



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.B. NO. 211, RELATING TO HAWAIIAN AS AN OFFICIAL LANGUAGE OF THE STATE OF HAWAII.

BEFORE THE:

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Tuesday, February 2, 2021

TIME: 1:00 p.m

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Ryan K. P. Kanaka'ole,
Deputy Attorney General, at 808-587-2978)

Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill but has strong concerns.

This bill amends section 1-13, Hawaii Revised Statutes (HRS), to make the Hawaiian version of a law binding if that law was originally drafted in Hawaiian then translated into English when there is a radical and irreconcilable difference between the two versions.

Section 1-13, HRS, currently provides that the English version of a law is binding whenever there is any radical and irreconcilable difference between the English and Hawaiian version of any of the laws of the State. This statute, holding the English version of law as binding, traces back to the 1859 Civil Code of the Kingdom of Hawai'i. *In re Ross*, 8 Haw. 478 (1892). The opinion of the *Ross* Court still holds true today that "though the Hawaiian language is the original language of [Hawai'i], the English language is largely in use." *Id.* at 480.

Well over a century's worth of Hawai'i legal precedent is largely based on the courts' interpretation of the English version of Hawai'i law. The vast majority of judges in Hawai'i are not fluent in Hawaiian. When interpreting the laws to which this new section 1-13, HRS, would apply, judges would likely need to rely on English translations

of the law. This bill could give rise to dueling translations of the Hawaiian original, which would presumably be difficult to resolve and potentially increase the cost and length of litigation.

Amending section 1-13, HRS, to allow a Hawaiian version of law to supersede the English version may lead to ambiguities in the application and interpretation of laws. Laws tracing back to the Kingdom-era were often passed and promulgated in two versions, English and Hawaiian. However, “there is no dual legislation. As a rule one version is the translation of the other.” *Ross*, 8 Haw. at 480. In situations where two versions of a law were promulgated at the same time, the ambiguities created by this bill would lead to questions over which version of the law was the original, the answer to which could be unknowable.

Further, laws originally drafted in Hawaiian that predate the earliest iterations of section 1-13, HRS, could have been subsequently amended over time – in English. The effect of this bill on such laws is unclear, but could be interpreted to create a patchwork of binding language in both English and Hawaiian within the same law.

The ambiguities created by this bill could lead to due process, vagueness, and other legal and practical problems in the interpretation of Hawai‘i law. For example, if the Hawaiian version of a certain law is binding, a majority of Hawai‘i’s populace – who do not speak Hawaiian – would not know whether they are in compliance with that law.

We therefore respectfully ask that the Committee hold this bill. Thank you for the opportunity to provide these comments.



Legislative Testimony

SB211

Relating to Hawaiian as an Official Language of the State Senate Committee on Hawaiian Affairs

February 2, 2021

1:00 p.m.

Via Videoconference

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that its Board of Trustees **SUPPORT** SB211, which would require that the Hawaiian version of a law be held binding, if the law in question was originally drafted in Hawaiian. OHA commends the intent and purpose of this measure, which would give “teeth” and true meaning to the Hawaiian language’s designation as an official State language, as well as support the perpetuation and normalization of ‘Ōlelo Hawai‘i for future generations to come.

This measure is a step towards addressing the significant challenges that ‘Ōlelo Hawai‘i speakers continue to face in their efforts to increase and normalize the use of ‘Ōlelo Hawai‘i in public spaces and communities. Article XII, section 4 of the constitution establishes Hawaiian as an official state language, in recognition of the decades of systemic oppression that led to the unjust and often racially-motivated marginalization of the Native Hawaiian language, culture, and people. However, the full spirit and intent of this constitutional mandate has yet to be realized, as ‘Ōlelo Hawai‘i speakers continue to face significant impediments to speaking their language even in fundamental civic settings. For example, in 1994, a federal district court judge denied an ‘Ōlelo Hawai‘i speaker the opportunity to express himself in ‘Ōlelo Hawai‘i during a deposition.¹ Naturally, this judicial restriction significantly undermined the Hawaiian language’s designation as an official language of the State, and as recently as 2018, this case was cited as persuasive precedent by a Maui district court judge to deny another ‘Ōlelo Hawai‘i speaker the right to use his ‘ōlelo makuahine (mother tongue) before the court. Effectively compelling ‘Ōlelo Hawai‘i speakers to speak English, such cases stand in contravention to the mandates, policies, and intent of various laws and other documents, including Article XII, section 4 of the Hawai‘i State Constitution; HRS § 1-13; the Native American Languages Act (NALA) of 1990;² and Article 13 of the United Nations Declaration on the Rights of Indigenous Peoples.³

The active favoring of English over ‘Ōlelo Hawai‘i is not only isolated to the court system, it is also rooted in a history of systemic oppression that must be acknowledged, repudiated, and rectified. Notably, Hawaiian was originally the first language of Hawai‘i’s

¹ *Tagupa v. Odo*, 843 F. Supp. 630 (D. Haw. 1994).

² *Codified as* 25 U.S.C.A. §§ 2901-2906 (1990).

³ UNDRIP Art. 13, Right to Language.

legislative, executive, and judicial branches. Many would also be surprised to know that **“Hawai‘i published its laws in both Hawaiian and English until 1943.”**⁴ However, policies such as the 1896 law prohibiting ‘Ōlelo Hawai‘i and requiring English to be the medium of instruction in public and private schools, the Organic Act’s subsequent mandate requiring all legislative proceedings be conducted in English only, and a 1943 statute abolishing the practice of publishing laws in ‘Ōlelo Hawai‘i, reflect an ongoing historical movement to suppress the use of the Native Hawaiian language in both social and civic arenas. As illustrated by the aforementioned court cases, the legacy of systemic linguistic oppression lives on to this day; as noted in this measure, existing statutory language even explicitly states that “Hawaiian *shall not* be required for public acts and transactions” (emphasis added).⁵

Accordingly, OHA strongly supports this measure as an important step towards giving long-overdue “teeth” to the constitutional vision of Hawaiian as a true, meaningful official language of the State. For the reasons set forth above, OHA urges the Committee to **PASS** SB211.

E ola nō ka ‘ōlelo Hawai‘i! Mahalo nui loa for the opportunity to testify on this measure.

⁴ Paul F. Nahoia Lucas, *E Ola Mau Kākou I ka ‘Ōlelo Makuahine: Hawaiian Language Policy and the Courts*, HWN J. HIST. 4 (2000).

⁵ HRS § 1-13.

SB-211

Submitted on: 1/30/2021 8:15:20 AM

Testimony for HWN on 2/2/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nako'olani Warrington	Individual	Support	No

Comments:

Mahalo nui loa for supporting Hawaiian as an official language of the State of Hawai'i.

SB-211

Submitted on: 1/30/2021 11:04:12 AM

Testimony for HWN on 2/2/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Titus Analu Matthews	Individual	Support	No

Comments:

If a law was originally drafted in the original language which is recognized as such, should be held in that capacity to the fullest extent.

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS
For hearing Tuesday, February 2, 2021

Re: SB211

RELATING TO HAWAIIAN AS AN OFFICIAL LANGUAGE OF THE STATE OF HAWAII.

Requires that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English.

TESTIMONY IN OPPOSITION

First let's note that this bill is written entirely in English. Now, why in the world would that happen in view of the main purpose of this bill? It seeks to establish that if a bill is written first in Hawaiian and then translated into English, the Hawaiian version shall take priority as the official version. So why not write this bill first in Hawaiian and then provide an English translation?

Indeed, why not write this bill solely in Hawaiian with no English at all? Would the members of this committee feel comfortable with that? Would you feel confident that you understand what you are enacting? No? Then why in the

world would you even so much as fool around with the idea of making the Hawaiian version of a bill take priority over the English version in case of a dispute later on over how it should be interpreted or implemented?

This bill is so poorly written, and lacking in detail -- it's surprising that the Chair of this committee called it up for a hearing (or perhaps that's not so surprising after all, considering that hearing the bill is a virtue signal to celebrate "Hawaiian language Month"). But there were bills two years ago along the same lines. Those bills failed, and were also poorly written, but at least they had more detail. The best thing about SB701 and SB195 from year 2019 was that they were written in Hawaiian language first, and then had English translations of their various sections. Thus those bills give us an opportunity to do a thought-experiment. Let's put the members of this committee to a test where they can judge for themselves whether they could possibly be serious about enacting the concept "that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English."

Here is a link to full text of SB701 from year 2019:

https://www.capitol.hawaii.gov/session2019/Bills/SB701_.pdf

Go ahead now. Read the first part of that bill, which is in Hawaiian, and then stop the first time you encounter the subordinate English translation. Did you understand it? Even if you as an individual are one of the rare legislators who speaks Hawaiian fairly well, do you understand what you read with sufficient confidence to vote for it even if it was highly controversial? More importantly, do you seriously believe that your colleagues in the legislature are competent to vote on it? If necessary, continue this thought-experiment by reading only the Hawaiian portion of each subsequent part of the bill, and then summarizing its main concepts in whatever language you prefer, before you read the English translation.

A majority of your fellow legislators whose fluency in Hawaiian language is moderate or even non-existent will be relying entirely on the English translation, but they will actually be voting on what the Hawaiian version says, according to the injunction "that the Hawaiian version of a law be held binding if the law in question was originally drafted in Hawaiian and then translated into English."

If you'd like another example, run the thought-experiment with SB195, also from year 2019:

https://www.capitol.hawaii.gov/session2019/Bills/SB195_.pdf

Giving priority to Hawaiian language is a political stunt to bolster ethnic pride and get votes from a constituency that demands visible tokens of validation and status; but it has no practical usefulness. It seems likely that every person outside Ni'ihau who speaks Hawaiian also speaks English with greater fluency. Hawaiian activists, following the lead of Princess Ruth Ke'elikolani (hoo dat?), sometimes insist on speaking Hawaiian in the courtroom or when giving speeches, interviews, or testimony; but they are perfectly capable of speaking and understanding English. Nobody NEEDS to speak or hear Hawaiian to express himself or to understand what someone is saying -- the activists demand it to score a political point; and sometimes to simply "gum up the works" when there is testimony on an environmental impact statement regarding telescopes on Mauna Kea or construction on a military base.

Please see a large and detailed webpage "Hawaiian Language as a Political Weapon" at

<http://www.angelfire.com/big09/HawLangPolitWeapon.html>

Kaleikoa Kaeo is a community college instructor who speaks English fluently. In fact he teaches classes using English as the language of instruction, makes fiery political speeches in English, and has also learned to speak Hawaiian fluently. He demanded to give court testimony in Hawaiian, not because he is unable to speak English, but merely as a stunt -- a form of Hawaiian sovereignty street theatre or political activism.

Kaleikoa Kaeo took his inspiration from the wealthiest person in Hawaii in the 1860s and 1870s, Princess Ruth Ke'elikolani, who could speak perfectly good English but refused to do so when politicians or journalists visited her -- she took great pleasure in humiliating them by forcing them to hire translators. She felt she was having a political and "moral" victory by forcing them to use Hawaiian. Is that what legislators and Hawaiian language zealots doing with this bill?

Hawaii is filled with the Aloha Spirit. Our people are kind and generous, and show our good will to people who cannot speak English by allowing them to give testimony in their own language and by providing them at our own taxpayer expense with interpreters who have been certified by the court to

be fluent in both their own language and English. But Kaleikoa Kaeo's political stunt was neither kind nor generous. It did not display good will, let alone the Aloha Spirit. He could easily have spoken English, but he chose to speak Hawaiian as a way to FORCE everyone else to either learn Hawaiian or to spend taxpayer dollars to hire speakers of Hawaiian. That's what today's bill in our legislature is all about -- a political stunt that would inconvenience everyone and cost a lot of money over time merely for the sake of cultural/linguistic chauvinism.

Hawaii has large numbers of people from many ethnic backgrounds who speak different languages in their homes; but we all come together in shared spaces where we are expected to speak English. Inability to speak English is treated as a disability or handicap. People who cannot speak English are given special accommodation to help them communicate in their own language, just as someone who is deaf gets a sign-language interpreter, someone who is blind is allowed to use a seeing-eye dog even in places where dogs are not normally allowed, and someone who cannot walk is allowed to use a wheelchair and elevator. Kaeo who is fluent in English but insists on speaking Hawaiian is like a marathon runner who might demand just for fun to come to court in a noisy wheelchair with a taxpayer-supplied assistant to push it for him.

If this bill were enacted into law, the Hawaiian language content of a bill would be the official law even though your comprehension of its meaning came only from the English-language version. And you can be quite sure that Hawaiian-language zealots would give top priority to writing many important bills in Hawaiian before getting them translated into English, thereby invoking the new rule that the Hawaiian version takes priority. Would your expertise in Hawaiian be sufficient to enable you to detect kaona (wat dat?) -- subtle double meanings that you would never vote for if you knew they were in the law you just finished enacting? Kaona were widely used orally in ancient times and later in Hawaiian language newspapers, as a sort of secret code, so that insiders "in the know" about obscure cultural metaphors would understand hidden social or political meanings in poetry or songs. For example, a hula might seem to be about a bee spreading pollen while flitting from flower to flower sipping nectar; but in reality one of its hidden meanings was about a man "spreading his seed" while engaging in intimate activities with one after another young ladies. On a more serious note, a phrase that seemed to be celebrating a needle piercing a white plumeria flower while stringing a lei might actually be an incitement to hurl a verbal or actual spear at a haole opponent.

Perhaps you're aware that there are some Hawaiian sovereignty activists who would love to get you to enact laws whose legally binding meaning in Hawaiian language would undermine or even overthrow the [fake!] State of Hawaii and replace it with a rejuvenated Kingdom; even though the merely advisory subordinate English translation being relied upon to solicit votes appears to pertain only to plowing on a farm as a way to turn over the soil. ("Huli" is to turn over, whether it refers to plowing the soil on a farm or inciting to violent political revolution.)

I conclude this testimony by citing an extremely important example from Hawaiian history illustrating how a single phrase, and especially an individual word in that phrase, has been subjected to deliberate distortion over time because of what the word meant in Hawaiian when proclaimed into law seventeen decades ago and what it has come to mean in English since then. The phrase in the Mahele laws beginning in 1848 and culminating in the Kuleana Act of 1850 is: "koe nae ke kuleana o na kanaka." The individual word whose meaning has morphed is "kanaka." When private land ownership was created by granting royal patent deeds during the unfolding stages of the Mahele, chiefs were given huge swaths of land, while peasants living on and farming individual parcels were given the right to have fee-simple ownership of their parcels. The problem was that the chief's land completely surrounded the peasant's small parcel, thus making it necessary for a peasant to trespass through the chief's land in order to gather materials necessary for daily life, or to go to the ocean for fishing. So in the interest of what we today might call "social justice", the chief's royal patent deed gave him ownership "but reserving the rights of the people" [for gathering or shoreline access]. That Hawaiian phrase "koe nae ke kuleana o na kanaka" today is always translated to mean "reserving the rights of the native tenants." However, there was nothing racial about the word "kanaka" back in 1850, although today it has come to refer to so-called "Native Hawaiians." The word "kanaka" simply meant person, or human being, with an implication that it might be referring to a servant or peasant. If you look up "kanaka" in the big Pukui/Elbert dictionary you will find no racial terms. Furthermore, the word "kanaka" does not mean "tenant" -- that word is "hoaina." Although non-natives made up only a small percentage of Hawaii's population in 1850, the rights reserved to the "kanaka" in the Kuleana Act were reserved for ALL the "people" regardless of race and regardless whether they were tenants under a particular chief.

The Hawaii Constitution Article 12 Section 7, and also the PASH decision by the Hawaii Supreme Court, include racial restrictions which are modern distortions and simply do not grow out of the Mahele or the Kuleana Act. "The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights." The traditional and customary rights of native Hawaiians from before 1778, and still possessed under the Kuleana Act of 1850 -- those terms describe what rights are being referred to, but those terms should NOT be construed as limiting those rights to members of any particular racial or ethnic group. By interpreting those rights to be possessed by ALL Hawaii's people, we would ensure equality under the law for everyone including ethnic Hawaiians. The fact that my interpretation of "koe nae ke kuleana o na kanaka" is so controversial should serve as an important illustration of why it is dangerous to give primacy to a language which very few people understand with sufficient fluency -- especially when the only people who do have sufficient fluency have been trained by teachers and institutions which are politically active; and the students mastering the language under their tutelage have been indoctrinated with their political views and will interpret the meaning of laws in a manner that facilitates their political agenda.

SB-211

Submitted on: 1/30/2021 2:05:44 PM

Testimony for HWN on 2/2/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Namaka	Individual	Support	No

Comments:

KÄ• ko'o!_support!

Mahalo

SB-211

Submitted on: 1/31/2021 12:21:43 AM

Testimony for HWN on 2/2/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Crystal Kia Paul	Individual	Support	No

Comments:

I support this bill.

SB-211

Submitted on: 1/31/2021 11:42:00 AM

Testimony for HWN on 2/2/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

KÄ• ko'o!

SB-211

Submitted on: 1/31/2021 9:26:51 PM

Testimony for HWN on 2/2/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Feena Bonoan	Individual	Support	No

Comments:

I support this bill.

1 February 2021

LATE

TESTIMONY OF XXX XXX (your name and organization here)

BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Tuesday, February 2, 2021

1:00 P.M.

Videoconference

GOVERNOR'S MESSAGE SB 211

RELATING TO HAWAIIAN AS AN OFFICIAL LANGUAGE OF THE STATE OF HAWAII.

Aloha Chairperson Shimabukuro and Members of the Committee,

I am submitting my testimony of support for Governor's Message SB 211 that relates to Hawaiian as an official language of the State of Hawai'i.

Based on XXX (Nominee Name) experience, community involvement, and solid track record in the community, XXX (Name of Organization) strongly supports the consideration and confirmation of XXX (Nominee Name) to the King Kamehameha Celebration Commission.

Mahalo for the opportunity to submit testimony.

Me ka pono,
Kēhau Pe'a



LATE

COMMITTEE ON HAWAIIAN AFFAIRS

Senator Maile S.L. Shimabukuro, Chair
Senator Jarrett Keohokalole, Vice Chair

TESTIMONY ON SENATE BILL 211
RELATING TO HAWAIIAN LANGUAGE AS AN
OFFICIAL LANGUAGE OF THE
STATE OF HAWAII

By
Samuel L. Kaolulo
Student
of
University of Hawaii

Tuesday, February 02, 2021, 1:00 p.m.-2:30 p.m.
Via Videoconference

Aloha,

Chair Shimabukuro, Vice Chair Keohokalole, and Members of the Committee:

My name is Samuel Kaolulo, and I am a student at the University of Hawaii and a concerned constituent of my community from the Kapolei community. I am testifying in favor of Senate Bill 211 to protect article XV, SECTION 4 of the State of Hawaii Constitution which it allows to give full recognition and honor to the rich cultural inheritance that Hawaiians have given to all ethnic groups of the State. As a Kanaka born and raised here on the islands, our language is our foundation. Furthermore, as indigenous people should have the right and be protected to have an interpreter present if necessary, to fully express openly the Hawaiian language in any political, administrative, and legal proceedings. As a Kanaka to pass on our language, traditions, and histories to our future generations has always been instilled in us from generation to generation. Again, my name is Samuel Kaolulo a graduate student at the University of Hawaii and I am in strong support of Senate Bill 211.

Mahalo nui loa,
Samuel Kaolulo