HONDA. In 5 seconds, Federal moneys cannot be used for State elections. State elections cannot be used for private kinds of elections. That is what they were saying. It is not about race.

Mr. HASTINGS of Washington. Mr. Speaker, I would like to yield 3 min-

utes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. I thank the gentleman from Washington for yielding some time on this subject matter.

Mr. Speaker, I rise in opposition to this bill, the Native Hawaiian Government Reorganization Act, whether it is amended or whether it is not amended. And I do so, Mr. Speaker, because first of all, the United States of America was founded upon the principle of equality, the principle of equality before the law. And we have further built upon the principle of equality of opportunity.

As I have listened to each of the speakers address this tonight, there seems to be a continuing theme that there are specific groups of people that deserve a certain kind of specific consideration before the law and before the appropriations of the United States Congress, and specific access to assets that might be utilized for their specific use, as opposed to other Hawaiians that aren't defined as Native Hawaiians.

I recall the debate back in 1959 when Hawaii and Alaska were both brought into the union, and I recall the discussions that were there then about the success that Hawaii had had by assimilating peoples into the broader society of Hawaii, and about how we didn't have to worry about the expression—then it wasn't Balkanization—but we didn't have to worry about the Hawaiians dividing themselves into separate and competing ethnic groups, that they were assimilated.

□ 1845

Assimilation was the watchword of the day, the code of the day, and that was the message and the promise and the commitment that Hawaiians made to the United States Congress when they were brought into the Union as a State.

Well, today we see a piece of legislation that comes before us that defies the very concept that was a principle that was clearly understood here on this floor of this Congress when Hawaii was brought into the Union.

And when I look at what this does, the broad definition of Native Hawaiians that might mean Native Hawaiians anywhere where they are in the United States that could be brought under this umbrella of beneficiaries of assets that could be as great as 40 percent of the land mass of the State of the Hawaii to be governed and regulated by self-described, self-defined Native Hawaiians at the expense of everyone else, and I wonder how good these promises might be, the promises that we wouldn't set up gaming institutions, we wouldn't set up toll roads or roadblocks; this would just be a very compatible, logical pro-tourism industry. It might be. In fact, it probably will be, Mr. Speaker.

But I am so concerned about the broader fundamental principle that applies here. And I would argue that the



gentleman that has spoken on behalf of those Native Americans that actually are real tribes by definition that exists within statute and within the tradition of law, have no solution for the reservation system that we have. They envision it the same 100 years from now as it is today. And so we see the replication of pathologies from reservation to reservation and not the opportunities.

I would have supported the Dawes Act however many years ago.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. HASTINGS of Washington. I yield the gentleman 1 additional minute.

Mr. KING of Iowa. I thank the gentleman, and I'd just make this point. When I read the material on this coming back up again, and I so appreciate Mr. ABERCROMBIE's work, and I know his heart and his head are in this. This is in a verbatim email that I wrote up to my staff, and it goes this way.

This bill makes a resounding statement that even Native Hawaiians can't be assimilated into a Western society. I disagree. It is a fundamental statement that goes to the heart of what it means to be an American. If, after all these years, Native Hawaiians have to be tribalized in order to function in a modern society, all Americans then must, by the identical logic, be Balkanized.

Mr. Speaker, the philosophy is wrong underneath this. However good the thoughts are, Americans should be assimilated, not subdivided. We should not be pitted against each other, and Americans should not have certain assets designated to them because of the ancestry that they claim. We should be all Americans under one flag.

Mr. RAHALL. Mr. Speaker, we're ready to close when the other side is. Is the gentleman from Washington ready to close?

Mr. HASTINGS of Washington. If the gentleman's the last speaker, then I am the last speaker on my side. I yield myself the balance of the time, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Washington is recognized for 1 minute.

Mr. HASTINGS of Washington. Mr. Speaker, just let me kind of summarize some of the overreaching debate that we've had here today.

This issue has been around this Congress for over 10 years, and this issue has had broad support within the State of Hawaii. Mr. Speaker, for over 10 years. And the underlying bill, before we will vote on the substitute, the underlying bill has broad support in the State of Hawaii.

But now we are going to have an amendment that was not written in public, and, in fact, as I mentioned in my earlier remarks, Governor Lingle is opposed to this approach on this bill, even though she agrees wholeheartedly with the issue of recognition for Native Hawaiians.

So, Mr. Speaker, I take everybody's word that's involved in this that it will be worked out to everybody's satisfaction. But, Mr. Speaker, why should we, on the floor of the House—

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. HASTINGS of Washington. With that, Mr. Speaker, I just urge my colleagues to vote against the substitute. I'll talk about that later.

Mr. RAHALL. Mr. Speaker, I'm very happy to yield the balance of our time to the gentleman from Hawaii (Mr. ABERCROMBIE).

Mr. ABERCROMBIE. Mr. Speaker, I want to thank all my colleagues here today, and I want to thank those especially who have risen in opposition. This is what our democracy is all about. My only regret in extending my aloha to those who may not feel able to vote for the bill today is that you have not had an opportunity, perhaps, to visit with, to understand, and to comprehend what it means to be a Native Hawaiian.

It is, of course, very easy for someone to say well, how can you do that; you came from somewhere else.

I was born and raised just outside Buffalo, New York. I came to Hawaii some 50 years ago, with statehood, given the opportunity to go to the University of Hawaii as a graduate teaching assistant. And the first thing that happened to me as I came that great distance, across the continent and across the ocean, then in a Pan American Clipper, it took 10 hours just to get from the coast to Hawaii. And when I took that first breath of Hawaiian air and saw the gorgeous curves of the island of Oahu, Diamondhead, Waikiki, and the first evening, taken to Manoa Valley, where I now reside, it was as if destiny had called.

And the first contact that I had was with my Chinese Hawaiian friend, Solomon Lu, God rest his soul, whose family took me in and treated me as one of their own. And that's what Hawaii is all about.

Mr. Speaker, this is not about race. This is about the aloha spirit. This is about the rainbow State of Hawaii. This is about Native Hawaiians who give us the host culture and the fundamental sense of who we are as human beings. And the diversity that defines us in Hawaii that does not divide us is the kind of diversity and definition we need in this House of Representatives, that we need in the United States of America.

This is Hawaii's gift to the United States. It is its gift to the world, the spirit of aloha. And in that same spirit of aloha, I ask for a vote favorably on behalf of the Native Hawaiian recognition bill.

The SPEAKER pro tempore. All time for debate on the bill has expired.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4626, HEALTH INSURANCE INDUSTRY FAIR COMPETITION ACT

Mr. HASTINGS of Florida, from the Committee on Rules, submitted a privileged report (Rept. No. 111-418) on the resolution (H. Res. 1098) providing for consideration of the bill (H.R. 4626) to restore the application of the Federal antitrust laws to the business of health insurance to protect competition and consumers, which was referred to the House Calendar and ordered to be printed.

## NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2009—CONTINUED

PART A AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ABERCROMBIE

Mr. ABERCROMBIE. Mr. Speaker, I have an amendment in the nature of a substitute made in order under the rule.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment in the nature of a substitute printed in part A of House Report 111-413 offered by Mr. ABERCROMBIE:

Strike all after the enacting clause and insert the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the "Native Hawaiian Government Reorganization Act of 2010".

### SEC. 2. FINDINGS.

Congress finds that—

(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States and the Supreme Court has held that under the Indian Commerce, Treaty, Supremacy, and Property Clauses, and the War Powers, Congress may exercise that power to rationally promote the welfare of the native peoples of the United States so long as the native people are a "distinctly native community";

(2) Native Hawaiians, the native people of the Hawaiian archipelago that is now part of the United States, are 1 of the indigenous, native peoples of the United States, and the Native Hawaiian people are a distinctly native community;

(3) the United States has a special political and legal relationship with, and has long enacted legislation to promote the welfare of, the native peoples of the United States, including the Native Hawaiian people;

(4) under the authority of the Constitution, the United States concluded a number of treaties with the Kingdom of Hawaii, and from 1826 until 1893, the United States—

(A) recognized the sovereignty of the Kingdom of Hawaii as a nation;

(B) accorded full diplomatic recognition to the Kingdom of Hawaii; and

(C) entered into treaties and conventions of peace, friendship and commerce with the Kingdom of Hawaii to govern trade, commerce, and navigation in 1826, 1842, 1849, 1875, and 1887;

(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land in trust to better address the conditions of Native Hawaiians in the