OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committees on Hawaiian Affairs and on Human Services and Housing

From: Cheryl Kakazu Park, Director

Date: February 11, 2015, 1:30 p.m.
State Capitol, Conference Room 224

Re: Testimony on S.B. No. 992
Relating to Native Hawaiian Children

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") takes no position on this bill, which would create a Native Hawaiian Welfare Act establishing a na kupuna tribunal and granting it exclusive jurisdiction over child custody proceedings involving Native Hawaiian children. OIP has technical comments regarding a confidentiality provision at page 11 of the bill, lines 9-12.

To create confidentiality for the information in question, **the bill should state that "the information shall not be disclosed under chapter 92F"** instead of stating as it currently does that "the information shall not be subject to chapter 92F or the Freedom of Information Act (5 U.S.C. 552), as amended."

The Uniform Information Practices Act ("UIPA"), chapter 92F, HRS, recognizes and gives effect to confidentiality statutes in its exceptions at sections 92F-13(4) and 92F-22(5). Thus, it is only necessary to state that the information "shall not be disclosed" under chapter 92F to keep the information confidential. By

stating, as the bill does, that the information "shall not be subject to chapter 92F," an agency would have no obligation to even inform a requester that the request was denied and provide the reason, as would normally be required when denying a request under the UIPA.

Please note also that the Freedom of Information Act is the federal counterpart to Hawaii's UIPA and as such applies to federal government agencies, not to state or county agencies. Further, a state law purporting to create an exception to a federal law would not be effective in any case. OIP therefore recommends that the reference to the Freedom of Information Act be deleted, as in OIP's suggested language above.

Thank you for the opportunity to testify.

To: Senator Maile Shimabukuro, Chair of Committee on Hawaiian Affairs

Senator Suzie Chun-Oakland, Chair of Committee of Human Services and Housing

Joint Committees Members

RE: SENATE BILL 992 RELATING TO NATIVE HAWAIIAN CHILDREN

Date: Wednesday, February 11, 2015

Time: 1:30 PM

Room: 224

Good afternoon, Madams chair and committees members. My name is Maile Kehaulani Hallums, Leo Hano (Voice) o Na Kupuna Tribunal in support of Senate Bill 992. We are privileged to once again see this measure before us today, without revision, just like we had in 2006 then again in 2007. Since 2006 we have had several opportunities to exercise many components of this bill and to test the validity of its merits in cooperation with our own AG's office, in concert with the Administration for Child Welfare (hereinafter referred to as "CPS"), through the Department of Human Services (hereinafter referred to as "the Dept"), with the support of our Family Court system to guide us, Honolulu Police Department (HPD) Kapolei Unit, and especially with the encouragement of our august body of legislators. But most importantly, with the trust and faith of the families and communities who depended on our knowledge and strength of purpose while attending to these matters both here in Hawai'i, and in Chicago, Illinois, Phoenix, Arizona and Salt Lake City, Utah.

In previous testimonies, concerns were voiced regarding legalese language of the bill, financing for the implementation of the bill, and experience of na kupuna to address the issues raised in this measure of the care, treatment and the "how-to" of child welfare. The House Judiciary Committee supported HB1895 and we leave the language to its expertise and suggest the perusal of the Indian Child Welfare Act in its guide to correctness and application. The Department and CPS supported the intent and validity of the bill and applied many of our "ways of life" toward a more culturally sensitive approach in tandem with its existing services and programs and we look forward to a more collaborative partnership with it. The Ironworkers Union stood in full favor of the bill because it experienced firsthand the economic strain the breakup of family posed upon its members experiencing such matters and we are committed to a relationship whereby job development and placement through apprenticeship programs and training initiatives may be realized. And, finally, the Office of Hawaiian Affairs, while appreciating the intent, opposed the bill because they questioned the experience and knowledge of na kupuna, and furthermore, it objected to the term "First Nation of Hawai'i". Therefore, to that end we received neither support nor cooperation from a legislatively mandated entity whose existence was to assist in matters such as this, perhaps we may be grossly misinformed as to its purpose.

Begging these committees' indulgence, this Leo Hano will speak to those components of SB992 we suggest be clarified, modified or omitted because of the impracticality of its application or because it may dilute the integrity of its merits:

1. PART I, SECTION 2, Subsection 2, Definitions. Modify to include: "First Nation of Hawai'I" means that Nation of Hawai'i which existed prior to the overthrow of its monarchial government. (Reason: Through its political upheaval, Hawai'i, once recognized as an independent nation in the international arena, is now considered a state of the United States of America, the United States being our "new" or "second" nation.)
2. PART I, SECTION 2, Subsection 11(b). Parental rights; withdrawal of consent to voluntary termination. Modify to include that parent has 60 days to rescind consent. (Reason: By 90 days the child is very likely to have bonded with its new family, and its return could prove harmful to the child's development as it begins to thrive.)
3. PART I, SECTION 2, Subsection 14(a). Return of Custody. Please omit or modify as this paragraph closely parallels #2 above.
4. PART I, SECTION 2, Subsection 16 (b)(1). Reassumption of jurisdiction over child custody proceedings. Modify to strike "sovereign roster" and replace with language more akin to census data. (Reason: A "roster" leads to the misunderstanding that only those on "a list" may benefit from the intent of this bill. A classic example is what we have experienced with Kau Inoa and Kana'I'oluwalu, both creating such controversy as to separate the people instead of creating an instrument of unity.)
5. PART II, SECTION 31. OTHER PROGRAMS. Grants for native Hawaiian programs and child welfare codes. Include "..from Ceded Land Trust". (Reason: The Trust was especially created to assist native Hawaiians and this bill meets the criteria.)
6. PART III, SECTION 10, 2nd paragraph. Omit "departments of health, education, and human services". Modify to include native Hawaiian educators, health experts, and other persons as may be approved by Na Kupuna Tribunal sole discretion. (Reason: The study needs to reflect the dual challenges which hamper social cohesion and among our children and families.)
7. PART IV, SECTION 11 (a) and (b). Modify to extend the pilot project to 2 years instead of 1 year for optimum, measurable results. Further modify to include 25 cases as 5 from Oahu, 5 from Hawai'i, 5 from Kaua'I/Ni'ihau, 5 from Maui and 5 from Lana'i/Moloka'i. (Reason: Each island has its own unique challenges and are not subject to "one size fits all". It further encourages a better application of traditional practices indicative of each island.)
8. PART V, SECTION 12. Modify to include: "Na Kupuna Tribunal shall designate members of the task force and together shall submit a report to the legislature..". (Reason: Most of the organizations or agencies listed are directly responsible for much of the horrors we are attempting to eliminate or correct. 12,000 children unaccounted for leaves much to be desired to say the least!)
9. PART VI, SECTION 16. Revise to read "This Act shall take effect on July 1, 2017." (The time is NOW.)

We realize, in the philosophy of our late revered and prominent Reverend Akaiko Akana, that change much be gradually progressive so that we can take full advantage of its benefits; that we must recognize when change needs to happen; and finally, we must be able to sustain change once it occurs. Our late Congressional Senator Daniel Inouye paved the way for this bill to be enacted into Hawai'i Revised Statutes when he thoughtfully and steadfastly lobbied to include"Native Hawaiian" as designated in the Administration for Native Americans out of which come the Indian Child Welfare Act. What better tribute than to follow suit with the Native Hawaiian Child Welfare Act. Upon its enactment into HRS,

this body will have the unique distinction of being the only State of the United States to have its law obeyed in all 50 states superseding their own.

We applaud your efforts and congratulate you for your application of United States Public Law 103-150, which in part “expresses its commitment” to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people and further urges the President to support such reconciliatory efforts.

‘Owau ‘iho no,

Leo Hano, Maile K Hallums

Na Kupuna Tribunal, et al

Phone: 808 728 4179

Email: hallumsmaile@yahoo.com

To the attention of:

Madam Chairperson of the Senate Human Services and Housing Committee,
Madam Chairperson of the Senate Hawaiian Affairs Committee and,
Members of the Joint Committees

RE: Senate Bill 992

Wednesday, 11 February 2015

1:30p, Conference Room 224

Aloha, Madam Chairs and Joint Committees members. Thank you that I may plead for our support of Senate Bill 992 relating to Native Hawaiian children on this day, February 11, 2015.

My name is Odetta Kapuaonalani Kauhane NeSmith, fourth child of eleven children, second girl of eight daughters of Samuel Kalola Kekuawela Kauhane, Sr and Pine Annie Kealoha Ka'aiali'I Borges Kauhane. Samuel is the third child of Charles Fredrick Moloka'I Kauhane and Lucy Kawahinehelelaokaiona Kanakaoluna and Pine is the second of six daughters of James Ka'aiali'I and Elizabeth Kapeka Kalia Kakalia Ka'aiali'I Kaulahao.

I am wife of 60 years to Willie Rhea NeSmith Jr who has been deceased for 17 years. On April 3rd, I will be 80 years in this life. I am birth mother of 5 sons, 2 daughters and hanai mother of 12 with 27 great grandchildren. Between 1954-1957, I served in the US Army stationed in Germany where I was married to my husband who was a member of the US Airforce (1955-1958), also stationed in Germany. Our eldest son is a five year veteran of the US Airforce and our fourth son earned his doctorate degree from Waikata in New Zealand on Polynesian Language and Culture, speaks 5 languages and teaches at the University of Hawai'I at Manoa.

As its Po'o, I testify on behalf of Na Kupuna O Kekaha of Kaua'i. We are especially focused on the issue of the involuntary termination of parental rights of Native Hawaiian parents in order to remove their children from their homes to be available for adoption and/or to be placed in foster homes and also become wards of the state, which is a foreign behavior to Hawaiian cultural practice. Our deepest concern is that as the children of Hawaiian ancestry are fostered to non-Hawaiian families, genocide of a nation may eventually occur.

Today, we, the kupuna, are aware of the fear and we are cognizant of the diminishing number of Kanaka Maoli. We feel this bill will be instrumental in preventing this probable prelude to genocide from occurring.

Mahalo a nui loa no hoaloha ana i ku'u no 'olelo hou. Aloha no.

Odetta K NeSmith, Po'o

Na Kupuna O Kekaha

P.O. Box 1132

Waimea, Kaua'I 96796

Phone: (808) 384-9771

From:	mailinglist@capitol.hawaii.gov
To:	HWNTestimony
Cc:	hallumsmaile@yahoo.com
Subject:	Submitted testimony for SB992 on Feb 11, 2015 13:30PM
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SB992
Submitted on: 2/11/2015
Testimony for HWN/HSH on Feb 11, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
pearl campbell	na kupuna o waianae	Support	Yes

Comments:

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Submitted on: 2/11/2015
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Submitted By	Organization	Testifier Position	Present at Hearing
Pearl L Lewis	Legacy Coalition, Inc	Support	Yes

Comments:

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SB992
Submitted on: 2/9/2015
Testimony for HWN/HSH on Feb 11, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Puanani Rogers	Ho`okipa Network - Kauai	Oppose	No

Comments: Hands off our children unless you first have permission from their parents and grandparents.

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February 9, 2015

Maile S.L. Shimabukuro
Chair
Senate Committee on Hawaiian Affairs
Hawaii State Capitol
Room 222
415 South Beretania Street
Honolulu, HI 96813

Re: SB 992

The American Academy of Adoption Attorneys (Academy) submits this letter regarding Senate Bill 992.

The Academy is a not-for-profit organization of attorneys, judges, and law professors throughout the United States and Canada, who have distinguished themselves in the field of adoption law and who are dedicated to the highest standards of practice. The Academy's mission is to support the rights of children to live in safe, permanent homes with loving families, to protect the interests of all parties to adoptions, and to assist in the orderly and legal process of adoption. The Academy's work includes promoting the reform of adoption laws and disseminating information on ethical adoption practices. The Academy regularly conducts seminars for attorneys and the judiciary on the Indian Child Welfare Act (ICWA) and the rights of birth

parents and children. The Academy has been, and is actively involved in legislative efforts to amend ICWA and to establish federal protections for birth parents.

The Academy has grave concerns regarding the constitutionality of SB 992. The Academy believes that the cultural interests of all children should always be a consideration in determining a child's placement. However, the paramount consideration that should determine the placement of a child is the child's best interest and which considers the child's needs. The Academy, unfortunately, must state its opposition to SB 992 as we believe the legislation to be unconstitutional for the reasons set forth below.

The Constitutional Authority Permitting The Enactment Of The Federal ICWA

In its enactment of the federal ICWA, Congress set forth the following Congressional findings:

> **Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people**, the Congress finds --
> (1) that clause 3, section 8, article I of the United States Constitution provides that **"The Congress shall have Power . . . To regulate Commerce . . . with Indian tribes** [Tribes]" and, through this and other constitutional authority, **Congress has plenary power over Indian affairs**;
> (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
> (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that **the United States has a direct interest, as trustee,** in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
> (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
> (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.[1] (Emphasis added). 25 U.S.C. §1901.

[1] 25 U.S.C. §1901 (2006) (emphasis added).

The ICWA was enacted pursuant to Congress' power to regulate commerce and based upon its trustee relationship with Indian tribes.[2] The constitutionality of the ICWA has been upheld by lower courts, which often cite a 1974 United States Supreme Court decision, *Morton v. Mancari*[3] upholding a law which granted a hiring preference for Native Americans by the Bureau of Indian Affairs. In this often cited opinion, the Court, stated, "The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities . . [4].

Citing *Morton*, the Oregon Court of Appeals upheld the constitutionality of the ICWA and found it did not violate the Equal Protection Clause of the Fifth Amendment of the U.S. Constitution.[5] In upholding the constitutionality of the ICWA, the Oregon Court of Appeals applied the *Morton* test stating "The same is true of the ICWA, which nowhere requires specific quantum of Indian blood for a person to come under its protection."[6] The Oregon Court found that the authority for the enactment and constitutionality of the federal ICWA is in "the fulfillment of Congress'[s] unique obligation toward the Indians. . ."[7]

The *Morton* test, was also at the heart of *Rice v. Cayetano*[8] the 2000 U.S. Supreme Court decision that invalidated, and found unconstitutional, a Hawaiian state constitutional provision that required members of the Office of Hawaiian Affairs - which administered earned income from land held by the state - to be "Hawaiian" and be elected only by "Hawaiians." The state

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[2] *See* United States v. Kagama, 118 U.S. 375, 378-84 (1886) (stating that Congress's power of Indian affairs derived from the Commerce Clause and from Indian Tribes' dependence on the United States); Bd. of Cnty. Comm'rs v. Seber, 318 U.S. 705, 715 (1943) (stating that "federal power to regulate and protect the Indians and their property against interference even by a state has been recognized" not only because the Constitution mentioned this power with respect to commerce, but also because of Congress's duty "to prepare the Indians to take their place as independent, qualified members of the modern body politic").

[3] 417 U.S. 535 (1974).

[4] *Id.* at 554.

[5] *In re* Application of Angus, 655 P.2d 208, 213 (Or. Ct. App. 1983).

[6] *Id. at 556.*

[7] *Id.* (quoting *Morton*, 417 U.S. at 555).

[8] 528 U.S. 495 (2000).

statute defined "Hawaiians" as "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii."[9]

In striking down Hawaii's constitutional provision, the Supreme Court emphasized that the case differed from cases involving Indian tribes. In the *Rice* decision, the Court cited the *Morton* test with approval and stated that to avoid being an unlawful racial classification; the preference could not be directed to a racial group but rather members of federally recognized tribes.[10] The *Rice* decision clearly applies to the SB 992 and the reasons it would be found unconstitutional.

State ICWA Laws Cannot Expand Statutory Rights Granted By The Federal ICWA

While Congress has the authority to enact the ICWA, based upon the U.S. government's unique trustee relationship with federally recognized tribes, no such trust relationship exists between Indian tribes and the states. Even if SB 992 involved federally recognized tribes, (which it does not) it would still be unconstitutional.

The Iowa Supreme Court has addressed this issue regarding Iowa's ICWA law.

In its decision, *In re A.W. and S.W.*[11], the Iowa Supreme Court found section §232B.3(6) of the Iowa Code to be unconstitutional. The Iowa Supreme Court stated that given the limits of the state authority to legislate in favor of members of federally recognized tribes, Iowa's ICWA law's expansion of the definition of "Indian Child" to include ethnic Indians not eligible for tribal membership constituted a racial classification that does not survive a strict scrutiny equal protection analysis.[12] The Iowa Supreme Court concluded that the ICWA's definition of an Indian child represents the boundary of federal trust authority and limits a state to only enacting

[9] *Id.* at 409 (quoting HAW. REV. STAT. §10-2 (1993)).
[10] *Id.* at 519-20.
[11] 741 N.W.2d 793 (Iowa) 2007.
[12] *Id.* at 811.

laws as to children who are members or are eligible for membership in a federally recognized Indian tribe.[13] The court further ruled that given the limits of governmental authority, Iowa's expanded definition constituted a racial classification which does not survive a strict scrutiny equal protection analysis.[14]

What is widely misunderstood is that states may only legislate within the boundaries of the delegated federal Indian trust authority and the state's interest is defined by those boundaries. The two situations wherein states may legislate on behalf of Native Americans in order to further the purposes of the federal trust authority are: "[I]n the first, the state acts under a particularized, state-specific congressional delegation of jurisdiction; in the second, the state acts to accommodate federal supremacy in the field by enforcing congressionally created federal obligations toward Indian tribes that the federal government would otherwise enforce on its own.[15] Under the *delegation of authority* category, state legislatures may only enact state ICWA laws within the boundaries of the Congressional authority granted to the states to enact legislation favoring Native Americans.[16] Thus, any state ICWA law that grants rights to Indian tribes or individuals is beyond the confines of the Congressional authority delegated to the states is susceptible to being challenged on constitutional grounds. State laws that grant increased tribal rights beyond those rights authorized by the ICWA and/or that treat children and parents differently should be challenged, as such laws constitute government imposed discrimination based upon race.

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[13] *Id.*

[14] *Id.*

[15] Malabad v. N. Slope Borough, 70 P.3d 416, 423 (Alaska 2003); *see also* Puget Sound Gillnetters Ass'n v. Moos, 603 P.2d 819, 822-24 (Wash. 1979); Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658, 695-96 (1979).

[16] In re A.W.., 741 N.W.2d 793, 808 (Iowa) 2007

In *Palmore v. Sidoti*,[17] the U.S. Supreme Court struck down a Florida Court of Appeals decision that had affirmed a trial court's ruling removing a child from his mother's custody and awarding custody to the father solely because mother had remarried a member of a minority race. The Supreme Court stated that the goal of the Florida law is to mandate custody determinations based upon the best interests of the child, and "the goal of granting custody based on the best interests of the child is indisputably a substantial government interest for purposes of the Equal Protection Clause."[18] The Supreme Court found that the Florida rulings had violated the mother and child's constitutional rights of equal protection, pursuant to the Fourteenth Amendment.[19] *The Palmore* decision should be applicable to cases involving state ICWA laws that use race as the controlling reason in determining the fate of the Indian child.

Additionally, the Multiethnic Placement Act, 42 U.S.C. §1996b(1) states:

> (1) Prohibited conduct. A person or government that is involved in adoption or foster care placements may not - -
> (A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or
> (B) delay or deny placement of a child for adoption or into foster care, on the basis of the race, color or national origin of the adoptive or foster parent, or the child, involved.[20]

While the Multiethnic Placement Act states that it should not be construed to affect the application of the ICWA of 1978, it clearly is applicable to state laws and bans such laws from determining a child's adoptive or foster care placement based upon race, color or national origin.[21]

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[17] 466 U.S. 429 (1984).
[18] *Id.* at 432-34.
[19] *Id.* at 433.
[20] 42 U.S.C. §1996b(1) (2006).
[21] *Id* at §1996b(3).

Conclusion

The American Academy of Adoption Attorneys has concluded, based upon the statutes, findings, and case law cited above, that SB 992, as drafted, is unconstitutional and therefore should not be enacted. The Academy would welcome the opportunity to further explain its position and/or discuss this legislation.

Sincerely,

Laurie B. Goldheim, Esq.
President
American Academy of Adoption Attorneys

Philip (Jay) McCarthy, Jr., Esq.
Co-Chair Indian Child Welfare Act Committee

Mark Fiddler, Esq.
Co-Chair Indian Child Welfare Act Committee

Center for Hawaiian Sovereignty Studies
46-255 Kahuhipa St. Suite 1205
Kane'ohe, HI 96744
Tel/Fax (808) 247-7942
Kenneth R. Conklin, Ph.D. Executive Director
e-mail Ken_Conklin@yahoo.com
Unity, Equality, Aloha for all

To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS
and
SENATE COMMITTEE ON HUMAN SERVICES AND HOUSING

Re: SB 992 RELATING TO NATIVE HAWAIIAN CHILDREN.
Creates the Native Hawaiian Welfare Act establishing the na kupuna tribunal which is granted exclusive jurisdiction over child custody proceedings involving Native Hawaiian children. Establishes a one-year pilot project prior to full implementation of the Act.

For hearing on Wednesday, February 11, 2015

TESTIMONY IN OPPOSITION

SB992 is a terrible bill. Explaining why would take more words than are in the bill itself! So I'll raise only a few disconnected issues for you to consider.

My dear legislators, are you familiar with the Indian Child Welfare Act? In particular, are you familiar with the lawsuit "Adoptive Couple v. Baby Girl" (also known as the Baby Veronica case)? Google it. Study it. The U.S. Supreme Court finally decided it on a technicality in a 5-4 vote on June 25, 2013, following nearly the entire first 4 years of a child's life while she was handed back and forth between different natural and adoptive parents and adoption agencies depending on the progress of litigation through numerous courts and jurisdictions. The absentee biological father had signed papers giving up all parental rights; but after the baby's biological mother gave Veronica up for adoption, the Cherokee Nation intervened to assert tribal custody because the father had a smidgen of Cherokee ancestry which gave Veronica 3/256 Cherokee blood. Imagine how confused that poor child must be! And what about the other 253/256 of her genetic heritage? One thing that was clear in the legal arguments and court decisions -- the "best interests of the child", which is the usual basis for child-custody decisions, was simply irrelevant because the ICWA says that even a small percentage of native blood trumps all other considerations -- exactly like SB992.

Here in Hawaii there are almost no "pure Hawaiians." Probably 3/4 of all so-called "Native Hawaiians" have more than 3/4 of their ancestry being non-Hawaiian. Why should a child whose ancestry is overwhelmingly non-Hawaiian be regarded as "Native Hawaiian" to the exclusion of all his other ancestries? Why should a committee of elderly ethnic Hawaiians be allowed to sit in judgment and dictate a child's future over the objections of parents and other family members whose biological and cultural ties to the child are far stronger?

This bill would enshrine both racial supremacy and racial separatism on stilts. It explicitly envisions enclaves where the demographics become increasingly ethnic Hawaiian, and the people living there are governed by their own laws which are significantly different from the rest of Hawaii. It reminds me of recent discussions about Paris after the murders of the Charlie Hebdo journalists -- there are apparently areas in Paris and other European towns where Muslims live in self-segregated enclaves under Sharia (Muslim) law and where non-Muslims and French civil authorities are afraid to go. Is that the kind of Hawaii we want? And this bill says that any smidgen of "Native Hawaiian" blood in a child determines that a "Na Kupuna tribunal" of Native Hawaiian elders will have the right to intervene in any adoption or child-custody case, even in state courts, even across state lines! The Kupuna Tribunal would have total decision-making authority above all other racial and cultural groups and above all normal divorce and adoption procedures. Who the hell are they to dictate to everyone else! Such arrogance would certainly spur bitter anger and anti-Hawaiian racial hostility -- and justifiably so!

The bill says "No involuntary termination of parental rights may be ordered." Really? Several times every year we see news stories about children being tortured by their own mother or custodial aunty (remember "Queen" Rita Makekau?) or father (including a soldier who tortured and killed his little girl and was just today sentenced to life in prison when a jury could not agree unanimously on a death sentence). By the way, where is Peter-Boy Kema? Sometimes parental rights should be terminated, in the best interest of the child -- even an ethnic Hawaiian child -- before it's too late.

Adoption across racial lines has become more commonplace throughout America as the years have gone by. But what should we think when the child itself has multiple racial lines in its own genealogy (as is true of nearly all "Native Hawaiians")? A child conceived by impregnation across racial lines should be able to be adopted across

racial lines. Such a child can fit comfortably into any of its racial/ cultural heritages; and in Hawaii's society of many races and cultures, a child would feel comfortable in any home or neighborhood even if none of its biological heritages was represented there.

Hawaii is a beautiful multicolored rainbow. Should re rip the red arc out of the rainbow and put it in one part of the sky, while the green arc goes to a different place? Do not rip us apart.

From: mailinglist@capitol.hawaii.gov
To: HWNTestimony
Cc: piilani@ialoharadio.com
Subject: Submitted testimony for SB992 on Feb 11, 2015 13:30PM
Date: Tuesday, February 10, 2015 2:48:15 PM

SB992
Submitted on: 2/10/2015
Testimony for HWN/HSH on Feb 11, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Devida Pi'ilani Lewis	Individual	Support	No

Comments: I am in full support of this bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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KLEINTOP, LURIA & MEDEIROS

A LIMITED LIABILITY LAW PARTNERSHIP

CHARLES T. KLEINTOP
TIMOTHY LURIA
DYAN M. MEDEIROS

NAOKO C. MIYAMOTO
CATHY Y. MIZUMOTO

DAVIES PACIFIC CENTER, SUITE 480
841 BISHOP STREET
HONOLULU, HAWAIʻI 96813

TELEPHONE:
(808) 524-5183

FAX:
(808) 528-0261

EMAIL:
D.Medeiros@hifamlaw.com

TO: Senator Maile S.L. Shimabukuro, Chair
Senator Brickwood Galuteria, Vice-Chair
Senate Committee on Hawaiian Affairs

Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice-Chair
Senate Committee on Human Services and Housing

FROM: Dyan M. Medeiros
E-Mail: d.medeiros@hifamlaw.com
Phone: 524-5183

HEARING DATE: February 12, 2015 at 1:30 p.m.

RE: Testimony in Opposition to SB992 Relating to Native Hawaiian Children

Good morning Senator Shimabukuro, Senator Galuteria, Senator Chun Oakland, Senator Green, and members of the Committees. My name is Dyan Medeiros. I am a partner at Kleintop, Luria & Medeiros, LLP and have concentrated my practice solely in the area of Family Law for more than sixteen (16) years. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I submit this testimony in opposition to SB992.

As a part-Hawaiian woman born and raised in Hawai'i, I question the need for this bill. While I was raised to understand and appreciate my Hawaiian heritage and culture, I was also raised to understand and appreciate my Chinese and Portuguese heritage and culture. Every family should have the choice to emphasize whatever culture and heritage they wish to. This bill, however, elevates Hawaiian heritage and culture while minimizing other cultures and ethnicities. Since the majority of Hawaiian children are part-Hawaiian, this law could easily send a message that the non-Hawaiian part of these children is not as good as or somehow lesser than their Hawaiian heritage. That is not good for any child's self-esteem.

I also believe this bill is confusing as written. For example it refers to the "Nation of Hawaii" which isn't yet a legally recognized entity. It also specifically defines "Child custody proceeding" to "include hanai placement or lawe hanai placement of, or involuntary termination of parental rights to, a native

Hawaiian child". However, other portions of the bill seem indicate that this bill would actually apply to any custody proceeding, including divorce and paternity cases. This could force a Native Hawaiian family going through a divorce or paternity case to actually have to address their issues in two (2) different forums – the na kupuna tribunal (for custody issues) and the Family Court (for all other issues – property division, child support, etc.). The bill also states that the na kupuna tribunal "shall exclusive jurisdiction over any child custody proceeding" (§4) but later says that the tribunal can waive that jurisdiction. If, however, the tribunal waives its exclusive jurisdiction, then what other court will have jurisdiction?

These are just a few examples of internal inconsistencies and issues with this bill. I believe that there are ways to address the concerns stated in Section 1 of this bill without such a far reaching and problematic bill. For these reason, I oppose SB992.

Thank you.

TO: Senator Maile S.L. Shimabukuro, Chair
Senator Brickwood Galuteria, Vice-Chair
Senate Committee on Hawaiian Affairs

FROM: Jessi L.K. Hall
E-Mail: jhall@coatesandfrey.com
Phone: 524-4854

HEARING DATE: February 11, 2015 at 1:30 p.m.

RE: Testimony in Oppostion to SB992

Good day Senator Shimabukuro, Senator Galuteria, and members of the Committee. My name is Jessi Hall. I am an attorney whose practice concentrates in Family Law. I am also a past Chair of the Family Law Section of the Hawaii State Bar Association. I am writing in opposition to SB992, regarding the creation of the Native Hawaiian Welfare Act.

This Bill seems to be premature. I understand that the language in the Bill is patterned after similar laws for Native American tribes. The significant difference here is that the Native American tribes have their own sovereign governments that oversee these tribunals and set rules and regulations. Hawaiians do not yet have that sovereign government that can manage such a program. Allowing a program like this to stand alone will lead to improper use and potentially corruption of a system whose sole purpose should be the safety and protection of the children.

Also, if nearly half of all children in the foster care program are of Hawaiian descent that means these are Hawaiian parents maltreating their children. This is not *pono*. Children have always been very important in Hawaiian culture. Does it not make more sense to fix the problem first so we do not have so many maltreated Hawaiian children and the cycle of abuse and neglect does not continue? Why not focus on creating programs to assist and educate the parents before the damage is done? If the children are not maltreated they will not need to be taken away from their Hawaiian parents and the parents themselves can instill proper Hawaiian values to their own children.

I understand the desire of the drafters in creating this Bill, but there are many steps that need to be undertaken prior to initiating this program. Thank you for the opportunity to testify in opposition to SB992.

Senator Maile S.L. Shimabukuro, Chair
Senator Brickwood Galuteria, Vice Chair
Committee on Hawaiian Affairs

Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair
Committee on Human Services and Housing

Aloha Chairs Shimabukuro and Chun Oakland, Vice Chairs Galuteria and Green, and members of the committees. My name is Jonathan Callejo, and I am a graduate student at the School of Social Work at the University of Hawaii at Manoa. I am writing in **opposition of SB 992 Relating to Native Hawaiian Children.**

I have worked in the social work and related youth mental health and child welfare services field across 15 years. I was a Child Welfare Services Case Manager and Investigator. My own caseload and experience within the system saw the over-representation of Native Hawaiian youth in foster services and as a Native Hawaiian, I appreciate the concern for sustaining our cultural heritage. However I cannot support this measure as it is currently written.

As noted in the bill, "Approximately 50 percent of the foster care cases under the jurisdiction of the department of human services involve native Hawaiian families". However under Hawaii's triage and differential response procedure for reports, those that end up in the jurisdiction of the department are there because the harm or threat of imminent harm required their removal from the home. Those that remain under the department are there because the home environment has demonstrated an unwillingness or inability to make the changes necessary to support reunification in a timely manner.

This bill would not serve to reduce the number of Native Hawaiian youth at this level of risk, but instead relabel them under the jurisdiction of the tribunal. These would still be children that require that level of out of home placement due to risks to their safety and well-being. If these children are kept within the home despite the safety concerns, then we are trading safety of the child for the family culture. I am also concerned that this bill seeks to limit the parental rights of mothers by mandating how long they must wait before relinquishing their parental rights by making any consent given prior to, or within twelve moths after the birth of the native Hawaiian child not valid.

The bill also seeks to abolish the involuntary termination of parental rights for Native Hawaiians. The family courts may terminate parental rights in this regard when parents abandon their children, leave them in the care of others and not communicate with them, or otherwise fail to support and provide for their children over an extended period of time. They have not attended to their responsibilities as parents for an extended period of time and to the detriment of the child's well-being. Children deserve permanency and stability in their lives with caregivers willing and able to provide for them. Removing the category of involuntary termination of parental rights is also an unacceptable prioritization of family cohesion over child safety and well-being.

I instead urge the committees to focus our efforts elsewhere in this issue. We want to reduce the over-representation of native Hawaiian children at this level of care. Instead of seeking to repair or maintain the family after a significant safety concern when trust has been broken, let's focus on preventing these crisis events from occurring in the first place. Thank you for the opportunity to testify.

Sincerely,

February 10, 2015

Hon. Maile Shimabukuro, Chair
Senate Committee on Hawaiian Affairs
Room 222 – State Capitol
Honolulu, HI 96813
FAX 586 7796
Hon. Suzanne Chun-Oakland, Chair
Senate Committee on Human Services and Housing
Room 226 – State Capitol
Honolulu, HI 96813

Re: S.B. 992, Relating to Native Hawaiian Children

Hearing: Wednesday, February 11, 2015
1:30 p.m.
C.R. 224

Chairs Shimabukuro and Chun-Oakland and Committee Members:

There is great concern in the native Hawaiian community that the present system of placing native Hawaiian children with foster parents is not working, and, that it is detrimental to these children. It is the belief of many in the native Hawaiian community that a native Hawaiian tribunal should be granted exclusive jurisdiction over child custody proceedings involving native Hawaiian children.

As we understand, an identical bill was introduced in the 2007 legislature and passed both houses and was in conference at the end of the session. Apparently, time constraints precluded both houses from working out the differences.

We respectfully request that this measure be passed and forwarded to JDL/WAM.

Respectfully,

Melvin Kahele

Date: February 10, 2015

To: Members of the Committees on Hawaiian Affairs and Human Resources and Housing

From: Naomi Kauhane

Re: Senate Bill 992

Dear Honorable Senators:

My name is Naomi Kauhane and I am the proud parent of two adopted boys ages eight and ten and of Hawaiian decent. I am a Native Hawaiian and my boys and I presently reside in Salt Lake City, Utah.

I believe that Senate Bill 992 would have been helpful as I tried to adopt my two boys over the last seven years. Children need to know that they will be safe and provided for as they grow up to become responsible adults in our community. Families need to know that they are not alone in the intimidating court processes and financial limitations should not deter families from doing what is in the best interest of a child.

While the Legacy Coalition Family Advocate of the Na Kupuna Tribunal gave support to me in the adoption process, our Utah court system did not recognize their jurisdiction. I went ahead and pursued the adoption. How can families afford to adopt children? I certainly could not. The financial implications and going through the hiring and cost for an attorney were terrifying and not knowng how the court system works for adoptions was truly intimidating to me.

Passage of Senate Bill 992 will give parents the security and support knowing there is help available to see them through this process and ensures children are not lost in the child welfare system. Additionally, it is important to me as a native Hawaiian that my children as well as all native Hawaiian children know their heritage and cultural traditions. That is the legacy that I want to leave my boys. I believe that not only my boys but all native Hawaiian children will benefit by the passage of Senate Bill 992.

Respectfully,

Naomi Kauhane

From: mailinglist@capitol.hawaii.gov
To: HWNTestimony
Cc: sophiascorp@gmail.com
Subject: *Submitted testimony for SB992 on Feb 11, 2015 13:30PM*
Date: Wednesday, February 11, 2015 2:02:14 AM

SB992
Submitted on: 2/11/2015
Testimony for HWN/HSH on Feb 11, 2015 13:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Sophia bedford	Individual	Support	No

Comments:

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