



**SCR85/SR33**

**REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS TO CONVENE A TASK FORCE OF HAWAIIAN LEADERS, LEGAL SCHOLARS, AND A BROAD REPRESENTATION OF MEMBERS OF THE HAWAIIAN COMMUNITY TO REVIEW AND CONSIDER WHETHER ITS FIDUCIARY DUTY TO BETTER THE CONDITIONS OF HAWAIIANS AND MANAGE ITS RESOURCES TO MEET THE NEEDS OF HAWAIIAN BENEFICIARIES WOULD BE BETTER SERVED BY HAVING TRUSTEES APPOINTED RATHER THAN ELECTED.**

Senate Committee on Hawaiian Affairs

March 23, 2017

3:00 p.m.

Room 016

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the OHA Board of Trustees **COMMENT** on SCR85/SR33.

As the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians,<sup>1</sup> OHA has substantive obligations to protect the interests of the agency's beneficiaries.<sup>2</sup> OHA is required to serve as the principal public agency in the State of Hawai'i responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians; assess the policies and practices of other agencies impacting Native Hawaiians; and conduct advocacy efforts for Native Hawaiians.<sup>3</sup> OHA is further responsible for managing and administering the funds, real property, and other assets it holds in trust for the benefit of Native Hawaiians.<sup>4</sup> OHA appreciates the intent behind SCR85 and SR33, to ensure that OHA acts in the best interests of its Native Hawaiian beneficiaries.

OHA believes it is essential to recognize that OHA was created as an independent agency built on the goal of Native Hawaiian autonomy and self-determination. The appointment of OHA Trustees by the Judiciary or the Executive Branch would not fulfill the vision of self-determination and could begin to erode OHA's autonomy from the three branches of the State's government. Appointed Trustees may be or feel constrained in their ability to take action in ways that conflict with the interests of those that appoint them, and the lack of an electoral process may also render them less accountable to their constituents. OHA emphasizes that elected Trustees over past decades have moved OHA from a fledgling entity to a multi-faceted agency that provides beneficiaries with a formidable array of programs and services in such areas as health, housing stability, economic well-being, education, land, and culture. Whether an appointed Board of Trustees would have achieved greater results or acted with greater fidelity to the OHA trust is a matter of debate and opinion.

Mahalo nui loa for the opportunity to testify on this measure.

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<sup>1</sup> HAW. CONST. ART. XII, § 5.

<sup>2</sup> See Haw. Rev. Stat. Chapter 10 (2009).

<sup>3</sup> HRS § 10-3 (2009).

<sup>4</sup> HAW. CONST. ART. XII, §§ 5 AND 6.

**From:** mailinglist@capitol.hawaii.gov  
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**Subject:** \*Submitted testimony for SCR85 on Mar 23, 2017 15:00PM\*

**SCR85**

Submitted on: 3/20/2017

Testimony for HWN on Mar 23, 2017 15:00PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kaulana Dameg	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
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**To:** HWNTestimony  
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**SCR85**

Submitted on: 3/21/2017

Testimony for HWN on Mar 23, 2017 15:00PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Maxine Anderson	Individual	Support	No

Comments: As an OHA beneficiary, I SUPPORT this bill and look forward to a time in which OHA trustees are once again actually chosen from and for its beneficiaries.

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**SCR85**

Submitted on: 3/21/2017

Testimony for HWN on Mar 23, 2017 15:00PM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gerard Silva	Individual	Oppose	No

Comments: This would give the Authority's more room for wide spread crooked government. WHEN THE PUBLIC Gets to VOTE THERE IS LESS CHANCE OF COLUTION. If they are apointed you know there will be Colution and a lot of back room politics. We have enough Crooks in Government as it is. We Oppose SCR85

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Unity, Equality, Aloha for all



No: Ke Kōmike no ke Kuleana Hawai‘i ma ka ‘Aha Kenekoa  
No ka ‘Aha Ho‘olohe Malaki 23, 2017

Re: SCR85/SR33

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TESTIMONY IN OPPOSITION

Question: What's wrong with the existing system whereby OHA trustees are elected?

Answer: Hawaii voters might elect trustees who are not strong enough in their zealously for racial entitlement programs, racial separatism, or race-based government; or (heaven forbid!) who might not even have Hawaiian blood.

Problem: Federal court decisions say that all Hawaii voters, regardless of race, can vote for OHA trustees; and all Hawaii voters, regardless of race, can run for and be elected as OHA trustees. Many so-called "non-Hawaiians" (i.e., people with no Hawaiian blood), and even some people who do have Hawaiian blood, might actually believe that all people are equal in the eyes of God and should be treated equally by our government regardless of race. The problem is that voters like that might elect OHA trustees whose views are not sufficiently racist.

Solution: Remove OHA trustees from the scrutiny of the voters. The solution is to have OHA trustees appointed instead of being elected. Because zealous radical racials can put a lot of pressure on whomever makes the appointments, forcing the appointment of OHA trustees who share their views, but who would lose in an election.

Is it possible for zealous radicals to force a Governor (or other appointer) to knuckle under to their demands? Yes indeed. We've seen that quite often. Most recently we saw that happen with the issue of building the 30-meter telescope on Mauna Kea. The radicals used rocks and their own bodies to block the access road; and neither the Hawaii Island mayor nor the Governor had the guts to call out the police or National Guard to haul them away. The radicals made it clear that regardless of the outcome of administrative or court hearings, they would never allow the telescope to be built on Mauna Kea. Where was the "silent majority" who favored putting the telescope on Mauna Kea? They stayed silent. If the issue had been placed on the ballot, the telescope would have already been built. But the radicals won because of weak-kneed bureaucrats and government officials.

If the legislature eventually decides to (propose to) amend the Constitution to make OHA trustees appointed, there will be a federal lawsuit to nullify that amendment, and the lawsuit will succeed. The events of March 2013 make it clear why such a lawsuit will succeed.

Derrick Watson, a Native Hawaiian and Judge in the U.S. District Court in Honolulu, established a precedent in his ruling to block President Trump's executive order regarding immigration from several nations in the Middle East. Judge Watson based his ruling not on what Trump's executive order actually said, not on what the Constitution says about the President's authority over foreign relations, and not on the laws Congress has passed which give the President the right to single out nations or whole classes of people to place restrictions on immigration. No. He didn't even consider those things. Watson said the most important consideration is what's in President Trump's heart, as disclosed by what Trump said about banning Muslims during his Presidential campaign a year ago. Watson decided that Trump's words and actions show his MOTIVE was racial and religious discrimination, even though the actual executive order does not single out race or religion; and even though plenty of Arabs, Africans, and Muslims will continue to immigrate from other nations.

Judge Watson established a precedent when he ruled that the motive of racial/religious discrimination in the heart of the President who wrote the executive order decides the case, even though the actual contents of the executive order, and the expected results of implementing it, show no such discrimination and the President clearly has the authority to issue the order.

So, what about the proposal to make OHA trustees appointed instead of elected?

The motives are clear in looking at the failed bill HB118, and the "whereas" clauses in SCR85/SR33 which share the same purposes.

There were two main proposals in HB118. (1) The bill singled out the recently elected trustee Keli'i Akina. It did that by prohibiting anyone

who is a registered lobbyist from serving as OHA trustee -- and it just so happens that Akina is the only registered lobbyist who holds elective office (he registered as a lobbyist because as President of the non-profit think tank Grassroot Institute he spends time meeting with legislators regarding the need for transparency, accountability, and fiscal responsibility). Written testimony from the racials who probably wrote the bill make it clear that the motive for the bill was to get rid of Akina because he is not sufficiently racist. (2) HB118 contained the explicit language that "No person shall be eligible for election or appointment to the board unless the person is [racially] Hawaiian". Even after a small amendment was made to the bill, the racial requirement for candidacy remained as it was.

The House committee on Hawaiian affairs whose chairman had introduced the bill was warned in Ken Conklin's testimony that the racial restriction on candidacy had been ruled unconstitutional by two federal courts 17 and 15 years previously. The chairman of the committee censored Conklin's testimony but Conklin made sure the members got it anyway. Nevertheless the committee of racist zealots voted unanimously to pass the bill they knew was unconstitutional! See complete details about HB118 and Conklin's testimony in a blog at <http://tinyurl.com/hy3r9hd>

Now let's examine the "whereas" clauses in this SCR85/SR33. Let's see how those clauses disclose the same motive as HB118, to ensure that all OHA trustees will be racially Hawaiian. SCR does not explicitly say that all appointees to the OHA board must be racially Hawaiian. But the same analysis used by Judge Watson to rule against Trump's executive order on account of the motives imputed by Watson to Trump, will also compel a future federal judge to rule against the amendment proposed by SCR/SR because of its racist motive (perhaps even Watson himself will be the judge if the rotation of judges assigns the case to him!)

The "whereas" clauses on pages 1 and 2 of SCR/SR were carefully written to cite portions of the legislative history of the creation of OHA



in the 1978 Constitutional Convention to support the claim that OHA was created to ensure self-determination, self-government, and even sovereignty by the racial group of Native Hawaiians.

The "whereas" clauses on page 3 describe the Rice v. Cayetano decision by the U.S. Supreme Court in 2000 which desegregated voting for OHA trustees, and the Arakaki decision of 2000 upheld by the 9th Circuit Court in 2002 which desegregated candidacy for OHA trustee. At the end of page 3 and continuing on page 4, SCR85/SR33 makes it clear that the racial desegregation of voting and candidacy for OHA trustees was a disaster for racial self-determination. The "whereas" clauses on page 4 make clear that a Constitutional amendment should be written that would provide a way to appoint to the OHA board candidates with "stellar" qualifications who would work exclusively for the best interests of ethnic Hawaiians (forget the best interests of the State of Hawaii of which OHA is an agency).

The final solution on page 5 proposes to convene a racially exclusive gang of "Hawaiian leaders, legal scholars, and Hawaiian community members to review whether the manner of selecting and seating OHA trustees could be improved upon through an appointment process rather than by election, consider the appropriate appointing authority, and consider how to develop a list of the best qualified potential trustees for submittal to the appointing authority"

So there it is. The legislative history of HB118 and SCR85/SR33 proves that the motive is racist for changing from election of OHA board members to appointment of them. Therefore the same reasoning used by Judge Derrick Watson to enjoin Trump's executive order on immigration will also be used by a federal judge in the future to enjoin any Hawaii Constitutional amendment to appoint rather than elect OHA trustees. No matter how carefully the language of such an amendment might be crafted to avoid the appearance of racism, the racist motivation of this SCR85/SR33, and the committee that passes it, is clear. Therefore the resulting Constitutional amendment must be overturned as "the fruit of the poisonous tree."

**From:** mailinglist@capitol.hawaii.gov  
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**SCR85**

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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Oppose	No

Comments:

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