

NEIL ABERCROMBIE
GOVERNOR
STATE OF HAWAII



ALBERT "ALAPAKI" NAHALE-A
CHAIRMAN
HAWAIIAN HOMES COMMISSION

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DEPARTMENT OF HAWAIIAN HOME LANDS

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TESTIMONY OF ALAPAKI NAHALE-A, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON JUDICIARY ON

HB 1627 HD 1, RELATING TO GOVERNMENT

February 17, 2011

Chair Keith-Agaran, Vice-Chair Rhoads and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports the purpose and intent of HB 1627 HD 1 which provides for a reorganization process for a Native Hawaiian governing entity and for the State of Hawaii's recognition of this entity.

DHHL has supported the various versions of the Native Hawaiian Government Reorganization Act that have been vetted in the U.S. Congress since 2000. The premise for DHHL supporting this federal legislation was achieving federal recognition to protect the Hawaiian Home Lands trust from 14th Amendment legal challenges and to advance Native Hawaiian self-governance and self-determination. We do support state recognition of a Native Hawaiian entity as an intermediate step for Native Hawaiians to ultimately achieve federal recognition, however, our department must further study this measure and engage in consultation with our beneficiaries to fully understand its impact to our trust and its legal implications.

Thank you for the opportunity to testify.



HB 1627, HD 1
RELATING TO GOVERNMENT
House Committee on Judiciary

February 17, 2011

2:30 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following comments on HB 1627, HD 1, which sets forth a process for the reorganization of a first nation government by Native Hawaiians and its subsequent recognition by the State of Hawai'i:

OHA supports state recognition of Native Hawaiians provided that it does not diminish efforts to pursue and obtain federal recognition.

As to the specifics of state recognition, OHA is carefully considering possible approaches, including HB 1627, HD 1, so as to be able to offer constructive suggestions as this legislative session proceeds. We look forward to communicating with our beneficiaries, legislators and other public officials, our advisors, and others about how best to approach state and federal recognition.

Mahalo for the opportunity to testify on this important measure.

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

TESTIMONY BY
PRESIDENT SOULEE STROUD

**IN SUPPORT OF House Bill 1627, HD1
Relating to Government**

Before the House Committee on Judiciary
February 17, 2011; 2:30 pm Room 325

Aloha Chairman Keith-Agaran, and Vice Chairman Rhodes and members of the House Judiciary Committee. I am Soulee Stroud, President of the Association of Hawaiian Civic Clubs here today to support the passage of HB 1627, HD1 .

The first civic club was founded in 1918 and we continue to thrive with clubs on all islands of the State of Hawaii, 11 states on the continent and the District of Columbia. We now have sixty component clubs participating in those activities that our founders envisioned – historic preservation, education of Native Hawaiian students, protection of traditional culture and advocacy for Hawaiian Home Lands. We have also been very active in the support and protection of the public land trust that was created with the annexation of Hawai'i by the United States in 1898. These lands, were the original public, government and crown lands of the Kingdom of Hawai'i and we taken and held in a federal and later with the admission of Hawai'i as a State, in a State public land trust for the benefit of the people of Hawai'i in general and the native Hawaiian people, in particular.

The purpose of HB 1627, HD1 is to establish procedures for State recognition of a first nation government. We note that this House Draft closes matches the H.R. 2314 The Native Hawaiian Government Reorganization Act, with the amendments that were submitted by then Governor Linda Lingle. It was a conservative approach to the recognition of the first nation, intending to retain much of the powers of state government and subject everything to negotiation rather than simply permitting certain powers to accrue, as a first nation.

While the Association of Hawaiian Civic Clubs has always supported Sen. Akaka and his efforts to gain recognition of Native Hawaiians, it has been difficult to ascertain the amendments being proposed To HR 2314 and to identify the most contemporary version before Congress. It is therefore, heartening, that we can respond to and monitor the progress of a proposed **State** recognition bill for the first peoples of Hawai'i nei.

We note that this proposed version tends to mirror Sen. Akaka's bill, certain changes exist, specifically deleting language that relates to Federal programs, Indian Tribal programs, the Department of Interior jurisdiction, and the Federal Office of Hawaiian Relations. We agree with these deletions.

However, we also noticed that the broader section of governmental authority to the first nation as articulated in the Akaka bill under Section 9 "Reaffirmation of Delegation of Federal Authority to State of Hawaii; Governmental Authority and Powers; Negotiations; Claims (1) In General " has been deleted. The deletions include exercise of governmental authority over transferred lands, natural resources and other assets. It also deletes the exercise of civil and criminal jurisdictions, the exercise of the authority to tax and other residual authorities. All of these, we expect are now subject to negotiation.

On the face of it, we can see no reason to disagree with these deletions, rather we acknowledge that this is a starting point. It is a new beginning of recognition of the first peoples of Hawai'i. We are supportive of taking these first steps together and look forward to joining in the long discussions ahead.

Thank you for your consideration of our testimony . We urge your support of these measure.

For further information please contact our Government Relations Chair, Jalna Keala at jalna.keala2@hawaiiantel.net.

Testimony for HB1627 on 2/17/2011 2:30:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Saturday, February 12, 2011 7:07 AM**To:** JUDtestimony**Cc:** Ken_Conklin@yahoo.com

Testimony for JUD 2/17/2011 2:30:00 PM HB1627

Conference room: 325

Testifier position: oppose

Testifier will be present: No

Submitted by: Kenneth R. Conklin, Ph.D.

Organization: Individual

Address:

Phone:

E-mail: Ken_Conklin@yahoo.com

Submitted on: 2/12/2011

Comments:

To the House Committee on Judiciary:

HB1627 is fundamentally the same as the federal Hawaiian Government Reorganization bill, also known as the Akaka bill; except that instead of having the federal government recognize the Akaka tribe, this bill would have only the State of Hawaii recognizing that tribe.

The clear purpose of the bill is to authorize the creation of an entity with governmental powers, but restricted to people who have at least one drop of Hawaiian native blood.

That racist concept is unconstitutional under the 14th Amendment of the U.S. Constitution. Since all legislators have taken an oath to support and defend the U.S. Constitution, any legislator who votes in favor of this bill has thereby violated that oath and must resign from office.

The concept of this bill also violates the first sentence of the first Constitution of the Kingdom of Hawaii, sometimes called the "kokokahi" (one blood) sentence, which proclaimed "Ua hana mai ke Akua i na lahuikanaka a pau i ke koko hookahi, e noho like lakou ma ka honua nei me ke kuikahi, a me ka pomaikai." In English, it can be translated into modern usage as follows: "God has made of one blood all races of people to dwell upon this Earth in unity and blessedness." What a beautiful and eloquently expressed concept! HB1627 is an ugly and disgusting violation of that kokokahi sentence.

King Kamehameha III wrote the kokokahi sentence as the first sentence of his Declaration of Rights in 1839, which was then incorporated in its entirety to become the preamble of the Constitution of 1840. In making that proclamation the King exercised sovereignty and self-determination on behalf of his native people, and on behalf of all people of all races who were subjects and residents of his Kingdom. The U.S. Commission on Civil Rights quoted the kokokahi sentence as a major reason for opposing the Akaka bill. Their letter, on official stationery, can be seen at www.angelfire.com/biq09a/AkakaUSCCR082809.pdf

The oldest bones in Mauna Ala (The Royal Mausoleum) are the bones of John Young (Olohana), an Englishman without whom Kamehameha The Great could not have unified

the Kingdom. Young's bones are buried below a monument designed to look like a heiau, and guarded by a pair of pulo'ulo'u (sacred taboo sticks). Young served as battlefield general, and member of the council of ruling chiefs. Kamehameha appointed him as Governor of Hawaii Island and gave him a home immediately next to the great Pu'ukohola Heiau. Young's son, Keoni Ana, was Kuhina Nui, second in rank only to King Kamehameha III, and his signature was required alongside the King's before any act of the legislature could become law (those are the only two signatures on the second Kingdom Constitution of 1852). His granddaughter was Queen Emma. Hundreds of other people with no native blood served as cabinet ministers, members of the legislature, judges, and department heads throughout the Kingdom's history.

Today's Hawaiians are ethically bound to respect the wisdom of their ancestors. They are also legally and morally bound to respect the full partnership between natives and non-natives which enabled the Kingdom to be established and to thrive. All subjects of the Kingdom were fully equal under Kingdom laws, regardless of race, including voting rights and property rights. When partners work together in full equality to create and sustain a business or nation, it is morally and legally wrong for one partner to toss out or set aside or segregate other partners.

A zealous minority within the ethnic Hawaiian minority demands racial separatism. Should we allow that? Will you legislators be accomplices to such evil?

Consider the historical struggle for identity within the African-American community. Elijah Muhammad's Nation of Islam, and the early Malcolm X, advocated racial separatism and portrayed the white man as a devil. Some radicals called for setting aside several southern states for a Nation of New Africa. Fortunately Martin Luther King used Gandhi's spiritual tool of non-violence to appeal to people's inner goodness, which led to full integration. After his pilgrimage to Mecca Malcolm X understood the universal brotherhood of people of all races, but was gunned down by the separatists when he tried to persuade them to pursue integration.

In Hawaii we see a similar struggle now unfolding. Some demagogues use racial grievances to stir up hatred, and leaders use victimhood statistics to build wealthy and powerful institutions on the backs of needy people who end up getting very little help.

The Akaka bill, and HB1627, would empower the demagogues and racial separatists. These bills are supported primarily by large, wealthy institutions; not by the actual people they claim to represent. Institutions like the \$400 Million Office of Hawaiian Affairs, and the \$9 Billion Kamehameha Schools, seek to entrench their political power. They want an exemption from the 14th Amendment requirement that all persons be given the equal protection of the laws regardless of race.

But Hawaiians are voting with their feet against the Akaka bill. After seven years and untold millions of dollars in state government money for advertising (and free T-shirts!), fewer than one-fourth of those eligible have signed up for the Kau Inoa racial registry likely to be used as a membership roll for the Akaka tribe. Sadly, if either the Akaka bill or HB1627 passes then the separatists will be able to create their tribe even though the majority of ethnic Hawaiians oppose the idea. And 80% of Hawaii's people, having no native blood, will see our beautiful Hawaii carved up without even asking us.

Do the racial separatists have a right to go off in a corner and create their own private club for members only? Perhaps. But should the rest of us give them our encouragement and our resources to enable them to do that? Absolutely not.

It's time for this legislature to stop encouraging racial separatism. It's time to stand up in support of unity and equality. Just say no to HB1627 and all other bills motivated by the same mentality.

You really should read my 302-page book (I gave a copy to my Representative Ken Ito two years ago, so perhaps you can ask him to borrow it; or go to the library for one of its 27 copies):

"Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State"

<http://tinyurl.com/2a9fqa>

The HD1 amended version of this bill sets the effective date at July 1, 2093. But do not be misled to think this bill has no teeth on account of its lengthy delay in effective date. Passing this bill would have very real effects immediately. It would put the State of Hawaii on record as granting (eventual) state recognition to this fake Indian tribe; and thereby the so-called tribe could assert the "political question doctrine" and other legal defenses against equal protection lawsuits under the 14th Amendment. Regardless whether such a legal defense is valid, the mere assertion of it, bolstered by passage of this bill, would tie up the courts in knots for many years, forestalling a decision on the merits.

Testimony for HB1627 on 2/17/2011 2:30:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 14, 2011 8:05 AM

To: JUDtestimony

Cc: garrysmith@juno.com

Testimony for JUD 2/17/2011 2:30:00 PM HB1627

Conference room: 325

Testifier position: oppose

Testifier will be present: Yes

Submitted by: Garry P. Smith

Organization: Individual

Address:

Phone:

E-mail: garrysmith@juno.com

Submitted on: 2/14/2011

Comments:

This is certainly unconstitutional both state and federal. How can the state recognize native Hawaiians as a tribe when they are not and never have been a tribe. The U.S. Supreme Court has ruled twice that native Hawaiians are not a political group or native Indians, they are a race of people and therefore any recognition from the state would be of a race. Race based programs not based on need are demeaning to all. Picking one person for special benefits based only on their ancestry is totally unconstitutional and an affront to all Americans. This, if passed, will end up in court and make some attorney a lot of money.

Testimony for HB1627 on 2/17/2011 2:30:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 15, 2011 12:48 PM

To: JUDtestimony

Cc: josephpollarddo@yahoo.com

Testimony for JUD 2/17/2011 2:30:00 PM HB1627

Conference room: 325

Testifier position: oppose

Testifier will be present: No

Submitted by: Joseph Pollard

Organization: Individual

Address:

Phone:

E-mail: josephpollarddo@yahoo.com

Submitted on: 2/15/2011

Comments:

JUDtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 16, 2011 7:55 PM
To: JUDtestimony
Cc: shaglund@hotmail.com
Subject: Testimony for HB1627 on 2/17/2011 2:30:00 PM

Testimony for JUD 2/17/2011 2:30:00 PM HB1627

Conference room: 325
Testifier position: comments only
Testifier will be present: No
Submitted by: Sue Haglund
Organization: Individual
Address:
Phone:
E-mail: shaglund@hotmail.com
Submitted on: 2/16/2011

Comments:

HB 1627 sets a precedent of a foreseeable process with unforeseeable consequences.

I am Dule Indian of Panama and I speak here as an indigenous person from Central America. Also I am a doctoral candidate at University of Hawaii-Manoa's Political Science department specializing in Indigenous Politics.

How can one governing entity fulfill an established procedural process for another?

How can one indigenous person tell his/her brother or sister he/she is not indigenous enough?

I support the intent of the bill in recognizing an autonomous Hawaiian nation, but I oppose the legislative measure's in creating a 'commission' appointed by a governor, and the required criteria in defining 'qualified Native Hawaiian constituents' yet fails to establish required criteria of a commission nine-member appointees.

The establishment of a process and a council where a governor appoints its members takes away the voice of Native Hawaiians.

Let Native Hawaiians create a structure themselves not any other non-Native Hawaiian entity, it is not the place of non-Native Hawaiian entity or institution to authorize or regulate and control procedural process for Native Hawaiians.

Although commission is a term used it is a working group that should be comprised of and reflect the diversity of ALL Native Hawaiians. It should be that such working group has all legitimacy in the eyes of ALL Native Hawaiians not just a selected few or like-minded person.

Although I support the intent of the bill, I cannot fully support it due to section 5 which describes the requirement of a registry list where Native Hawaiians have to prove who they are, their familial origins and how Native Hawaiian are they.

If you want to fully understand the ramifications in establishing a registry roll of eligible and qualified Native Hawaiians, take a look at the historical relationship between US and Native Americans. Just to name a few for instance:

- 1-The Dawes Commission a commission to deal with the Five Civilized Tribes authorized by US Congress in 1893 to handle allotment plan
- 2- and later 1896 law enacted by Congress had the Dawes Commission responsible in creating and gathering a members list of tribal citizenship;
- 3-Soon after 1898 Curtis Act was set in

place to dissolve all types of Native American governments thus subjecting them to US federal laws and Bureau of Indian Affairs (BIA) and a federal governmental entity responsible in defining Native American citizenship.

How does this relate to Native Hawaiians?

HB 1627 sets a symptomatic system of racial discriminatory practices: blood quantum. Blood quantum occurs automatically when you have a governor-appointed commission responsible in determining who is Native Hawaiian and how Native Hawaiian you are. HB 1627 does not establish a proper representation of Native Hawaiian voice. The state of Hawaii can recognize Native Hawaiians as indigenous people of the Hawaiian Islands; but the state does not have authority in determining who is Native Hawaiian or not through speculative controlled laws that set to dictate the citizenship and indigenous-ness of a people.