



HR114

URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY WORKING GROUP TO DISCUSS POLICIES AND LEGISLATION WITH RESPECT TO NATIVE HAWAIIAN INTELLECTUAL PROPERTY House Committee on Judiciary & Hawaiian Affairs

March 31, 2023

2:00 PM

Room 325

The Office of Hawaiian Affairs (OHA) offers its **STRONG SUPPORT** for HCR108, which urges the establishment of a Native Hawaiian intellectual property working group to discuss policies and legislation with respect to Native Hawaiian intellectual property.

Native Hawaiians continue to endure inequities and disparities that stem from unresolved historical injustices¹ – injustices that established systems of oppression and institutions of racism that have yet to be dismantled and which persist in their severing of Native Hawaiians from their ancestral lands, their annihilation of Native Hawaiian presence in the Hawaiian Islands, and their attempted erasure of Native Hawaiian identity.² Accordingly, Native Hawaiians have and continue to struggle against the current of settler-colonialism in all attempts to exercise self-determination that includes the freedom from external intervention, which is so often contravened by cultural/identity misappropriation in its many forms.

The State of Hawai'i, on the condition of its admission to the Union,³ was obligated with an extra duty of care to the Native Hawaiian people,⁴ as a result of these historical injustices. The State reinforced that extra duty of care for the betterment of conditions of Native Hawaiians by enshrining this founding principle within the Hawai'i State Constitution.⁵ The State has continuously acknowledged its extra duty of care to the Native Hawaiian people through additional statutory obligations vested in OHA⁶ and in recognition of Native Hawaiians as the only indigenous, aboriginal, and maoli people of Hawai'i.⁷

OHA appreciates the opportunity to testify on this measure and urges the Legislature to **PASS** HR114 for the betterment of conditions of Native Hawaiians. Mahalo nui loa!

¹ Pub. L. 103-150 (1993), 107 Stat. 1510 “Apology Resolution.”

² “If we are ever to have peace and annexation the first thing to do is to obliterate the past,” stated by Samuel Mills Damon, Vice President of the Provisional Government and Executive Council for the Republic of Hawai'i, Council of State (Provisional Government of the Hawaiian Islands, 1895). 26 November 1895. Hawaii State Archives Series 424 Vol. 4.

³ Pub. L. 86-3, 73 Stat. 4; Hawai'i Admissions Act of 1959.

⁴ Id. at §5(f).

⁵ Haw. Stat. Con. Art. XII, Section 4-7 (1978).

⁶ Haw. Rev. Stat. §10.

⁷ Haw. Rev. Stat. §10H-1.

**Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair**

Tuesday, March 31, 2023

2:00 PM

**Conference Room 325, State Capitol, HI
415 South Beretania Street**

STRONG SUPPORT: HCR 108 / HR 114, URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY WORKING GROUP TO DISCUSS POLICIES AND LEGISLATION WITH RESPECT TO NATIVE HAWAIIAN INTELLECTUAL PROPERTY.

Aloha, e Chair Tarnas, Vice Chair Takayama, & Committee Members,

My name is James Palakiko and I am testifying in strong support of HCR 108 / HR 114, which would curtail future Native Hawaiian Intellectual Property legal issues, and ensure that such issues are one less thing that Kānaka Maoli will need to struggle with moving forward.

As a practitioner of hula and hana no‘eau, I can attest that Native Hawaiian Intellectual Property abuses and disputes are increasing. These Intellectual Property abuses adversely impact Kanaka Maoli culture which the State has a fiduciary responsibility to uphold and protect. However, the State currently lacks the legal framework to support Native Hawaiian Intellection Property.

With indigenous Intellectual Property rights being raised in forums around the world, more and more indigenous peoples are forming partnerships with state governments to successfully develop policies unique to their circumstances and needs. Native Hawaiian Intellectual Property has been the subject of discussions and forums in Hawai‘i for over two decades. It is now time to form the means for Native Hawaiian Intellectual Property to be expressly recognized and protected, beginning with the establishment of a Native Hawaiian Intellectual Property Working Group.

I also request that, if it is helpful, you consider augmenting this resolution with following items to add to the weight of this resolution for more forceful momentum:

* * * * *

WHEREAS, on October 3-5, 2003, the Paoakalani Declaration was compiled at the

Native Hawaiian Intellectual Property Rights Conference to express Native Hawaiians' "collective right of self-determination to perpetuate our culture under threat of theft and commercialization of the traditional knowledge of Kanaka Maoli, our wahi pana and nā mea Hawai'i."

* * * * *

WHEREAS, on August 21-22, 2021, the international coalition of kumu hula, Huamakahikina, convened to form and ratify the Huamakahikina Declaration on the Integrity, Stewardship, and Protection of Hula which states "There is insufficient protection for Kanaka Maoli culture and knowledge maintained, and embodied by, Hula. This includes infringement of the intellectual property rights to which Kumu Hula are entitled with respect to the Hula resources they steward and create."

* * * * *

BE IT FURTHER RESOLVED, that the members of the Native Hawaiian Intellectual Property Working Group and the named organizations and entities will have the authority to include additional Native Hawaiian organizations and entities through consensus at their discretion.

* * * * *

As such, please accept my testimony in strong support of HCR 108 / HR 114.

Mahalo nui for your consideration,

James Palakiko

HR-114

Submitted on: 3/30/2023 5:49:12 AM

Testimony for JHA on 3/31/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Support	Written Testimony Only

Comments:

Support for all of the reasons stated in the whereas clauses, however, please amend to include a member of the Association of Hawaiian Civic Clubs on the NATIVE HAWAIIAN INTELLECTUAL PROPERTY WORKING GROUP consistent with the 9th Whereas clause of the resolution: "WHEREAS, the Association of Hawaiian Civic Clubs previously adopted Resolution Nos. 02-08, 03-13, and 17-57 to protect Native Hawaiian cultural intellectual property and resources and urge the Legislature to enact legislation, in consultation with Native Hawaiians, that recognizes and protects the Native Hawaiian people's collective intellectual property rights; "

HR-114

Submitted on: 3/30/2023 7:41:56 AM

Testimony for JHA on 3/31/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kawena Lauriano	Individual	Comments	Written Testimony Only

Comments:

Aloha mai kākou, I am writing today as a Native Hawaiian librarian. I agree that Native Hawaiian Intellectual Property Rights should be established, however; I am not sure that the State of Hawai‘i should be the governing body for this. In any case, should this Resolution pass, I encourage diverse representation from the lāhui Hawai‘i including a legal team whose interests are in protecting Native Hawaiian rights, rather than commercial rights, and Native Hawaiian librarians and/or archivists as we understand the intricate systems of accessing Hawaiian knowledge. Mahalo for your time.

HR-114

Submitted on: 3/30/2023 10:11:55 AM

Testimony for JHA on 3/31/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Helen Wong Smith	Individual	Comments	Written Testimony Only

Comments:

Aloha mai kākou,

Please accept my comments on HCR108/HR114 re: the Establishment of a Native Hawaiian Intellectual Property Working Group to Discuss Policies and Legislation with Respect to Native Hawaiian Intellectual Property. While I applaud the attention on this issue, two issues of are concern.

First is the omission of the Paoakalani Declaration, 2003 the result of Kanaka Maoli of Ka Pae ‘Āina gathered at Ka ‘Aha Pono - Native Hawaiian Intellectual Property Rights Conference, October 3 - 4, 2003. Their goal was to express a collective right of self-determination to perpetuate their culture under threat of theft and commercialization of the traditional knowledge of Kanaka Maoli, their wahi pana, and nā mea Hawai‘i. This well-formulated ten-page Declaration aligned with the Kari-Oca Declaration, Indigenous Peoples‘ Earth Charter, Mataatua Declaration on Cultural and Intelletual Property Rights of Indigenous Peoples, UNDP Consultation on Indigenous Peoples‘ Knowledge and Intellectual Property Right (Suva, Fiji, 1995), and the Treaty for a Lifeforms Patent-Free Pacific and Related Protocols. The Paoakalani Declaration and provides the Hawaiian worldviews of copyrights, trademarks and patents. <https://www.paifoundation.org/resources>

The second concern is the absence of librarians and archivists who are versed in indigenous intelletual property rights on the working group. These professionals are versed in the issues of indegenous data sovereignty. These repositories play an important role in the cultural survival of Kanaka Maoli in acquring, appropriately describing, and making accessible the records of their ‘ike.

Mahalo piha,

Helen Wong Smith, MLIS, CA, FSAA

Archivist for University Records

University of Hawai‘i at Mānoa

VP/President-Elect, Society of American Archivists

REPRESENTATIVE DAVID A. TARNAS, CHAIR
REPRESENTATIVE GREGG TAKAYAMA, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

TESTIMONY IN STRONG SUPPORT OF HCR 108/HR 114

FRIDAY, MARCH 31, 2023 AT 2:00PM
CONFERENCE ROOM 325 & VIDEOCONFERENCE
HAWAI'I STATE CAPITOL
415 SOUTH BERETANIA STREET

Aloha mai e Chair Tarnas, Vice-Chair Takayama, & Committee Members,

Mahalo for the opportunity to testify in strong support of both HCR108/HR114. My name is U'ilani Tanigawa Lum and I am a hula practitioner and an Assistant Professor of Law at Ka Huli Ao Center for Excellence in Native Hawaiian Law at the William S. Richardson School of Law. I am testifying today in my personal capacity. As a cultural practitioner, I can personally attest to the challenges that I and my colleagues face in dealing with a system of ownership that does not always align with the unique attributes of our cultural practices.

Along with my experience as a hula practitioner, I also founded Kāhuli Leo Le'a, Native Hawaiian-managed and serving 501(c)(3) non-profit organization, aimed at catalyzing aloha 'āina through the education, composition, and presentation of mele and other cultural practices. The establishment of this organization grew out of the strong belief that our constitutionally protected traditional and customary practices not only directly inform Kānaka Maoli identity, but make Hawai'i, Hawai'i. Given these important roles in Hawai'i, Kāhuli Leo Le'a has worked to create infrastructure that promotes and advances these practices for our broader community. Issues around Intellectual Property has been a consistent roadblock to these efforts. Often times, the existing western legal framework does not align with, or is in opposition to our customs and practices.

As this resolution begins to outline, cultural practitioners often face issues of ownership, authority, and appropriation. This resolution would build on the work of those who came before us, including, for example: the Paoakalani Declaration, the Huamakahikina Declaration, and more. Given the wide-ranging implications, conversations to identify culturally-appropriate solutions will require subject matter experts in law, 'ōlelo Hawai'i, mele, policy, and more. Given the plethora of experts and practitioners that may contribute to this conversation, I humbly ask this committee include the following amendment to add:

“BE IT FURTHER RESOLVED, that the members of the Native Hawaiian Intellectual Property Working Group may have the authority to include additional organizations and individuals at their discretion.”

Mahalo to Chair Tarnas, Vice-Chair Takayama, and the members of this important Committee for your consideration of this endeavor. **Please advance HCR108/HR114 as a necessary step toward establishing solutions for a decades-old problem.** Mahalo nui for your work on behalf of our communities!

Mahalo nui,



U'ilani Tanigawa Lum

**Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair**

Thursday, March 31, 2023

2:00 PM

**Conference Room 325, State Capitol, HI
415 South Beretania Street**

STRONG SUPPORT: HCR 108 / HR 114, URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY WORKING GROUP TO DISCUSS POLICIES AND LEGISLATION WITH RESPECT TO NATIVE HAWAIIAN INTELLECTUAL PROPERTY.

Aloha, e Chair Tarnas, Vice Chair Takayama, & Committee Members,

My name is U'i Kahue-Cabanting and I am testifying in strong support of HCR 108 / HR 114, which would curtail future Native Hawaiian Intellectual Property legal issues, and ensure that such issues are one less thing that Kānaka Maoli will need to struggle with moving forward.

As a practitioner of 'ulana and hana no'eau, I can attest that Native Hawaiian Intellectual Property abuses and disputes are increasing. These Intellectual Property abuses adversely impact Kanaka Maoli culture which the State has a fiduciary responsibility to uphold and protect. However, the State currently lacks the legal framework to support Native Hawaiian Intellection Property.

With indigenous Intellectual Property rights being raised in forums around the world, more and more indigenous peoples are forming partnerships with state governments to successfully develop policies unique to their circumstances and needs. Native Hawaiian Intellectual Property has been the subject of discussions and forums in Hawai'i for over two decades. It is now time to form the means for Native Hawaiian Intellectual Property to be expressly recognized and protected, beginning with the establishment of a Native Hawaiian Intellectual Property Working Group.

I also request that, if it is helpful, you consider augmenting this resolution with following items to add to the weight of this resolution for more forceful momentum:

* * * * *

WHEREAS, on October 3-5, 2003, the Paoakalani Declaration was compiled at the

Native Hawaiian Intellectual Property Rights Conference to express Native Hawaiians' "collective right of self-determination to perpetuate our culture under threat of theft and commercialization of the traditional knowledge of Kanaka Maoli, our wahi pana and nā mea Hawai'i."

* * * * *

WHEREAS, on August 21-22, 2021, the international coalition of kumu hula, Huamakahikina, convened to form and ratify the Huamakahikina Declaration on the Integrity, Stewardship, and Protection of Hula which states "There is insufficient protection for Kanaka Maoli culture and knowledge maintained, and embodied by, Hula. This includes infringement of the intellectual property rights to which Kumu Hula are entitled with respect to the Hula resources they steward and create."

* * * * *

BE IT FURTHER RESOLVED, that the members of the Native Hawaiian Intellectual Property Working Group and the named organizations and entities will have the authority to include additional Native Hawaiian organizations and entities through a democratic consensus at their discretion.

* * * * *

As such, please accept my testimony in strong support of HCR 108 / HR 114.

Mahalo nui for your consideration,

U'i Kahue-Cabanting

Lot 25 Pu'ukapele Ave, #351
Ho'olehua, Hawai'i 96729

Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair

Tuesday, March 31, 2023

2:00 PM

Conference Room 325, State Capitol, HI
415 South Beretania Street

STRONG SUPPORT: HCR 108 / HR 114, URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY WORKING GROUP TO DISCUSS POLICIES AND LEGISLATION WITH RESPECT TO NATIVE HAWAIIAN INTELLECTUAL PROPERTY.

Aloha, e Chair Tarnas, Vice Chair Takayama, & Committee Members,

My name is Kaleilehua Maioho and I am testifying in strong support of HCR 108 / HR 114, which would curtail future Native Hawaiian Intellectual Property legal issues, and ensure that such issues are one less thing that Kānaka Maoli will need to struggle with moving forward.

As a practitioner of hula and hana no‘eau, I can attest that Native Hawaiian Intellectual Property abuses and disputes are increasing. These Intellectual Property abuses adversely impact Kanaka Maoli culture which the State has a fiduciary responsibility to uphold and protect. However, the State currently lacks the legal framework to support Native Hawaiian Intellectual Property.

With indigenous Intellectual Property rights being raised in forums around the world, more and more indigenous peoples are forming partnerships with state governments to successfully develop policies unique to their circumstances and needs. Native Hawaiian Intellectual Property has been the subject of discussions and forums in Hawai‘i for over two decades. It is now time to form the means for Native Hawaiian Intellectual Property to be expressly recognized and protected, beginning with the establishment of a Native Hawaiian Intellectual Property Working Group.

I also request that, if it is helpful, you consider augmenting this resolution with following items to add to the weight of this resolution for more forceful momentum:

* * * * *

WHEREAS, on October 3-5, 2003, the Paoakalani Declaration was compiled at the

Native Hawaiian Intellectual Property Rights Conference to express Native Hawaiians' "collective right of self-determination to perpetuate our culture under threat of theft and commercialization of the traditional knowledge of Kanaka Maoli, our wahi pana and nā mea Hawai'i."

* * * * *

WHEREAS, on August 21-22, 2021, the international coalition of kumu hula, Huamakahikina, convened to form and ratify the Huamakahikina Declaration on the Integrity, Stewardship, and Protection of Hula which states "There is insufficient protection for Kanaka Maoli culture and knowledge maintained, and embodied by, Hula. This includes infringement of the intellectual property rights to which Kumu Hula are entitled with respect to the Hula resources they steward and create."

* * * * *

BE IT FURTHER RESOLVED, that the members of the Native Hawaiian Intellectual Property Working Group and the named organizations and entities will have the authority to include additional Native Hawaiian organizations and entities through consensus at their discretion.

* * * * *

As such, please accept my testimony in strong support of HCR 108 / HR 114.

Mahalo nui for your consideration,
Kaleilehua Maioho