

MAR 15 2006

SENATE CONCURRENT RESOLUTION

REQUESTING THE HAWAII CONGRESSIONAL DELEGATION TO INTRODUCE
LEGISLATION TO AMEND THE FEDERAL CIVIL RIGHTS LAW.

1 WHEREAS, the Civil Rights Act of 1866 was enacted to give
2 former slaves the right to own property, enforce contracts, and
3 give evidence in courts because those rights were not
4 specifically guaranteed in the Thirteenth Amendment; and
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6 WHEREAS, the Civil Rights Act of 1866 was codified in 42
7 U.S.C. §1981 and is often referred to as Section 1981, the
8 number assigned to it in the codification of federal laws, and
9 during the time of the section's enactment and codification, the
10 Hawaiian Islands were still a sovereign kingdom; and
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12 WHEREAS, Section 1981 provides in part that "All persons
13 within the jurisdiction of the United States shall have the same
14 right in every State and Territory to make and enforce
15 contracts, to sue, be parties, give evidence, and to the full
16 and equal benefit of all laws and proceedings for the security
17 of persons and property as is enjoyed by white citizens, and
18 shall be subject to like punishment, pains, penalties, taxes,
19 licenses, and exactions of every kind, and to no other"; and
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21 WHEREAS, immediately following its passage, Section 1981
22 underwent nearly a century of desuetude until it began to gain
23 independent significance during the 1960s with the passage of
24 the Civil Rights Act of 1964 that provided equal employment
25 opportunities and made racial discrimination in public places
26 illegal; and
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28 WHEREAS, the Civil Rights Act of 1991 reversed several
29 United States Supreme Court decisions and combined elements of
30 Section 1981 and the employment-related provisions of the Civil
31 Rights Act of 1964; and
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33 WHEREAS, Congress addressed the United States Supreme
34 Court's narrow reading of the phrase "make or enforce contracts"



1 by redefining the phrase to include "the making, performance,
2 modification, and termination of contracts, and the enjoyment of
3 all benefits, privileges, terms, and conditions of the
4 contractual relationship";

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6 WHEREAS, Congress also clarified that Section 1981 applied
7 to both governmental and private discrimination; and

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9 WHEREAS, when Congress revisited Section 1981 in 1991, its
10 view of the statute's proper scope was presumptively informed by
11 the body of law that developed in the interim; and

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13 WHEREAS, both before and after the passage of the Civil
14 Rights Act of 1991, Congress specifically directed money to the
15 education of Native Hawaiians in 1988 via the Hawkins-Stafford
16 Amendments, formerly codified at 20 U.S.C. §4905(a) and the
17 Native Hawaiian Education Act, 20 U.S.C. §7517(3) (A); and

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19 WHEREAS, Section 1981 has been used as the basis for claims
20 that remedial programs that provide special assistance to Native
21 Hawaiians are discriminatory; and

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23 WHEREAS, there is nothing in the history of Section 1981 to
24 suggest that Congress was concerned with remedial programs that
25 provide special assistance to Native Hawaiians; and

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27 WHEREAS, the use of Section 1981 as the basis for
28 discrimination claims that challenge remedial programs that
29 provide special assistance to Native Hawaiians contravenes other
30 measures Congress has taken to provide remedial measures for
31 Native Hawaiians; now, therefore,

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33 BE IT RESOLVED by the Senate of the Twenty-third
34 Legislature of the State of Hawaii, Regular Session of 2006, the
35 House of Representatives concurring, that the Hawaii
36 Congressional delegation is requested to introduce legislation
37 to ensure that remedial programs that provide special assistance
38 to Native Hawaiians are not subject to challenge under the
39 federal Civil Rights Law; and
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1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the members of the
3 Hawaii Congressional delegation.
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J. Alan Goh

Cynthia Hee

OFFERED BY:

[Signature]
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Will Eyo
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