

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

COMMENTS ON HOUSE CONCURRENT RESOLUTION 168
REQUESTING THE DEPARTMENT OF PUBLIC SAFETY TO REQUIRE
IN ITS CONTRACTS THAT INCARCERATED NATIVE HAWAIIANS BE FREE
TO PRACTICE THEIR NATIVE HAWAIIAN RELIGION AS WELL AS ONE
OTHER FAITH.

by

Clayton A. Frank, Director
Department of Public Safety

House Committee on Public Safety
Representative Faye P. Hanohano, Chair
Representative Henry J.C. Aquino, Vice Chair

Thursday, March 18, 2010; 11:00AM
State Capitol, Conference Room 309

Representative Hanohano, Representative Aquino, and Members of the Committee:

The Department of Public Safety (PSD) thanks the legislature for their interest in allowing Native Hawaiian inmates housed in facilities on the mainland under contract with PSD to be allowed to practice their Native Hawaiian religion as well as on other faith simultaneously.

At present, all inmates regardless of their ethnic origins housed under contract on the mainland are allowed to practice a single religion of their choosing, and have the ability to which religious practices every six months if they so choose. This was done primarily for operational security of the facility, limited available space, and because at times, unfortunately some inmates used religious gatherings to further illegal gang activities.

Allowing inmates to practice a single religion at a time, does not violate either their State or Federal constitutional rights, and is done for compelling governmental interest, and is the least restrictive means of furthering the government's interest. In that, ensuring the safe and secure operations of the correctional facility

It should be noted that any attempt to single out any particular ethnic group, including Native Hawaiians for a privilege that is not constitutionally required, violates the First and Fourteenth amendment rights of all other persons incarcerated of other ethnic and/or religious backgrounds.

Given the limited available space in correctional facilities coupled with the inherent legitimate operational security concerns with allowing those incarcerated to practice two religious faiths simultaneously, PSD cannot support this measure. HCR 168 is unnecessary, and will expose the State to costly Federal litigation.

Thank you for the opportunity to provide testimony on this matter.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phone/E-Mail: (808) 533-3454/kat.caphi@gmail.com



COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

COMMITTEE ON HAWAIIAN AFFAIRS

Rep. Mele Carroll, Chair

Rep. Maile Shimabukuro, Vice Chair

Thursday, March 18, 2010

9:00 a.m.

Room 309

SUPPORT - HCR 168 - Religious Freedom

PBSTestimony@capitol.hawaii.gov

Aloha Chair Hanohano, Vice Chair Aquino and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a diverse community initiative working to improve conditions of confinement for Hawai'i's incarcerated individuals, enhance the quality of justice, and promote public safety by supporting smart justice policies. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that almost 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HCR 168 requesting the Department of Public Safety to require in its contracts that incarcerated Native Hawaiians be free to practice their Native Hawaiian religion as well as one other faith.

Community Alliance on Prisons supports this measure as freedom of religion is a right enshrined in the Constitution.

Sadly, CCA has abridged the right of incarcerated individuals to practice their Native Hawaiian religion along with another faith. Why? In the community, there are many families where Mom is of one faith and Dad is of another. Many families celebrate both Christmas and Chanukah. Why is this a problem for incarcerated persons? Isn't it good to have individuals involved in positive activities?

Is this just another attack on Native Hawaiians in an effort to maintain control of their identity? Please pass this measure to assert and ensure the constitutionally protected freedom of religion rights of our people who are working to get their lives on track. Mahalo for this opportunity to testify.



NATIVE HAWAIIAN LEGAL CORPORATION

Serving Hawai'i since 1974

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813 • Phone (808) 521-2302 • Fax (808) 537-4268

March 17, 2010

Via email: PBStestimony@Capitol.hawaii.gov

Rep. Faye P. Hanohano, Chair
Rep. Henry J.C. Aquino, Vice Chair
For the COMMITTEE ON PUBLIC SAFETY

Rep. Mele Carroll, Chair
Rep. Maile S.L. Shimabukuro, Vice Chair
For the COMMITTEE ON HAWAIIAN AFFAIRS

RE: HCR 168: REQUESTING THE DEPARTMENT OF PUBLIC SAFETY TO REQUIRE IN ITS CONTRACTS THAT INCARCERATED NATIVE HAWAIIANS BE FREE TO PRACTICE THEIR NATIVE HAWAIIAN RELIGION AS WELL AS ONE OTHER FAITH.

Chairs Hanohano and Carroll, Vice-Chairs Aquino and Shimabakuro, and Members of the Committee on Public Safety and Committee on Hawaiian Affairs:

Aloha. My name is Andrew Sprenger. I am a staff attorney with the Native Hawaiian Legal Corporation (NHLIC). NHLIC supports HCR 168 which concerns the freedom of incarcerated individuals in the State of Hawaii to practice Native Hawaiian religion as well as another faith.

Our office has represented approximately 60 Native Hawaiian religious practitioners who were serving their sentences in the State of Hawaii and in various private prisons on the mainland. Our office currently represents approximately 30 Native Hawaiian religious practitioners who are serving their sentences at the Saguaro Correctional Facility (SCF) and the Red Rock Correctional Facility's (RRCF) in Arizona. Our scope of representation concerns the protection of our clients' ability to practice critical tenets of the Native Hawaiian religion as protected under the Constitutions of the United States of America, the State of Hawaii, the Federal Protection of Religious Exercise of Institutionalized Persons Act (42 USCS § 2000cc-1 (2003)), and the Federal American Indian Religious Freedom Act, (42 USCS § 1996)).

We understand that the Department of Public Safety currently implements a policy which forces inmates to choose one faith. We have learned that this policy causes irreparable harm to some of our clients who must practice Native Hawaiian religion, but must also express tenets of another faith. Specifically, the current policy now forces incarcerated Native Hawaiian religious practitioners to make the painful and impossible decision to forego part of their spiritual belief system in exchange for another. For example, we are aware that the current policy has precluded certain Native Hawaiian religious practitioners from meeting with
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Rep. Faye P. Hanohano, Chair
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For the Committee on Public Safety

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other practitioners to observe the Makahiki Season and engage in regular group pule, (prayer), oli (chant) and hula (dance) because the Department of Public Safety has those individuals registered as Christians.

According to leading experts in Hawaiian religion and spirituality, engaging in Native Hawaiian religious practices and the practices of another religion is not irreconcilable. Native Hawaiians continue to participate in the indigenous spiritual and religious systems based upon tenets and beliefs first established by the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawai'i. These religious and spiritual beliefs and practices originate in, and are interpreted from within, the traditional Native Hawaiian culture and community.

It is common knowledge that Native Hawaiian spiritual tenets and beliefs are manifested in the observance of certain rituals and other activities to acknowledge `aumāku and akua (deities), ancestors, and are also expressed and perpetuated in the very essence of a people and their relationship to each other and to their kulāiwi (native land). Native Hawaiians continue to recognize that they are related to elements of nature – to the land, to the ocean, to the wind, to the rain. Nature is the domain of both ancestral spirits and Hawaiian deities so caring for the environment, mālama `āina, mālama kai (care for the land and ocean), is an integral aspect of spiritual practice. One of the primary concepts in Native Hawaiian religion holds that all persons, places, plants, and animals are imbued with mana (spiritual power). Spiritual beliefs are also expressed through honoring family deities; that may be long-departed ancestors who provide protection and assistance to families.

In Native Hawaiian spiritual practice, pule, oli and hula and other religious protocol produce and perpetuate mana. Mana is positively increased through pono (righteous, just, and responsible) actions. By way of example, Native Hawaiian religious practitioners may seek permission from the appropriate deity before taking a resource, tender ho`okupu (an offering) to pay respect to the deity, and pule (pray), oli (chant), and hula (dance) to honor the deity.

Native Hawaiian spirituality and Christianity intersected in 1778 with the arrival of the first Europeans. Native Hawaiian spirituality was and is essentially a non-exclusionary faith because Hawaiian religion encompasses every activity of daily life and recognizes a plurality of deities. It is therefore not unusual or contradictory for practitioners of Native Hawaiian religion to concurrently follow the teachings of another religion, such as Christianity.

Recently, the Hawai'i Supreme Court touched upon the related cultural practice of malama `aina:

In OHA v. HCDCH, we expressly agreed with the "cultural importance of the land to native Hawaiians" set forth in the findings of the trial court, which stated that:

Rep. Faye P. Hanohano, Chair
Rep. Henry J.C. Aquino, Vice Chair
For the Committee on Public Safety

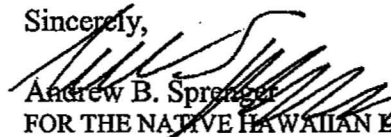
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The [n]ative Hawaiian [p]eople continue to be a unique and distinct people with their own language, social system, ancestral and national lands, customs, practices and institutions. "The health and well-being of the [n]ative [H]awaiian people is intrinsically tied to their deep feelings and attachment to the land." [(Citing in a footnote to the Apology Resolution.)] Aina, or land, is of crucial importance to the [n]ative Hawaiian [p]eople -- to their culture, their religion, their economic self-sufficiency and their sense of personal and community well-being. Aina is a living and vital part of the [n]ative Hawaiian cosmology, and is irreplaceable. The natural elements-land, air, water, ocean-are interconnected and interdependent. To [n]ative Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians. The aina is part of their ohana, and they care for it as they do for other members of their families. For them, the land and the natural environment is alive, respected, treasured, praised, and even worshipped.

117 Hawai'i at 214, 177 P.3d at 924 (original emphasis omitted) (format altered) (brackets in original). *Office of Hawaiian Affairs v. Housing and Community Development Corp. of Hawai'i*, 121 Hawai'i 324, 333, 219 P.3d 111, 1120 (2009).

Based upon the above, the Department of Public Safety's present policy of restricting Native Hawaiian practitioners from worshipping another faith is at best insensitive to the historical and cultural legacy of Hawaii's indigenous spiritual and religious systems, and at worst, punitive to those individuals who desire to rehabilitate themselves through their faiths while incarcerated. We therefore support the passage of HCR 168.

Sincerely,



Andrew B. Sprenger
FOR THE NATIVE HAWAIIAN LEGAL CORPORATION

Copy: Clients