

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI A HO'OMĀKA'IKA'I JOSH GREEN, M.D. GOVERNOR

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Statement of CHRIS J. SADAYASU Director

Department of Business, Economic Development, and Tourism before the

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Tuesday, March 21, 2023 1:01 PM State Capitol, Conference Room 224 and Video conference

In consideration of

SCR 191

RELATING TO THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY WORKING GROUP TO DISCUSS POLICIES AND LEGISLATION WITH RESPECT TO NATIVE HAWAIIAN INTELLECTUAL PROPERTY.

Chair Shimabukuro, Vice Chair Fevella and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) supports SCR 191, which urges the establishment of a Native Hawaiian Intellectual Property Working Group to discuss policies and legislation with respect to Native Hawaiian intellectual property.

DBEDT and its Creative Industries Division (DBEDT/CID) supports the intent of this Concurrent Resolution to discuss policies and legislation that would recognize and protect the collective intellectual property rights of Native Hawaiian people from misappropriation, as well as the ensure that traditional laws, customs and designs are respected and properly attributed to the Native Hawaiian community.

Through programs like Creative Lab Hawaii, DBEDT/CID has been working to support the recognition of traditional and cultural arts forms of creativity and innovation

in all forms, whether in the area of storytelling, design, dance and music, as protectable intellectual property.

DBEDT/CID respectfully request an amendment to add DBEDT and its Creative Industries Division to the membership of the working group body to allow for the Department's further engagement in the community wide discussion regarding policies and legislation regarding the protection of Native Hawaiian intellectual property.

Thank you for the opportunity to testify.

SENTATOR MAILE S. L. SHIMABUKURO, CHAIR SENATOR KURT FEVELLA, VICE-CHAIR SENATE COMMITTEE ON HAWAIIAN AFFAIRS

TESTIMONY IN STRONG SUPPORT OF SCR 191

TUESDAY, MARCH 21, 2023 at 1:01 PM CONFERENCE ROOM 224 & VIDEOCONFERENCE STATE CAPITOL 415 SOUTH BERETANIA STREET

Aloha Chair Shimabukuro, Vice-Chair Fevella & Committee Members,

My name is Zachary Alaka'i Lum, and I am testifying today in strong support of SCR 191 which would establish a Native Hawaiian Intellectual Property Working Group to discuss policies and suggest legislation with respect to Native Hawaiian Intellectual Property. As a Grammy-nominated, 21-time Nā Hōkū Hanohano Award winner and overall cultural practitioner of mele and hula, I can personally attest to the challenges that I and my colleagues face in dealing with a system of property and ownership that does not align with the unique attributes of our cultural practices.

The customs relating to mele, in particular, have often clashed with Western copyright laws. For example, where the repetitious use of words, phrases and music is a long-standing custom of Hawaiian music, current laws may consider this custom copyright infringement. Where many mele are known by various composers, current laws may call consider them "orphan works" – mele who have known composers but cannot be located for licensing and use as provided by current copyright law. While "orphan works" represent a substantial amount of mele we know today, the inability to locate an "owner" leaves music royalty monies on the proverbial table – unclaimed monies that could benefit composers, artists, and mele practitioners. The Native Hawaiian Intellectual Property Working Group can provide next steps toward resolving these and other related issues.

The lack of a codified, culturally-appropriate process for engaging mele is actually holding back the progress of the Hawaiian language movement After decades of progress in the Hawaiian language revitalization movement, mele provide a next step in Hawaiian language acquisition. To move beyond conversational 'ōlelo Hawai'i fluency and into further levels of depth and value in our language, we look to mele as a main source. However, the lack of a sui generis, culturally-appropriate process toward engaging mele considered "orphan works" deprives the Hawaiian language movement of this necessary next step in language restoration.

As the executive director of Kāhuli Leo Le'a, a nonprofit organization dedicated to mele and other cultural practices as a means of composing Lāhui, I have aimed our current and future programming toward the socio-economic resilllience of cultural practitioners. We do this in two major ways: 1) providing services to mele practitioners and recording artists to engage existing music royalty revenue streams, and 2) creating a Hawai'i-based streaming platform for music,

video and other digital media to the specific benefit of Hawai'i's practitioners. The findings of the Native Hawaiian Intellectual Property Working Group will be key in providing sustainable career pathways, ensuring that our cultural practices endure through the socio-economic resillience of cultural practitioners.

Finally, I humbly submit the following proposed amendments for SCR 191:

"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 organizations and entities in its work at their discretion."

Mahalo to Chair Shimabukuro, Vice-Chair Fevella, and the members of this Committee for your consideration of this endeavor. I humbly urge you to pass SCR 191 as a necessary step toward establishing solutions for a decades-old problem.

Aloha nō,

Zachary Alaka'i Lum

Executive Director, Kāhuli Leo Le'a

zack@kahulileolea.org



March 18, 2023

Senator Maile S. L. Shimabukuro, Chair Senator Kurt Fevella, Vice Chair Members of the Committee on Hawaiian Affairs Stat Capitol 415 South Beretania Street Honolulu, HI 96813

> SCR 191 Urging the Establishment of a Native Hawaiian Intellectual Property Re: Working Group to Discuss Policies and Legislation with Respect to Native Hawaiian Intellectual Property

Senator Shimabukuro and Members:

The Waimea Hawaiian Civic Club strongly supports SCR 191 entitled above as it brings forth the very concerns and sentiments raised at the Annual Convention of the Association of Hawaiian Civic Clubs of 2018. AHCC Resolutions 2018-43 an 2018-44 were submitted to the legislature by the AHCC Government Relations Committee raising the issues and potentials for considerable impact to, and loss of, our Native Hawaiian culture and essence of Ka`Ike Hawai`i.

We ask that your committee strongly consider naming the Association of Hawaiian Civic Clubs as a member of the proposed Native Hawaiian Intellectual Property Working Group.

Finally, we ask that this committee fully support this measure. We are grateful for your work and kako'o.

Me ka ha`aha`a.

EDITH KAWAI, President WAIMEA HAWAIIAN CIVIC CLUB



21 Malaki 2023 | Written Testimony of Elena K. Farden for SCR 191 | Image: lenafarden@gmail.com
Aloha Chair Shimabukuro, Vice Chair Fevella, and Committee Members:

My name is Elena Farden and I submit this testimony in my individual capacity as a Kanaka and doctorate of education student. My dissertation focuses on cultural intellectual property (IP), Traditional Cultural Expressions (TCEs), Traditional Knowledge (TK), and genetic resources and their role as community wealth indicators of Kanaka 'Ōiwi Knowledge Systems Towards Aesthetic Sovereignty.

I am in STRONG SUPPORT with a FRIENDLY AMENDMENT to SCR 191 urging the establishment of a Native Hawaiian intellectual property working group to discuss policies and legislation with respect to Native Hawaiian intellectual property, with consideration to amend: Page 3, line (25) to include an additional named organization, including transmittal of certified copies, to be: The Association of Hawaiian Civic Clubs, specifically representative(s) from Kuini Pi'olani Hawaiian Civic Club.

The AOHCC has had long-standing advocacy support of cultural IP since 2002, and most recently with their establishment of a sub-committee of Native Hawaiian IP under the umbrella of their economic development committee. The work of this sub-committee has hosted training and workshops for its members to elevate awareness and understanding of cultural IP issues. Additionally, the original resolution was authored by Kuini Pi'olani Hawaiian Civic Club and later adopted as Senate Concurrent Resolution 164 in 2019 urged the establishment of a Native Hawaiian intellectual property task force to develop a sui generis legal system to recognize and protect Native Hawaiian IP.

As our world grows smaller, and technology moves our lives faster, the globalization of culture and demands for possession of our collective cultural IP and identity will only increase at our doorstep. According to the World Intellectual Property Organization (WIPO), in 2003, the year Hawai'i State Legislature adopted the Paoakalani Declaration from the 'Aha Pono Native Hawaiian Intellectual Property Rights Conference, there were 1,100 IP dispute cases. Last year in 2022 alone, there were a staggering 5,764 IP dispute cases.

I implore the Committee to support SCR 191 with the amendment to include the Association of Hawaiian Civic Clubs representatives from Kuini Pi'olani Hawaiian Civic Club.

Me ka mahalo ha'aha'a.

Elena K. Farden

Elena L. Farden

Submitted on: 3/17/2023 4:43:05 PM

Testimony for HWN on 3/21/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Keao NeSmith	Individual	Support	Written Testimony Only

Comments:

Please work to ensure that traditional Hawaiian intellectual property is kept in such a way that native Hawaiians can have access to them (e.g. hula gestures, lomilomi, gathering flora-fauna) without fear of lawsuit, fines or prosecution. Newly created intellectual property by native Hawaiians should also be protected in the same way, BUT new concepts created by non-Hawaiians, such as 'pepeke henua', which is not based on Hawaiian language and created by someone who is not Hawaiian, should not be considered Hawaiian because such an invention is not Hawaiian no matter how you look at it. It (and others like it) is a term foreign to the Hawaiian language and created by somone who is not Hawaiian.

Submitted on: 3/17/2023 6:33:59 PM

Testimony for HWN on 3/21/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Julia Estigoy-Kahoonei	Individual	Support	Written Testimony Only

Comments:

I support the establishment of a committee to make sure that all things belonging and related to the native Hawaiian culture be protected from misuse and misrepresentation. It's a struggle enough undoing the damage done by the overthrow and though the past can not be changed, we can at least protect the future of the culture from further damage and misappropriation. Indigenous cultures need to be protected.

Submitted on: 3/19/2023 8:31:42 AM

Testimony for HWN on 3/21/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Pueo Pata	Individual	Support	Written Testimony Only

Comments:

Committee on Hawaiian Affairs

Senator Maile S.L. Shimabukuro, Chair

Senator Kurt Fevella, Vice Chair

Tuesday, March 21, 2023

1:01 PM

Conference Room 224, State Capitol, HI 415 South Beretania Street

STRONG SUPPORT: SCR 191, 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 Shimabukuro, Vice Chair Fevella, & Committee Members,

My name is Cody Pueo Pata and I am the kumu hula of Hālau Hula 'o Ka Malama Mahilani. I am also a Hawaiian language teacher, a Hawaiian music recording artist, a classically-trained haku mele, and an experienced practitioner of several hana no 'eau.

I have been actively engaged as a practitioner in these pursuits since 1991. All of my training was conducted in traditional master-apprentice fashion through which not only were the tangible aspects of these 'oihana and hana no'eau transmitted, but so too were the intangible values, wisdom, perspectives, and logic that allow these pursuits to be identified as uniquely Hawaiian. These latter subjects fall under the modern term of Intellectual Property (IP). My experiences in all of these areas, along with my exposure to various IP abuses, have led me to write to you in **strong support of SCR 191** with the hopes of curtailing future Hawaiian IP legal issues, and ensuring that such issues are one less thing that Kānaka Maoli will need to struggle with moving forward.

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.

* * * * *

I thank you for your time and consideration in reviewing my testimony and suggestions in STRONG SUPPORT of SCR 191.

Me ka 'oia'i'o,

na Cody Pueo Pata

Submitted on: 3/19/2023 9:16:03 AM

Testimony for HWN on 3/21/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Delia Parker Ulima	Individual	Support	Written Testimony Only

Comments:

Aloha, my name is Delia Ulima and I support efforts to establish a Native Hawaiian Intellectual Property working group. Native Hawaiians, perhaps more than any indigenous group worldwide, has been impacted by cultural appropriation and cultural commodification in relation to our language, arts, practices, not limited to but even extending to things like the extraction and use of DNA. There are international and national remedies and models that we can look to as examples of how we might utilize existing tools, laws and protections, as well as design and implement methods that are most appropriate to our place, worldviews and existing cultural practices. I urge this committee to strongly consider the needs of our community and follow the guidance of our kupuna and practitioners regarding Native Hawaiian intellectual property rights and this measure. Mahalo nui loa!

Submitted on: 3/19/2023 11:00:34 AM

Testimony for HWN on 3/21/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Keoni Kuoha	Individual	Support	Written Testimony Only

Comments:

Aloha, e Chair Shimabukuro, Vice Chair Fevella, & Committee Members,

My name is Keoni Kuoha and I am testifying in **STRONG SUPPORT** of SCR191, which would address and help avoid future legal issues regarding Native Hawaiian intellectual property and ensure that such issues are one less thing to burden Kānaka Maoli moving forward.

As a practitioner of 'Ōiwi art, 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 responsibility to uphold and protect. However, the State currently lacks the legal framework to support and protect Native Hawaiian intellectual properties.

With indigenous intellectual property rights being raised in forums around the world, more and more indigenous peoples are forming partnerships with governments to successfully develop policies unique to their circumstances and needs. Native Hawaiian intellectual property rights 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 properties to be expressly recognized and protected, beginning with the establishment of a Native Hawaiian Intellectual Property Working Group.

Moreover, to further refine the current resolution, please consider adding the following:

- * * * * * 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.

Please accept my testimony in **STRONG SUPPORT** of SCR 191.

Mahalo nui for your consideration,

Keoni Kuoha

Submitted on: 3/19/2023 6:14:13 PM

Testimony for HWN on 3/21/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Kim-Hee Wong	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Shimabukuro, Vice-Chair Fevella, & Committee Members,

My name is Kim-Hee Wong, and I am testifying today in strong support of SCR 191 which would establish a Native Hawaiian Intellectual Property Working Group. 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 align with the unique attributes of our cultural practices.

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 Shimabukuro, Vice-Chair Fevella, and the members of this important Committee for your consideration of this endeavor. I humbly urge you to pass SCR 191 as a necessary step toward establishing solutions for a decades-old problem.

Mahalo nui,

Kim-Hee Wong

SENATOR MAILE S. L. SHIMABUKURO, CHAIR SENATOR KURT FEVELLA, VICE-CHAIR, AND OTHER MEMBERS OF THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS

TESTIMONY IN STRONG SUPPORT OF SCR 191

TUESDAY, MARCH 21, 2023 at 1:00 PM CONFERENCE ROOM 224 & VIDEOCONFERENCE STATE CAPITOL 415 SOUTH BERETANIA STREET

Aloha Chair Shimabukuro, Vice-Chair Fevella, & Committee Members,

My name is Julian Keikilani Ako. I am a composer of Hawaiian mele and an ongoing student as well as speaker of 'ōlelo Hawai'i. Although I currently serve as Vice President of the Hawai'i Academy of Recording Arts and Pelekikena of the Kuini Pi'olani Hawaiian Civic Club, I am not submitting this testimony **in strong support of SCR 191** on behalf of either organization but rather on my own behalf.

For far too long elements of our kānaka (most commonly referred to in English as "native Hawaiian") cultural practices which encompass our 'ike kūpuna have been misappropriated and monetized without our expressed consent. My hope is that, in the long term, the establishment of the Native Hawaiian Intellectual Property Working Group called for by **SCR 191** will lead to policies and legislation to protect our kānaka intellectual property. As a cultural practitioner, I can personally attest to the challenges that I and our people face in dealing with a Western system of ownership that does not align with the unique attributes of our cultural practices.

The existing Western legal framework does not effectively protect our traditional and customary practices which include mele, hula, and more. As this resolution begins to outline, cultural practitioners often face issues of ownership, authority, and misappropriation given this framework. This working group will provide an important opportunity to convene subject matter experts, as well as cultural practitioners and leaders, to have a *proactive* conversation about the practices that make Hawai'i, Hawai'i. Building on the work of those who have come before us, this proposed Native Hawaiian Intellectual Property Working Group can identify significant issues, articulate culturally-appropriate solutions, and provide meaningful next steps toward resolving these issues.

Finally, given the plethora of experts and practitioners that can contribute to this conversation, I humbly ask that this committee include the following amendment, adding:

"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 in its work at their discretion."

Mahalo to Chair Shimabukuro, Vice-Chair Fevella, and the members of this important Committee for your consideration of this endeavor. I humbly urge you to support passage of SCR 191 as a necessary step toward establishing solutions for a decades-old problem.

Mahalo nui loa.

Julian Keikilani Ako

Committee on Hawaiian Affairs Senator Maile S.L. Shimabukuro, Chair Senator Kurt Fevella, Vice Chair

Tuesday, March 21, 2023
1:01 PM
Conference Room 224, State Capitol, HI
415 South Beretania Street
STRONG SUPPORT: SCR 191, 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 Shimabukuro, Vice Chair Fevella, & Committee Members,

My name is Lahela Spencer and I am testifying in **strong support of SCR191**, 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 kumu hula along with being involved in the hospitality & tourism industry, 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.

If it can add to weight to this resolution for more forceful momentum, please consider adding the following:

* * * * *

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.

Please accept my testimony in strong support of SCR 191.

Mahalo nui for your consideration, Lahela Spencer

Submitted on: 3/20/2023 8:33:13 AM

Testimony for HWN on 3/21/2023 1:01:00 PM

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

Comments:

Aloha, I am writing today in support of SCR 191 to establish a working group that will protect the intellectual property rights of Native Hawaiians. As stated in the Resolution, Native Hawaiian culture and language has been used as commodies by foreign interests with little to no protection for the people who belong to that culture. Please consider establishing this group to aid Native Hawaiians in perpetuating our 'ike, mo'olelo, and hana no'eau. Mahalo.

<u>SCR-191</u> Submitted on: 3/20/2023 9:42:43 AM

Testimony for HWN on 3/21/2023 1:01:00 PM

Submitted By	Organization	Testifier Position	Testify
Elmer Kaai	Individual	Support	Written Testimony Only

Comments:

As a member of Kuini Pi'olani Hawaiian Civic Club, I am fully support of SCR 191 and encourage the committee's passage and the Senate's adoption. This work group is a catalyst to implement changes that are long over due.