

FEB 12 2009

SENATE RESOLUTION

URGING THE GOVERNOR AND THE ATTORNEY GENERAL TO WITHDRAW THE APPEAL TO THE UNITED STATES SUPREME COURT OF THE HAWAII STATE SUPREME COURT DECISION, OFFICE OF HAWAIIAN AFFAIRS V. HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, 117 HAWAII 174 (2008).

1 WHEREAS, in 1978 the people of Hawai'i, in recognition of
2 the historic injustices committed against the Native Hawaiian
3 people, voted overwhelmingly to amend the Hawai'i State
4 Constitution to address those injustices; and
5

6 WHEREAS, in 1978, the people of Hawai'i amended the Hawai'i
7 State Constitution to include Article XII, Section 4, which
8 identifies the Native Hawaiian people and the general public as
9 the two beneficiaries of the public land trust; and
10

11 WHEREAS, other amendments adopted in 1978 to the Hawai'i
12 State Constitution include the establishment of the Office of
13 Hawaiian Affairs, protections of traditional and customary
14 rights of the Native Hawaiian people, adoption of the Hawaiian
15 language as one of the two official languages of Hawai'i, and a
16 mandate to include Hawaiian language, culture, and history
17 educational programs in the public schools; and
18

19 WHEREAS, the Seventeenth Legislature determined that 1993
20 should serve as a year of special reflection on the rights and
21 dignities of the Native Hawaiian people in Hawai'i and in
22 American society, and consistent with that determination, passed
23 a series of legislative enactments that further committed Hawai'i
24 to reconciliation with the Native Hawaiian people; and
25

26 WHEREAS, in House Concurrent Resolution No. 179, Regular
27 Session of 1993, the Legislature recognized the illegality of
28 the 1893 overthrow of the Kingdom of Hawai'i and the lingering
29 claims of the Native Hawaiian people to their national lands
30 with a request to the President and Congress to formally
31 apologize to the Native Hawaiian people for the overthrow; and
32



1 WHEREAS, in House Concurrent Resolution 213, Regular
2 Session of 1993, the Legislature recommitted itself to address
3 the historic wrongs committed against the Native Hawaiian people
4 by the United States government in the 1893 overthrow of the
5 Kingdom of Hawai'i; and

6
7 WHEREAS, in Act 354, Session Laws of Hawaii 1993, the
8 Legislature acknowledged that many Native Hawaiians believe
9 lands taken without the consent of the Native Hawaiian people
10 should be returned and if not, then monetary compensation should
11 be made; and

12
13 WHEREAS, in Act 354, Session Laws of Hawaii 1993, the
14 Legislature pledged its continued support to the Native Hawaiian
15 people by taking steps to promote the restoration of the rights
16 and dignity of the Native Hawaiian people and committed
17 substantial state resources to educate the general public about
18 Hawaiian sovereignty; and

19
20 WHEREAS, in Act 359, Session Laws of Hawaii 1993, the
21 Legislature found that in 1898, Hawai'i was annexed to the United
22 States through the Newlands Resolution without the consent of or
23 compensation to the indigenous people of Hawai'i or their
24 sovereign government, and that as a result, the indigenous
25 people of Hawai'i were denied the mechanism for expression of
26 their inherent sovereignty through self-government and
27 self-determination, their lands, and their ocean resources; and

28
29 WHEREAS, in Act 340, Session Laws of Hawaii 1993, the
30 Legislature placed the island of Kaho'olawe, a place of
31 extraordinary cultural significance, into the public land trust
32 under the condition that the State would eventually transfer the
33 management and control of Kaho'olawe to a future sovereign Native
34 Hawaiian entity upon its recognition by the United States and
35 the State; and

36
37 WHEREAS, in Act 340, Session Laws of Hawaii 1993, the
38 Legislature envisioned a future sovereign Native Hawaiian entity
39 capable of receiving the island of Kaho'olawe from the State, and
40 endorsed a broad and progressive view of the reconciliatory
41 process, which includes an entity representative of the Native
42 Hawaiian people capable of formally dealing with the State; and
43



1 WHEREAS, in Act 329, Session Laws of Hawaii 1997, the
2 Legislature found that the events of history set forth in the
3 1993 Federal Apology Resolution (Public Law 103-150), contribute
4 to "a deep sense of injustice among many Native Hawaiians" and
5 further recognized that "the lasting reconciliation so desired
6 by all people of Hawai'i" is possible only if the Legislature
7 fairly acknowledges the past; and

8
9 WHEREAS, the Governor has affirmed the State's commitment
10 to reconciliation with the Native Hawaiian people, and the
11 Legislature continues to believe that the health and well-being
12 of the Native Hawaiian people is intrinsically tied to deep
13 feelings of attachment to the land; and

14
15 WHEREAS, on January 31, 2008, the Hawai'i State Supreme
16 Court in Office of Hawaiian Affairs v. Housing Community
17 Development Corporation of Hawaii (117 Hawaii 174), interpreted
18 the State's trust obligation in relation to ceded lands under
19 state law and enjoined the State from selling or otherwise
20 transferring to third parties any ceded lands from the public
21 lands trust until the claims of the Native Hawaiian people to
22 the ceded lands have been resolved; and

23
24 WHEREAS, the Governor and Attorney General petitioned the
25 United States Supreme Court to review the decision of the Hawai'i
26 State Supreme Court and that petition has been granted; and

27
28 WHEREAS, the Legislature finds that pursuing such an action
29 is detrimental to the interests of all of the people of Hawai'i
30 and to the ongoing reconciliation process between the State and
31 the Native Hawaiian people; now, therefore,

32
33 BE IT RESOLVED by the Senate of the Twenty-fifth
34 Legislature of the State of Hawaii, Regular Session of 2009,
35 that the Governor is urged to withdraw the appeal to the United
36 States Supreme Court of the Hawai'i State Supreme Court decision,
37 Office of Hawaiian Affairs v. Housing and Community Development
38 Corporation of Hawaii, 117 Hawaii 174 (2008); and

39
40 BE IT FURTHER RESOLVED that the Legislature declares the
41 public policy of the State of Hawai'i is to honor the decision of
42 the Hawai'i State Supreme Court; and

43



1 BE IT FURTHER RESOLVED that certified copies of this
2 Resolution be transmitted to the Governor and the Attorney
3 General.
4
5
6

OFFERED BY: _____

A handwritten signature in black ink, appearing to be 'C. J. M. He', is written over a horizontal line.