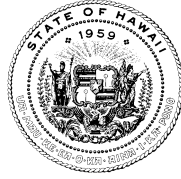


DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
HEARING ON MARCH 24, 2022 AT 1:01PM VIA VIDEOCONFERENCE

**SCR 125/SR 110 REQUESTING THE DEPARTMENT OF HAWAIIAN HOME LANDS
TO ESTABLISH A WORKING GROUP TO RETURN CROWN LANDS TO NATIVE
HAWAIIANS**

March 24, 2022

Aloha Chair Shimabukuro, Vice Chair Keohokalole, and members of the Committee:

The Department of Hawaiian Home lands (DHHL) supports these resolutions requesting a working group to return crown lands to Native Hawaiians. DHHL requests that this Committee consider if the Office of Hawaiian Affairs or Ka Huli Ao Center for Excellence in Native Hawaiian Law are the more appropriate entities to establish the working group.

Thank you for your consideration of our testimony.

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS
For hearing Thursday, March 24, 2022

Re: SCR125/SR110
REQUESTING THE DEPARTMENT OF HAWAIIAN HOME HWN LANDS TO
ESTABLISH A WORKING GROUP TO RETURN
CROWN LANDS TO NATIVE HAWAIIANS.

TESTIMONY IN OPPOSITION

There is no reason why DHHL should establish a working group "to return crown lands to Native Hawaiians" for the simple reason that "Native Hawaiians" as a group were never the owners of the crown lands, and therefore those lands cannot be "returned" to them.

This issue was firmly and unequivocally settled by the decision in the only lawsuit ever brought by ex-queen Lili'uokalani against the U.S. Lili'uokalani demanded compensation from the U.S. for the crown lands, which she claimed had belonged to herself personally; and the Court ruled that she had never been the owner of those lands. Furthermore, by claiming personal ownership of the crown lands and demanding compensation only for herself, the ex-queen displayed her belief that so-called "Native Hawaiians" were not the owners of those lands -- she could have named them as co-plaintiffs or they could have moved to be added as class-action complainants, but neither of those things occurred. According to Lili'uokalani, she was sole owner.

Full text of Lili'uokalani's complaint filed in 1909, and full text of the Court's decision filed in 1910, along with commentary, can be found on a webpage:

"Lili'uokalani Loses A Big One (The Crown Lands) -- Liliuokalani v. United States, 45 Ct. Cl. 418 (1910)" at

<https://www.angelfire.com/hi2/hawaiiansovereignty/liliucrownlands.html>

The ex-queen lost the case. But in the process, many of the claims made today by the sovereignty activists were asserted by the ex-queen and rejected by the Court based on irrefutable evidence. After seeing all the evidence and hearing all the arguments on both sides, the Court of Claims became convinced that her claims had no merit. The decision itself is a valuable legal document. It is important not only because it contains these arguments concerning the Crown Lands, but also because of the very important appendices included by the Court as part of the evidence. Some of the material in these appendices is difficult or impossible to find anywhere else, and decisively refutes claims raised by today's sovereignty activists on issues in addition to

the Crown Lands. It is also interesting that she never sued the United States for the "illegal overthrow" or the "illegal annexation" to try to reverse those events or be compensated for them; she sued only for money for "her" Crown Lands. The manner in which she lost lays out the evidence and the arguments for both sides in a direct confrontation between the ex-Queen and the United States. Such a direct legal confrontation at such a high level over "sovereignty" issues was never repeated for 90 years, until the Rice v. Cayetano case. The decision of the Court of Claims (like the Supreme Court decision in Rice v. Cayetano) is very clear and convincing. For example, in the Lili'uokalani decision, the Court cited the Treaty of Annexation both as evidence that the Court has jurisdiction to decide the case and as affirmation that the Treaty exists and is valid; and the Court provided full text of the Treaty of Annexation in an appendix which is included in the webpage.

Here are some of the "whereas" assertions in this resolution SCR125/SR110 offered in 2022, and refutations of them.

Reso: "the Hawaiian Kingdom was overthrown in violation of international law"

Refut: There is no international law against a revolution. And of course all revolutions that overthrow an existing government are illegal under the laws of the overthrown government.

Reso: "the Crown Lands ... became a collective resource to support the Hawaiian monarchs and Hawaiian people ... [and] were not truly "public" but were an entitlement of the Hawaiian people as the beneficiaries of a trust maintained by their monarch"

Refut: Part II of the Court's own summary of its decision, on page 419, clearly states: "The Hawaiian statute of 1865 curtailed the title vested in the King to the purpose of maintaining the royal state and dignity; and the King approved the statute which divested the sovereign of

whatever legal title he had theretofore had in the crown lands. After that the lands belonged to the office and not to the individual."

Reso: "the lands taken by the Provisional Government in 1893, Republic of Hawaii in 1894, and United States in 1898 were taken without the consent of or compensation to the Hawaiian people ... the 1993 federal Apology Resolution confirms that one million eight hundred thousand acres of Crown and Government Lands were thereafter ceded to the United States without the consent of or compensation to the Native Hawaiian people or their sovereign government"

Refut: Regarding "Lands were thereafter ceded to the United States without the consent of the Native Hawaiian people or their sovereign government": The nation of Hawaii remained an internationally recognized independent nation under its two successor governments: the Provisional Government and the Republic of Hawaii. After a revolution, the successor government speaks to other nations on behalf of all the nation's people including those on the losing side, whether they like it or not. Emperors, Kings, Queens, and Presidents of at least 19 nations personally signed letters addressed to President Dole, Republic of Hawaii, formally recognizing the Republic as the rightful successor government of the still-independent nation of Hawaii; thus, under international law, the Republic had the right to offer the Treaty of Annexation including the ceding of Hawaii's public lands. See photos of those letters at <https://historymystery.kenconklin.org/recognition-of-the-republic-of-hawaii/>

Further Refut: The claim that the crown, government and public lands of Hawaii were ceded to the United States "without compensation to the Native Hawaiian people or their sovereign government" is false. The United States compensated the Republic of Hawai'i government and its people (including kanaka maoli) by assuming their public debts, including the debts incurred under the Kingdom for the issuance of bonds to redeem all encumbrances on the Crown lands incurred by various monarchs to support their lavish lifestyles [including Kalakaua's

trip around the world and his construction and furnishing of Iolani Palace], as noted on pages 431-434 of the Court decision.

Further refutation concerning the 1993 apology resolution:

The Hawaii Supreme Court had ruled unanimously, 5-0, in favor of a lawsuit by OHA demanding that no parcel of ceded lands can be sold by the State of Hawaii without permission from Native Hawaiians [presumably that would be OHA] and based its decision partly on the 1993 apology resolution. But on March 31, 2009 the U.S. Supreme Court ruled unanimously, 9-0, to overturn the Hawaii Supreme Court's ruling. The U.S. Supreme Court clearly and forcefully rejected the apology resolution as having any force of law regarding the ownership of the ceded lands, concluding that the State of Hawaii owns all the public lands (including the crown lands) in fee simple absolute and can freely lease or sell them without regard to the apology resolution. Full text of the U.S. Supreme Court's decision in HAWAII ET AL. v. OFFICE OF HAWAIIAN AFFAIRS ET AL. is available at <https://www.supremecourt.gov/opinions/08pdf/07-1372.pdf>

See also a scholarly essay by Constitutional law attorney Bruce Fein, reprinted in the Congressional Record: <https://www.angelfire.com/hi5/bigfiles3/AkakaFeinCongRec061405.html>

See also Patrick W. Hanifin, esq', HAWAIIAN REPARATIONS: NOTHING LOST, NOTHING OWED
XVII HAWAII BAR JOURNAL No. 2 (1982)
<https://www.angelfire.com/hi5/bigfiles/HanifinReparations1982.pdf>

and also "U.S. apology resolution 20th anniversary -- A resolution was introduced in the Hawaii legislature to commemorate the 20th anniversary of the U.S. apology resolution; and testimony by Kenneth Conklin, Ph.D., was offered to the Hawaii legislature in the form of a substitute resolution explaining that the apology resolution is filled with falsehoods, has produced bad consequences, and should be repealed."
<https://www.angelfire.com/big09/ApologyReso20thAnniv.html>



Environmental Caucus of The Democratic Party of Hawai'i

To: The Honorable Maile S. L. Shimabukuro, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Committee on Hawaiian Affairs

Re: **SCR 125 / SR 110 REQUESTING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO ESTABLISH A WORKING GROUP TO RETURN CROWN LANDS TO NATIVE HAWAIIANS**

Hearing: Thursday, March 24, 2022, 1:01 p.m.
Conference Room 016, via Videoconference

Position: **Strong Support**

Aloha, Chair Shimabukuro, Vice Chair Keohokalole, and Members of the Committee on Hawaiian Affairs:

The Environmental Caucus of the Democratic Party of Hawai'i stands in strong support of SCR 125 / SR 110. This measure would request the Department of Hawaiian Home Lands to establish a Crown Lands working group to return Crown Lands to Native Hawaiians.

The Crown Lands Working Group is to (1) identify which Crown Land tax map keys should be prioritized for return to Native Hawaiians; and (2) identify which entity or entities should receive the land from the State and assume responsibility for management of those lands in perpetuity.

The reason for this resolution is to return Crown Lands back to the Native Hawaiians for the unlawful taking of these lands as the result of the illegal overthrow of the Kingdom of Hawaii. Such lands were not public lands but were the personal domain of the King Kamehameha III which became a collective resource to support the Hawaiian monarchs and Hawaiian people as beneficiaries of a trust maintained by their monarchs. These lands were taken by the Provisional Government of 1893, Republic of Hawaii in 1894, and the United States in 1898 without the consent of or compensation to the Hawaiian people. The 1993 Federal Apology Resolution confirmed that 1,800,000 acres of Crown and Government Lands were ceded to the US without the consent of or compensation to the Native Hawaii people or their sovereign government. This Resolution would be the first step in correcting the wrongs that were bestowed on the Native Hawaiians for this illegal taking 129 years ago. Mahalo for the opportunity to testify,

Melodie Adyja Co-Chair, Environmental Caucus of the Democratic Party of Hawai'i

LATE

SR-110

Submitted on: 3/21/2022 3:20:49 PM

Testimony for HWN on 3/24/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Jennifer Azuma Chrupaluk	Individual	Support	Written Testimony Only

Comments:

YES! YES! YES!!!!!!!!!!!!!!!!!!!! THANK YOU!!

SR-110

Submitted on: 3/22/2022 2:41:24 PM

Testimony for HWN on 3/24/2022 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Shannon Rudolph	Individual	Support	Written Testimony Only

Comments:

Support

LATE

Aloha,

I am in support of SR110. We must do what is right by the Hawaiian people and help them get their land back. Many Kanaka Maoli have lived and died on the list. By making a working group that is dedicated to this issue, it should help them get what is rightfully theirs.

Mahalo nui loa,
Cybil