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Unity, Equality, Aloha for all


Testimony regarding RIN 1090–AB05 (Regulation Identifier Number)
"Procedures for Reestablishing a Government-to-Government Relationship With the Native Hawaiian Community"
AGENCY: Office of the Secretary, Department of the Interior.
ACTION: Proposed rule.
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Testimony submitted November 26, 2015
In honor of today's Thanksgiving Day holiday
Giving thanks that there is no federally recognized Hawaiian tribe.

by Kenneth R. Conklin, Ph.D.
Website: "Hawaiian Sovereignty: Thinking Carefully About It"
http://tinyurl.com/6gkzk
Book: "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State"
http://tinyurl.com/2a9fqa

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After introducing myself, I will discuss first those practical topics where my testimony is most likely to actually influence the shaping of the Final Rule, in the hope that Rule can be merely a disaster rather than a full-blown catastrophe. Later segments of my testimony focus on topics where I express historical, legal and moral objections to the whole concept of dividing the lands and people of Hawaii along racial lines.

1. Page 8 Aloha from Ken Conklin. Fundamental principles of civil rights cause me to support and defend the unity of Hawaii's people, the undivided sovereignty of the State of Hawaii, the unity of Hawaii with the United States, and equality of all Hawaii's people under the law regardless of race.

2. Page 11 Setting a quorum for credible participation rate in a ratification election -- the number of votes required for ratification of a governing document as specified in the October 1 Notice of Proposed Rulemaking is TOO LOW, both in regard to a quorum for HHCA-eligible native Hawaiians and in regard to a quorum for the larger group of all ethnic Hawaiians.

3. Page 16 The Advance Notice of Proposed Rulemaking from 2014 posed the following question #8 which has been abandoned in the current NPRM and needs to be reconsidered: "To be included on the roll, what should constitute adequate evidence or verification that a person has a significant cultural, social, or civic connection to the Native Hawaiian community?" By failing to demand that participants in the election of delegates or ratification of a governing document must provide affirmation of political belief and/or documented evidence of membership in a Native Hawaiian cultural, social, or civic group; the Department of Interior is merely using deception and subterfuge in attempting to convert a racial group into a political entity. DOI does not have legal authority to recognize a racial group, nor to arbitrarily declare that a racial group is a political entity. Therefore any Final Rule specifying conditions for recognizing a Hawaiian tribe must include requirements that the voters and candidates for election to create a governing document, and/or to ratify that document for submission to DOI, must have provided proof of political loyalty to the

tribe and also proof of personal affiliation with Native Hawaiian cultural, social or civic groups.

4. Page 19 The Department of Interior is proposing a new rule specially tailored to the unique circumstances of recognizing a Hawaiian tribe. One of the things that makes Hawaii unique is the extremely large 22% of the State's population who are "Native Hawaiian", compared to the far smaller percentage of Indians in the populations of all the other States. Another thing that makes Hawaii unique is that all the "Native Hawaiians" would be eligible to join the single Hawaiian tribe. By contrast Native Alaskans at 19% of population are divided among 227 federally recognized tribes. Oklahoma has the second largest percentage who are Indians -- 13.5% -- and they are divided among 39 federally recognized tribes. In third place is New Mexico at 10.4% divided among 21 federally recognized tribes. Creating a Hawaiian tribe would produce a traumatic partitioning of our people and lands along purely racial lines -- Native Hawaiian vs. everyone else -- comparable to the partitioning of India along religious lines when Pakistan was created. Such a massive partitioning is a matter for all the people of Hawaii to decide in an election where everyone regardless of race should have a right to vote. Although Department of Interior has never asked the people of a State whether they approve federal recognition for an Indian tribe, the situation in Hawaii is unique and therefore DOI has a responsibility to create a unique rule. THE RULE SHOULD REQUIRE THAT THE HAWAIIAN TRIBE CANNOT HAVE FEDERAL RECOGNITION UNTIL SUCH TIME AS THE PEOPLE OF HAWAII HAVE APPROVED OF FEDERAL RECOGNITION BY A QUESTION ON THE BALLOT IN A GENERAL ELECTION ACCORDING TO THE SAME REQUIREMENTS AS MUST BE MET BY ANY PROPOSED AMENDMENT TO THE CONSTITUTION OF THE STATE OF HAWAII.

5. Page 21 Promises or predictions made in the October 1 NPRM that the rights of people will be protected cannot be delivered, because whatever requirements the Department of Interior imposes upon a tribe's initial governing document in order to grant federal recognition can later be changed by the tribe unilaterally after the tribe has been officially recognized. There are two reasons why the initial governing document cannot be enforced by DOI: (a) The NPRM explicitly states that the Hawaiian tribe will enjoy the same inherent sovereignty to exercise self-

determination that all federally recognized mainland tribes enjoy (including the right to amend its governing document); but in addition, (b) a new Final Rule published in the Federal Register on October 19, which took effect as law on November 18, allows any federally recognized tribe to amend its governing document without the amendment(s) needing any approval by the Secretary of Interior.

6. Page 26 In light of item #5 above, and the fact that ethnic Hawaiians with low native blood quantum are a large majority of all ethnic Hawaiians eligible to join the Hawaiian tribe, the special rights of HHCA-eligible native Hawaiians (50% native blood quantum) are likely to be nullified regarding leases and governance on the Homelands.

7. Page 29 In light of item #5 above, the Hawaiian tribe can set up GAMBLING CASINOS ON THE MAINLAND OR IN HAWAII as demonstrated by the fact that existing laws prohibiting any legalized gambling in Hawaii did not dissuade the State legislature from previously entertaining legislation to put casinos on the Homelands. Nearly all versions of the Akaka bill for 13 years prohibited a Hawaiian tribe from having gambling casinos, and such a prohibition would have been effective because Congress has plenary power over all the tribes. But a tribe created by an administrative rule cannot be stopped from having a casino on the mainland or in Hawaii merely by a provision in its initial governing document, since the Hawaiian tribe, once federally recognized, is free to amend its governing document without needing federal approval.

8. Page 35 In light of item #5 above, the Hawaiian tribe cannot be prohibited from participating automatically in all the benefit programs intended for the mainland tribes, despite assurances to the contrary in the NPRM. The sheer size of the Hawaiian tribe will result in the Hawaiian tribe hogging the federal benefit programs; and that factor, combined with federal budget cutbacks, will deprive the mainland tribes of funds they have come to rely upon. Thus the Department of Interior, in zealously pushing for federal recognition of a Hawaiian tribe, is violating its fiduciary obligation to protect the mainland tribes which have come to depend upon DOI.

9. Page 39 Despite promises in the NPRM, a Hawaiian tribe, like all federally recognized tribes, would indeed threaten the sovereign immunity

of federal and State lands, and also threaten private land titles. A federally recognized Hawaiian tribe would have the same right as mainland tribes to invoke the Indian Non-intercourse Act and the concept of aboriginal land title. Administrative granting of federal recognition to a Hawaiian tribe as contemplated in NPRM imposes no time limit for final global settlement of historical grievances, even though some previous versions of the Akaka bill did impose such a time limit.

10. Page 46 Jurisdiction by a Hawaiian tribe over Hawaii citizens with no native blood, and also over ethnic Hawaiians who choose not to join the tribe. Indian Child Welfare Act. Violence Against Women Act. The federal NAGPRA law, as well as State laws, allow a Hawaiian tribe to assert rights regarding native burials on state, county, or private lands even when the tribe does not own those lands.

11. Page 50 The Notice of Proposed Rulemaking repeatedly refers to a “reorganized Native Hawaiian government" or “reestablishing a government-to-government relationship with the Native Hawaiian community.” But there never was a government of a unified archipelago of Hawaii where the government consisted solely of Native Hawaiians nor where the citizenry with voting and property rights were solely Native Hawaiian. Thus there was never a Native Hawaiian government which could now be reorganized. All you could do is create one out of thin air with no basis in history. Genuine tribes are recognized because they already exist. Genuine tribes were not created centuries ago the way the Kingdom of Hawaii was created -- by using guns and ships provided by Caucasians, with Caucasians occupying high-level leadership positions in the tribal government. Genuine tribes are not newly created the way the Hawaiian tribe is being created -- by non-Indians passing laws in the State legislature and providing money for race-based elections, assisted by the Department of Interior telling them how to write their governing documents in such a way as to ensure federal recognition.

12. Page 57 NPRM refers to “the special political and trust relationship that congress has established between that [the Native Hawaiian] community and the United States.” But it is doubtful whether such a trust relationship exists -- the assertion that such a trust relationship exists has

been a political football, alternately denied and affirmed and denied depending on which political party controls the Presidency or Congress.

13. Page 63 Authoritative sources since 2001 warn that creating a race-based government for ethnic Hawaiians would be both unconstitutional and bad public policy: U.S. House Judiciary Committee subcommittee on the Constitution; U.S. Commission on Civil Rights; and others.

14. Page 67 Authoritative sources confirm the Hawaiian revolution of 1893 was legitimate and the U.S. owes nothing to ethnic Hawaiians beyond what is owed to all the citizens of the United States: 808-page report of the U.S. Senate Committee on Foreign Affairs (1894); Native Hawaiians Study Commission report (jointly authorized by Senate and House, 1983); the 1993 apology resolution and rebuttals to it; letters from at least 19 foreign heads of state granting formal de jure recognition to the Republic as the rightful government of Hawaii (1894); legitimacy of the Treaty of Annexation (1898).

15. Page 88 Evidence that "Native Hawaiians" and also the general citizenry of Hawaii do not want federal recognition of a "Native Hawaiian" governing entity or tribe. Zogby survey; two Grassroot Institute surveys; newspaper and OHA scientific surveys show ethnic Hawaiians and the general population place "nationbuilding" at bottom of priorities; informal newspaper polls show majority opposes creating a Hawaiian tribe and racial entitlements; hundreds of essays from 2000 to 2014 by nationally known experts and opinion-makers.

16. Page 93 People of all races jointly own Hawaii as full partners. It would be historically, legally, and morally wrong to push people with no native blood to the back of the bus. Why the metaphors of stolen car or stolen house are wrong. The battle for hearts and minds of Hawaii people of Asian ancestry. President Obama himself opposes tribalism and erecting walls between natives and immigrants. The history of the Black civil rights movement is instructive -- Martin Luther King's model of full integration won the hearts and minds of African Americans and of all Americans, defeating the racial separatism of the "Nation of Islam."

17. Page 103 Administrative rule-making should not be used to enact legislation explicitly rejected by Congress during 13 years when megabucks were spent pushing it. Legitimate authority for rule-making should not be regarded as a license for arbitrary and capricious rule-breaking. If the rules are changed in such a radical way to allow such a fully assimilated, scattered group as "Native Hawaiians" to get federal recognition, hundreds of other groups cannot be denied.

18. Page 108 The people and lands that might be cobbled together to create a Hawaiian tribe are fully integrated, fully assimilated, and widely scattered throughout all neighborhoods in Hawaii and all 50 states. Genuine tribes began long ago as demographically homogeneous and geographically compact; and the purpose of federal recognition is to enable them to continue their lifestyle and self-governance. But federal recognition for a Hawaiian tribe would take things in the opposite direction -- herding into demographic and geographic racial ghettos people and lands that have long been fully assimilated, widely scattered, and governed by a multiracial society. Map showing public lands likely to be demanded by a Hawaiian tribe; Census 2010 table showing number of Native Hawaiians in every state; Census 2010 table showing number of Native Hawaiians in every census tract in Hawaii.

19. Page 129 Six cartoons by Daryl Cagle illustrating the social divisiveness of racial entitlement programs, as seen in Midweek newspaper, Honolulu, probably late 1990s to mid 2000s.

Section 1. Aloha from Ken Conklin. Fundamental principles of civil rights cause me to support and defend the unity of Hawaii's people, the undivided sovereignty of the State of Hawaii, the unity of Hawaii with the United States, and equality of all Hawaii's people under the law regardless of race.

Aloha kakou. O Ken Conklin ko'u inoa. Mai ke ahupua'a o He'eia, Ko'olaupoko, O'ahu mai au.

I am Kenneth R. Conklin, Ph.D., retired professor of Philosophy. I have been a citizen of Hawaii and permanent resident of the town of Kane'ohe in the ahupua'a of He'eia, Ko'olaupoko, O'ahu since 1992. I came to live here primarily because of my love and respect for Hawaiian history and culture, and appreciation of our fully integrated multiracial society. I have attended hundreds of Hawaiian sovereignty meetings and demonstrations; and I speak Hawaiian language with moderate fluency. I maintain a very large website on the topic of Hawaiian sovereignty and related issues including history, law, and the Akaka bill, at:
http://tinyurl.com/6gkzk
and am the author of a 302-page book "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State" with portions available at
http://tinyurl.com/2a9fqa

My goals as a civil rights activist are to protect and strengthen the unity of Hawaii's people under the undivided sovereignty of the State of Hawaii; the unity of Hawaii with the United States; and equality under the law for all Hawaii's people.

For a detailed description of the fundamental principles for which I stand, see
http://www.angelfire.com/hi2/hawaiiansovereignty/principles.html

For personal information about me and my background, see
http://www.angelfire.com/bigfiles90/ConklinBio.html

In keeping with those goals, I oppose dividing the lands and people of Hawaii along racial lines as envisioned by the Akaka bill (numerous bill numbers and versions) pending in Congress from July 2000 through December 2012 and as envisioned by current proposals to create a Hawaiian race-based government and give federal recognition to it as an Indian tribe. I also oppose efforts to rip the 50th star off the flag by restoring Hawaii's previous status as an independent nation. I oppose Hawaii's amazingly large number of racial entitlement programs.

The dollar value and institutional power structure in those existing racial entitlement programs are the primary motivators of demands for federal recognition to convert the favored racial group into a federally recognized Indian tribe. Hawaii's racial entitlement programs are unconstitutional under the 14th Amendment equal protection clause. Courts will eventually invoke the 14th Amendment to abolish such programs unless the favored racial group is declared to be a federally recognized tribe. As a civil rights activist I believe all Hawaii citizens should be treated equally under the law by federal, state and local governments, regardless of race. Therefore I oppose efforts to declare Hawaii's favorite racial group to be a federally recognized tribe, because such a declaration would make it harder to abolish the astoundingly unequal treatment currently in place.

This testimony is divided into sections. Each section focuses on a specific topic. In choosing the order of presenting the topics, I realize that the Department of Interior is hell-bent on creating a rule tailor-made to provide swift approval (before President Obama leaves office) of the application for federal recognition which it knows the wannabe Hawaiian tribe will be submitting.

Therefore I have chosen to present first those practical topics where my testimony is most likely to actually influence the shaping of the Final Rule, which we all know the Department of Interior will proclaim in the Federal Register no matter how much opposition there is from the citizens of Hawaii. I hope that my testimony will shape that Final Rule to be merely a disaster rather than a full-blown catastrophe.

Later segments of my testimony focus on topics where I express historical, legal and moral objections to the whole concept of dividing the lands and

people of Hawaii along racial lines. However futile it might be to make such objections in the face of a Department of Interior politically committed to imposing its evil agenda on Hawaii's people, I nevertheless am compelled to make my protest abundantly clear and will do so in the closing sections of this testimony.

Section 2. Setting a quorum for credible participation rate in a ratification election -- the number of votes required for ratification of a governing document as specified in the October 1 Notice of Proposed Rulemaking is TOO LOW, both in regard to a quorum for HHCA-eligible native Hawaiians and in regard to a quorum for the larger group of all ethnic Hawaiians.

The Department of Interior, under direction from President Obama, seems to be strongly supportive of creating a federally recognized Hawaiian tribe. But in its zeal to accomplish that goal, DOI is setting unrealistically low expectations for participation rates. DOI would love to certify a governing document ratification election even if the percentage of participation by eligible voters is very low, or the percentage of affirmative votes is very low. In this section I will show that statistical assumptions and techniques in the DOI comments in the NPRM are highly questionable.

It is absurd to use Census counts from 2010 to set expectations for an election that will take place in 2016. The documented number of Native Hawaiians as measured by the Census has been increasing at a rapid rate ever since the "Native Hawaiian" racial category was first added to the Census form in year 2000. In 2000 the number of people who checked the box for Native Hawaiian was about 401,000. In year 2010 it was 527,000 -- an increase of 126,000 in ten years, or 12,600 per year. Thus by the time a ratification election is held in year 2016 we can expect there to be about 12,600 x 6 = 75,600 additional Native Hawaiians, for a total of about 602,000 nationwide. Even if the methods used by DOI for calculating a quorum of affirmative votes were to be accepted (despite virtually ignoring the mainland Native Hawaiians; see below), those quorums should be increased by the same percentage as the increase in the number of Native Hawaiians from 2010 to 1016, which is 75600/527,000 = an increase of 14 percent. So instead of 50,000 and 15,000 the respective quorums would be 57,000 and 17,000.

Another error in the way NPRM sets a participation quorum concerns the HHCA-eligible native Hawaiians; i.e., those who have at least a 50% native blood quantum. Federal Register page 59,124 notes that "According to the 2010 Federal decennial census, there are about 156,000 Native Hawaiians

in the United States, including about 80,000 who reside in Hawaii, who self-identified on their census forms as “Native Hawaiian” alone (i.e., they did not check the box for any other demographic category)." With a figure of 156,000 nationwide, it is absurd to set a requirement of only 15,000 for the number of affirmative votes required from the group of HHCA-eligible native Hawaiians. We've all heard the saying "There are lies, there are damn lies -- and then there are statistics!" It is ludicrous that somehow the Department of Interior tortured its data analysis so wrenchingly as to set a quorum of only 15,000 out of 156,000.

Even if some of those 156,000 do not actually have the 50% native blood quantum, the fact remains that they have such great racial pride and racial activism that they chose to ignore whatever other ethnicities might be in their genealogies -- they chose to report themselves as being entirely native Hawaiian. Surely they could be expected to be active participants in any election to ratify governing documents for a Hawaiian tribe. This is also a reason to disparage the DOI quorum of 50,000 for all Native Hawaiians nationwide for all blood quantums. Here are 156,000 people who take such pride in being Native Hawaiian that they report that as their only ethnicity. Their failure to participate in a ratification election would indicate that they are boycotting and rejecting the entire process as bogus, and so should DOI.

Another error in the DOI statistical analysis is the assertion that the population of HHCA-eligible (50% quantum) native Hawaiians is declining. But Census data indicate that assumption is wrong. For the 2000 Census, there were 80,137 reported as “Native Hawaiian alone" and living in Hawaii. Census 2010 reported 80,337 as “Native Hawaiian alone" and living in Hawaii. That's actually a small increase, not a decline. The comparison between 2000 and 2010 nationwide is similar. The number of people on the waiting list for the Department of Hawaiian Homelands does not appear to be declining, and certainly it is true that the number on the waiting list is nowhere near the number of people who have the required 50% native blood quantum.

The NPRM devotes considerable discussion to its method for setting a quorum for participation by Native Hawaiians in the eventual ratification election for a governing document. In setting a requirement (or at least a

guideline) for the number and percentage of affirmative votes for DOI to be willing to grant federal recognition, the NPRM admits that the Department of Interior has "significantly discounted" the rate of participation by Native Hawaiians living outside the state of Hawaii, in the ratification election.

Quoting from Federal Register p. 59125: "Weighing these data, the Department concludes that it is reasonable to expect that a ratification referendum among the Native Hawaiian community in Hawaii would have a turnout somewhere in the range between 60,000 and 100,000, although a figure outside that range is possible. But those figures do not include Native Hawaiian voters who reside outside the State of Hawaii, who also could participate in the referendum; the Department believes that the rate of participation among that group is sufficiently uncertain that their numbers should be significantly discounted when establishing turnout thresholds."

On page 59124 NPRM acknowledges that according to Census 2010 there were about 527,000 Native Hawaiians in the entire U.S., including 290,000 in Hawaii. That means there were 237,000 Native Hawaiians living in the other 49 states. NPRM provides no compelling reason why "the rate of participation among that group is sufficiently uncertain that their numbers should be significantly discounted when establishing turnout thresholds."

DOI personnel seem to assume that Native Hawaiians living outside Hawaii are somehow disconnected from or uninterested in issues affecting the Native Hawaiian community. However, there is evidence of great interest and participation by them in Hawaiian cultural and political issues. OHA recognized that fact during the 13 years when the Akaka bill was pending in Congress, repeatedly sending representatives to meet with community groups in numerous states in order to get them to sign up for the Kau Inoa racial registry and to ask them to lobby their Senators and Congressional representatives on behalf of the Akaka bill. OHA sent many thousands of flyers and other mailouts to mainland residents of Hawaiian ancestry. Such expenditure of time and money indicates that OHA believes mainland Native Hawaiians are interested in Native Hawaiian affairs and will participate in political actions.

There are numerous Hawaiian Civic Clubs and hula halaus and Native Hawaiian college student organizations in the other 49 states, with

membership rolls comparable to the ones located in Hawaii. The civic clubs and college student clubs in California and Nevada are especially active, along with ones in Oregon, Massachusetts, and other states. Kamehameha Schools has many branches of its alumni association on the mainland with thousands of members.

For example the Kamehameha alumni club in San Francisco was extremely aggressive in staging a street demonstration at the U.S. 9th Circuit Court of Appeals during the time when that court was considering one of the lawsuits seeking racial desegregation of the school's admissions policy. The Honolulu Advertiser on Thursday, August 11, 2005 published an article "Alumni planning march in Bay Area" which included the following information: "Kamehameha Schools alumni and other supporters will hold a rally and march in downtown San Francisco next week in support of the school's Hawaiians-first admissions policy, according to one of the organizers. ... Noelani Jai, a 1983 Kamehameha graduate and an attorney who lives in Southern California, said she was bothered by the court ruling when she read it. After exchanging e-mails with other Kamehameha alumni in California, she quickly realized she isn't the only out-of-state Hawaiian who is unhappy and, on Friday, she decided to talk with others about the march. "All of the sudden it occurred to me one night that we live in California, we live near the 9th Circuit Court, and so I thought it would a perfect opportunity for kanaka maoli on the Mainland to represent those who are in Hawai'i by marching on the court," Jai said. ... Jai said that influencing the judges was not the main point. "More than that, we just want to educate folks across the continent, and not just San Francisco," she said. Jai said she hopes to get 300 to 400 at the march although some have suggested as many as 1,000 could show up, given the number of Kamehameha alumni in California. Vicky Holt Takamine, president of 'Ilio'ulaokalani, said about six members of her group intend to join the San Francisco effort. The group, which was instrumental in setting up last week's Honolulu march, intends to take along about 2,000 T-shirts to sell for $10 apiece. ... Jai said that besides the march, alumni chapters are talking about holding candlelight vigils Aug. 19 that would be conducted simultaneously across the country. There are more than a dozen chapters on the Mainland, including those in Washington, D.C., and Chicago."

Members of mainland Native Hawaiian civic clubs, hula halaus, alumni associations, etc. should be presumed to be as active in participating in Hawaiian affairs as their counterparts located in Hawaii.

To establish a ratio of expected participation in a ratification election for a Hawaiian tribal governing document, the Department of Interior should compare the number of Native Hawaiian civic clubs on the mainland, and their membership sizes, with the number and sizes of the civic clubs in Hawaii; and also make the same comparison between mainland groups and Hawaii groups for Kamehameha Schools alumni associations, college student clubs, etc. It is simply wrong for Department of Interior to ignore or severely discount mainland Native Hawaiian interest in, or opposition to, creation of a Hawaiian tribe merely because the people are in a diaspora. Indeed, we know that Native Hawaiians living away from their "homeland" often have a yearning for home that is stronger than what is felt by U.S. business executives, diplomats, or retirees living abroad.

Section 3. The Advance Notice of Proposed Rulemaking from 2014 posed the following question #8 which has been abandoned in the current NPRM and needs to be reconsidered: "To be included on the roll, what should constitute adequate evidence or verification that a person has a significant cultural, social, or civic connection to the Native Hawaiian community?" By failing to demand that participants in the election of delegates or ratification of a governing document must provide affirmation of political belief and/or documented evidence of membership in a Native Hawaiian cultural, social, or civic group; the Department of Interior is merely using deception and subterfuge in attempting to convert a racial group into a political entity. DOI does not have legal authority to recognize a racial group, nor to arbitrarily declare that a racial group is a political entity. Therefore any Final Rule specifying conditions for recognizing a Hawaiian tribe must include requirements that the voters and candidates for election to create a governing document, and/or to ratify that document for submission to DOI, must have provided proof of political loyalty to the tribe and also proof of personal affiliation with Native Hawaiian cultural, social or civic groups.

Initially, when people signed up directly for the Kana'iolowalu racial registry, they were required to provide documentary proof of Hawaiian native ancestry, and also to make the following two affirmations: "I affirm the unrelinquished sovereignty of the Native Hawaiian people" and also "I have a significant social, cultural, or civic connection to the Native Hawaiian community." But there was no requirement to provide proof for either of those affirmations, such as a notarized affidavit of belief in unrelinquished sovereignty or a proof of membership in a Hawaiian civic club or canoe club or hula halau or Kamehameha Schools alumni club or etc. Race was the only element for which proof was demanded.

The Department of Interior insists that federal recognition is given to a tribe not merely on account of race, but especially on account of its being a political entity with a history of having its own separate government that has

always exercised a significant degree of authority over its members. In an effort to make it look like Kana'iolowalu was a political entity and not merely a racial group, the two affirmations were added about a belief in unrelinquished sovereignty and having a significant connection to the native Hawaiian community. However, those two "political" elements were never required to be verified either by sworn affidavit or by membership documents, despite the very rigorous proof required for race..

The State legislature in 2013 passed, and the Governor signed, Act 77, allowing tens of thousands of names from earlier racial registries to be added to the Kana'iolowalu list automatically, without asking permission or even notifying those individuals. That made it look like those tens of thousands of people had affirmed unrelinquished sovereignty when in fact they had never made any such affirmation.

In case anyone now continues to believe that the group of candidates and voters in the Na'i Aupuni election is anything other than merely a racial group, recent litigation in the U.S. District Court in Honolulu provided proof that OHA, Kana'iolowalu, Na'i Aupuni, Akamai, et. al. were extremely willing to facilitate participation by members of the racial group who refused to affirm a belief in unrelinquished sovereignty. According to testimony from OHA and Na'i Aupuni officials who were called as witnesses in Judge Seabright's court, people who objected to the affirmation were told they could register as voters or candidates in the Na'i Aupuni election by signing up for an OHA registry or other registry identified in Act 77, thereby gaining the right to participate in the election without signing the Kana'iolowalu registration form containing the affirmation of unrelinquished sovereignty.

Thus the Kana'iolowalu group -- and all the participants in the Na'i Aupuni election -- were defined solely by race with no political affirmation and no requirement to show "a significant social, cultural, or civic connection to the Native Hawaiian community."

Item #13 on Federal Register page 59122 of the NPRM notes that "Native Hawaiian adult citizens who do not wish to affirm the inherent sovereignty of the Native Hawaiian people, or who doubt that they and other Native Hawaiians have sufficient connections or ties to constitute a community, or who oppose the process of Native Hawaiian self-government or the

reestablishment of a formal government-to-government relationship with the United States, would be free to participate in the ratification referendum and, if they wish, vote against ratifying the community's proposed governing document. ... The Department seeks public comment on these aspects of the proposed rule."

The Department of Interior is hereby placed on notice that it is merely identifying a racial group and not a political entity on account of DOI failure to demand, as a condition for granting a future request for federal recognition from the Native Hawaiian governing entity created through the Na'i Aupuni process, that candidates and voters in the Na'i Aupuni election prove a political affiliation by either an affidavit of political belief or a document displaying membership in a Native Hawaiian social, cultural, or civic group.

Any Final Rule specifying conditions for recognizing a Hawaiian tribe must include requirements that the voters and candidates for election to create a governing document, and/or to serve as tribal officers, must have provided proof of political loyalty to the tribe and also proof of personal affiliation with Native Hawaiian cultural, social or civic groups.

4. The Department of Interior is proposing a new rule specially tailored to the unique circumstances of recognizing a Hawaiian tribe. One of the things that makes Hawaii unique is the extremely large 22% of the State's population who are "Native Hawaiian", compared to the far smaller percentage of Indians in the populations of all the other States. Another thing that makes Hawaii unique is that all the "Native Hawaiians" would be eligible to join the single Hawaiian tribe. By contrast Native Alaskans at 19% of population are divided among 227 federally recognized tribes. Oklahoma has the second largest percentage who are Indians -- 13.5% -- and they are divided among 39 federally recognized tribes. In third place is New Mexico at 10.4% divided among 21 federally recognized tribes. Creating a Hawaiian tribe would produce a traumatic partitioning of our people and lands along purely racial lines -- Native Hawaiian vs. everyone else -- comparable to the partitioning of India along religious lines when Pakistan was created. Such a massive partitioning is a matter for all the people of Hawaii to decide in an election where everyone regardless of race should have a right to vote. Although Department of Interior has never asked the people of a State whether they approve federal recognition for an Indian tribe, the situation in Hawaii is unique and therefore DOI has a responsibility to create a unique rule. The rule should require that the Hawaiian tribe cannot have federal recognition until such time as the people of Hawaii have approved of federal recognition by a question on the ballot in a general election according to the same requirements as must be met by any proposed amendment to the Constitution of the State of Hawaii.

The wording of the ballot question should be: Yes/No: Do you approve of granting state and federal recognition to a Native Hawaiian governing entity whose inherent sovereignty, powers, and jurisdictional authority would be the same as a U.S. mainland Indian tribe?

Data and sources:
According to the U.S. Census American Community Survey for 2014, there are 15 states which each have 100,000 or more American Indian or Alaska Native residents (race alone or in combination with other races). Those states are California, Oklahoma, Arizona, Texas, New York, New Mexico, Washington, North Carolina, Florida, Michigan, Alaska, Oregon, Colorado, Pennsylvania and Minnesota, each of which has far larger total population than Hawaii (only 1.4 Million). Source: 2014 American Community Survey http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_1YR/S0201/0100000US.04000/popgroup~009

That same American Community Survey for 2014 unfortunately lumps Native Hawaiians together with Other Pacific Islanders. So a reasonable way to estimate 2014 population is by comparing Native Hawaiian population in Hawaii from years 2000 and 2010, and then extrapolating the increase to 2014. In Census 2000 there were roughly 240,000 Native Hawaiians (race alone or in combination with other races) living in Hawaii. In Census 2010 there were roughly 290,000 Native Hawaiians (race alone or in combination with other races) living in Hawaii. That's an increase of 50,000 in 10 years (Native Hawaiians are thriving!), or 5,000 per year. So for 2014 there were roughly 310,000 Native Hawaiians (race alone or in combination with other races) living in Hawaii, out of a total State population of 1.42 Million, or roughly 22%.

Alaska had the highest percentage of any State for American Native or Native Alaskan (race alone or in combination), at 19.4%; however, that includes 227 federally recognized tribes in Alaska alone, who are mostly in Alaska native villages. Alaska was followed by Oklahoma (13.5 percent), New Mexico (10.4 percent), South Dakota (10.1 percent) and Montana (8.0 percent). The estimates for New Mexico and South Dakota were not significantly different from one another.
Source: 2014 American Community Survey http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_1YR/DP05/0100000US.04000

List of federally recognized tribes by state. Now 567 tribes after the Pamunkey tribe in Virginia was recognized in July 2015. https://en.wikipedia.org/wiki/List_of_federally_recognized_tribes_by_state

Section 5. Promises or predictions made in the October 1 NPRM that the rights of people will be protected cannot be delivered, because whatever requirements the Department of Interior imposes upon a tribe's initial governing document in order to grant federal recognition can later be changed by the tribe unilaterally after the tribe has been officially recognized. There are two reasons why the initial governing document cannot be enforced by DOI: (a) The NPRM explicitly states that the Hawaiian tribe will enjoy the same inherent sovereignty to exercise self-determination that all federally recognized mainland tribes enjoy (including the right to amend its governing document); but in addition, (b) a new Final Rule published in the Federal Register on October 19, which took effect as law on November 18, allows any federally recognized tribe to amend its governing document without the amendment(s) needing any approval by the Secretary of Interior.

One major reason why promises made in the NPRM are unenforceable and easily vitiated is that a new Final Rule was just published by the Department of Interior in the Federal Register on October 19, 2015, which takes effect as law on November 18, which affects all federally recognized tribes, and which will apply to the future Hawaiian tribe as soon as it is officially recognized. The new Final Rule is Document Number 2015-26176 which can be found in the federal Register at

https://www.federalregister.gov/articles/2015/10/19/2015-26176/secretarial-election-procedures

or shorter URL
https://federalregister.gov/a/2015-26176

A news report describing it was published in the online "Indian Country Today" edition of October 22, 2015 at

http://indiancountrytodaymedianetwork.com/2015/10/22/washburn-pushes-self-determination-again-final-rule-secretarial-elections-162183

A key paragraph from the official executive summary of the Final Rule says the following [NB: The word "Secretary" or "Secretarial" refers to the U.S. cabinet officer known as the Secretary of Interior. The word "election" refers not to the election of tribal officers, but to any decision-making process for approving amendments to a tribe's governing document or Constitution.]

"For many tribes, the requirement for Secretarial elections or Secretarial approval is anachronistic and inconsistent with modern policies favoring tribal self-governance. The rule includes language clarifying that a tribe reorganized under the IRA may amend its governing document to remove the requirement for Secretarial approval of future amendments. The Department encourages amendments to governing documents to remove vestiges of a more paternalistic approach toward tribes. Once the requirement for Secretarial approval is removed through a Secretarial election, Secretarial approval of future amendments is not required, meaning there will be no future Secretarial elections conducted for the tribe, and future elections will be purely tribal elections, governed and run by the tribe rather than BIA. Additionally, without a requirement for Secretarial approval, the constitution will no longer be governed by the other election-related requirements of the IRA, such as the minimum number of tribal voters to make an election effective. Such matters will be governed by tribal policy decisions rather than Federal ones. Tribes with Secretarial election requirements are encouraged to remove them in furtherance of tribal sovereignty and self-determination."

The rule says that tribes are no longer required to obtain approval from the Secretary of Interior when they amend their governing documents. A tribe can conduct an election by mail, or at in-person polling places, to ratify proposed amendments to its governing document, and whatever amendments are ratified by the votes of the members, will no longer need to be approved by the Department of Interior. Furthermore, the tribe may change the quorum, or minimum number of votes necessary to approve an amendment to the tribal governing document. This ability to amend the

governing document without needing outside permission, including the right to reduce the required number of voters to as small a number as tribal leaders might desire, is part of the meaning of "self-determination" and "inherent sovereignty" so often touted in the Notice of Proposed Rulemaking which the Department of Interior is using to persuade Native Hawaiians to seek federal recognition as a tribe.

According to NPRM and presumably according to the Final Rule that will eventually be enacted into law by publishing it in the Federal Register regarding creation of the Hawaiian tribe, the initial governing document ratified by the certified Native Hawaiian voters must meet certain requirements in order for the Hawaiian tribe's application to be approved by the Secretary of Interior. However, once the Hawaiian tribe has actually had its initial governing document approved and has received federal recognition, it will then be free to amend its governing document without permission from the Secretary of Interior, to delete or change any of its provisions, thereby vitiating any of the "protections" in that document. All this is according to terms of the Document Number 2015-26176 Final Rule governing all tribes which was published in the Federal Record on October 19, 2015 and took effect as law on November 18,

Even before publication of the Federal Register Final Rule on October 19, 2015, the Department of Interior acknowledged in its comments on the Notice of Proposed Rulemaking published in the Federal Register on October 1, 2015 the fact that whatever conditions or concessions the Hawaiian tribe must satisfy to be officially recognized can be changed by the tribe after it has been recognized, due to the inherent powers of sovereign self-determination possessed by a recognized tribe. See NPRM Item 11 ISSUE and RESPONSE from Federal Register pp. 59121-59122:

"11. Would the proposed rule limit the inherent sovereign powers of a reorganized Native Hawaiian government?
ISSUE: OHA and numerous other commenters expressed a strong interest in ensuring that the proposed rule would not limit any inherent sovereign powers of a reorganized Native Hawaiian government.
RESPONSE: The proposed rule would not dictate the inherent sovereign powers a reorganized Native Hawaiian government could exercise. The proposed rule does establish certain elements that must be contained in a

request to reestablish a government-to-government relationship with the United States and establishes criteria by which the Secretary will review a request. See 50.10-50.15 (setting out essential elements for a request); id. 50.16 (setting out criteria). These provisions include guaranteeing the liberties, rights, and privileges of all persons affected by the Native Hawaiian government's exercise of governmental powers. Although those elements and criteria will inform and influence the process for reestablishing a formal government-to-government relationship, they would not undermine the fundamental, retained inherent sovereign powers of a reorganized Native Hawaiian government."

There are actually three reasons why promises of protections asserted in the NPRM, and in the Final Rule when published, are unenforceable and vitiated.

A. As the NPRM itself points out, Congress has plenary power over all the tribes, including the Hawaiian tribe. Furthermore, DOI is a creation of Congress. Any promise made by DOI can be nullified by Congress, and such nullification is very easy to place as a detail in the middle of a long and complicated budget bill that provides funding for the Department of Interior. The Hawaiian tribe will have powerful Senators and Congressional Representatives working to do exactly that, while Senators and Representatives from other states will not be paying attention to what they do for Hawaii.

B. The Hawaii Statehood Admission Act of 1959 delegated implementation of the Hawaiian Homes Commission Act, and management of the Hawaiian Homelands, to the State of Hawaii. The state Department of Hawaiian Homelands has managed (or mismanaged!) those homelands for 56 years with virtually no interference or oversight from DOI. With the creation of a Hawaiian tribe there will now be six conflicting jurisdictional authorities contending for resources and authority: Congress, U.S. Department of Interior, State of Hawaii legislature, State Department of Hawaiian Homelands, State Office of Hawaiian Affairs (which cannot be abolished without an election of the State of Hawaii to ratify a State Constitutional amendment), and the Hawaiian tribe. Since the Hawaiian tribe will have inherent sovereignty under its certificate of federal recognition from DOI as delegated to DOI by the plenary power of Congress, and because of the

Supremacy Clause of the U.S. Constitution whereby federal law trumps state law, it can be expected that the Hawaiian tribe will take control of the Hawaiian homelands. In that way the majority of the tribe, who are not HHCA-eligible (lacking 50% blood quantum) will thereby be able to deprive the homesteaders of protections they have come to expect.

C. The Final Rule published in the Federal Register on October 19, 2015, as described above and available at
https://www.federalregister.gov/articles/2015/10/19/2015-26176/secretarial-election-procedures
will allow the Hawaiian tribe to change its governing document and vitiate any special protections for the HHCA-eligible 50%ers which were required to be included in the initial governing document as a condition for the Secretary of Interior to grant tribal recognition. This ability to amend the governing document without needing outside permission is part of the meaning of "self-determination" and "inherent sovereignty" so often touted in the NPRM; and this ability to amend the governing document without requiring federal approval and even with a relatively small minority of tribal members voting on the amendment is allowed by the Final Rule Regulation Number 2015-26176 published in the federal Register on October 19, 2015.

Section 6. In light of item #5 above, and the fact that ethnic Hawaiians with low native blood quantum are a large majority of all ethnic Hawaiians eligible to join the Hawaiian tribe, the special rights of HHCA-eligible native Hawaiians (50% native blood quantum) are likely to be nullified regarding leases and governance on the Homelands.

Because the special rights for HHCA-eligible native Hawaiians (50% native blood quantum) are so important and deserve special attention, portions of section #5 of this testimony are reiterated here.

Since the Hawaiian tribe will have inherent sovereignty under its certificate of federal recognition from DOI as delegated to DOI by the plenary power of Congress, and because of the Supremacy Clause of the U.S. Constitution whereby federal law trumps state law, it can be expected that the Hawaiian tribe will take control of the Hawaiian homelands. In that way the majority of the tribe, who are not HHCA-eligible (lacking 50% blood quantum) will thereby be able to deprive the homesteaders of protections they have come to expect.

The Final Rule published in the Federal Register on October 19, 2015, as described above and available at
https://www.federalregister.gov/articles/2015/10/19/2015-26176/secretarial-election-procedures
will allow the Hawaiian tribe to change its governing document and vitiate any special protections for the HHCA-eligible 50%ers which were required to be included in the initial governing document as a condition for the Secretary of Interior to grant tribal recognition. This ability to amend the governing document without needing outside permission is part of the meaning of "self-determination" and "inherent sovereignty" so often touted in the NPRM; and this ability to amend the governing document without requiring federal approval and even with a relatively small minority of tribal members voting on the amendment is allowed by the Final Rule Regulation Number 2015-26176 published in the federal Register on October 19, 2015.

The position stated by DOI on page 59126 of the Federal Register NPRM:

"The proposed rule also clarifies that neither this rulemaking nor granting a request submitted under the proposed rule would affect the rights of HHCA beneficiaries or the status of HHCA lands. Section 50.44(f) makes clear that reestablishment of the formal government-to-government relationship will not affect title, jurisdiction, or status of Federal lands and property in Hawaii. This provision does not affect lands owned by the State of Hawaii or provisions of State law. ... And nothing in this proposed rule would alter the sovereign immunity of the United States or the sovereign immunity of the State of Hawaii." Furthermore, p. 59132: "(e) Reestablishment of the formal government-to-government relationship will not authorize the Native Hawaiian Governing Entity to sell, dispose of, lease, or encumber Hawaiian home lands or interests in those lands, or to diminish any Native Hawaiian's rights, protections, or benefits, including any immunity from State or local taxation, granted by: (1) The HHCA; (2) The HHLRA; (3) The Act of March 18, 1959, 73 Stat. 4; or (4) The Act of November 11, 1993, secs. 10001–10004, 107 Stat. 1418, 1480–84. (f) Reestablishment of the formal government-to-government relationship will not affect the title, jurisdiction, or status of Federal lands and property in Hawaii. g. The proposed rule does not diminish any Native Hawaiian's rights or immunities, including any immunity from State or local taxation, under the HHCA. ... the proposed rule includes a provision that makes clear that the promulgation of this rule would not diminish any right, protection, or benefit granted to Native Hawaiians by the HHCA. The HHCA would be preserved regardless of whether a Native Hawaiian government is reorganized, regardless of whether it submits a request to the Secretary, and regardless of whether any such request is granted. In addition, for the reorganized Native Hawaiian government to reestablish a formal government-to-government relationship with the United States, its governing document must protect and preserve Native Hawaiians' rights, protections, and benefits under the HHCA and the HHLRA."

Ken Conklin's rebuttal:

Everything quoted above can be regarded as a prediction, but does not have the force of law. In particular, note the closing sentence: "In addition, for the reorganized Native Hawaiian government to reestablish a formal

government-to-government relationship with the United States, its governing document must protect and preserve Native Hawaiians' rights, protections, and benefits under the HHCA and the HHLRA."

But as has been shown in testimony Section #5 above, once the Hawaiian tribe has its initial governing document approved and receives federal recognition as a tribe, then the new Final Rule published in the Federal Record on October 19, 2015 will allow the Hawaiian tribe to amend its governing document without needing permission from the Secretary of Interior. This ability to amend the governing document without needing outside permission is part of the meaning of "self-determination" and "inherent sovereignty" so often touted in the NPRM. Thus it would be possible for the majority of the tribe, who are not HHCA-eligible (i.e., lack the 50% blood quantum), to amend the governing document in ways that would deprive the homesteaders of their special rights under HHCA.

Section 7. In light of item #5 above, the Hawaiian tribe can set up GAMBLING CASINOS ON THE MAINLAND OR IN HAWAII as demonstrated by the fact that existing laws prohibiting any legalized gambling in Hawaii did not dissuade the State legislature from previously entertaining legislation to put casinos on the Homelands. Nearly all versions of the Akaka bill for 13 years prohibited a Hawaiian tribe from having gambling casinos, and such a prohibition would have been effective because Congress has plenary power over all the tribes. But a tribe created by an administrative rule cannot be stopped from having a casino on the mainland or in Hawaii merely by a provision in its initial governing document, since the Hawaiian tribe, once federally recognized, is free to amend its governing document without needing federal approval.

Throughout this testimony the phrase "Akaka bill" refers to any of numerous versions of bills introduced in Congress by Hawaii Senator Dan Akaka from 2000 through 2012 purporting to create or give federal recognition to a race-based Native Hawaiian Governing Entity under such bill names as "Native Hawaiian Recognition Act" or "Native Hawaiian Government Reorganization Act."

Many versions of the Akaka bill included provisions to protect the people of Hawaii, and federally recognized tribes in other states, against undesirable consequences of creating a Hawaiian tribe that could be expected when the new Hawaiian tribe might insist on exercising rights which federally recognized tribes have.

The two prohibitions found in nearly all versions of the Akaka bill concerned tribal gaming as regulated under the Indian Gaming Regulatory Act (IGRA), and access to federal programs benefitting all federally recognized tribes in areas such as healthcare, housing, education, etc. The reason for such prohibitions was to avoid having Senators from other states oppose the Akaka bill for fear that a Hawaiian tribe with hundreds of thousands of members in other states would open gambling casinos in those states in competition with the tribes there; and fears that a huge Hawaiian tribe

would take the lion's share of federal benefits set aside for all America's tribes. An additional purpose of the anti-gambling provision was to soothe public opinion in Hawaii.

The following language is from S.1783 introduced in the 107th Congress on December 7, 2001, but is typical of language found in nearly all versions of the bill throughout its 13-year history:

SEC. 8. APPLICABILITY OF CERTAIN FEDERAL LAWS.
(a) INDIAN GAMING REGULATORY ACT- Nothing contained in this Act shall be construed as an authorization for the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).
(b) INELIGIBILITY FOR INDIAN PROGRAMS- Nothing contained in this Act shall be construed as an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs or the Indian Health Service for any persons not otherwise eligible for such programs or services.

But of course IGRA is not the only way a tribe can get a casino. Akaka/Inouye knew that very well already in 2001, because they had spent decades serving on the Indian Affairs Committee. They hoped other Senators with less expertise might not be aware that the prohibition on using IGRA would not block the Akaka tribe from having casinos. But some of those Senators weren't quite so dumb as Akaka/Inouye hoped, and demanded stronger language to block the Akaka tribe from having casinos. The result was that by 2008 the gambling language in the Akaka bill had grown much stronger, reflecting some of the other ways tribes can get casinos. This is the language from 2008 that was added to the March 25 2009 version of the Akaka bill S.708 and H.R.1711:

"The Native Hawaiian governing entity and Native Hawaiians may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission. ... The foregoing prohibition ... on the use of Indian Gaming Regulatory Act and inherent authority to game apply regardless of whether

gaming by Native Hawaiians or the Native Hawaiian governing entity would be located on land within the State of Hawaii or within any other State or Territory of the United States."

Clearly, the experts on Indian law were concerned that "inherent authority" of a federally recognized tribe includes the right to have a casino. That's why the mainland tribes demanded that the Akaka bill in 2009 must make use of the plenary power of Congress to override the inherent authority of any future Hawaiian tribe by inserting especially strong language prohibiting the Hawaiian tribe from gambling. Congress has the power under the Constitution to make regulations for all tribes or for any particular tribe nullifying or changing whatever regulations the Department of Interior might imagine DOI has the power to impose.

The current Notice of Proposed Rulemaking includes a promise that gambling by a Hawaiian tribe would not be permitted under IGRA -- but this is the same sort of promise included as a formal prohibition in the Akaka bill in 2001 that was recognized by 2008 and 2009 to be grossly insufficient and requiring much stronger language.

Federal Register NPRM, p. 59121:
"8. Would reestablishment of a government-to-government relationship entitle the Native Hawaiian government to conduct gaming under the Indian Gaming Regulatory Act?

ISSUE: Several commenters stated that Federal rulemaking would make the Native Hawaiian government eligible to conduct gaming activities under the Indian Gaming Regulatory Act (IGRA), a Federal statute that regulates certain types of gaming activities by federally recognized tribes on Indian lands as defined in IGRA."

RESPONSE BY DOI: "The Department anticipates that the Native Hawaiian Governing Entity would not fall within the definition of “Indian tribe” in IGRA, 25 U.S.C. 2703(5). Therefore, IGRA would not apply. Moreover, because the State of Hawaii prohibits gambling, the Native Hawaiian Governing Entity would not be permitted to conduct gaming in Hawaii. The Department welcomes comments on this issue."

CONKLIN'S REBUTTAL SPECIFICALLY REGARDING GAMBLING IN VIEW OF THE FINAL LEGACY VERSION OF THE AKAKA BILL AND BILLS THAT WERE AT THAT TIME SIMULTANEOUSLY IN THE HAWAII LEGISLATURE TO PLACE GAMBLING CASINOS ON THE HAWAIIAN HOMELANDS :

Federal Register NPRM, p. 59132 says the following: "Upon reestablishment of the formal government-to-government relationship, the Native Hawaiian Governing Entity will have the same government-to-government relationship under the United States Constitution and Federal law as the government-to- government relationship between the United States and a federally recognized tribe in the continental United States, and the same inherent sovereign governmental authorities." That's very clear!

What turned out to be the final version of the Akaka bill was introduced on September 13, 2012, only 3 months before Senator Akaka retired, as an amendment in the nature of a substitute for S.675 of the 112th Congress; and passed the Committee on Indian Affairs on a voice vote within one minute of being introduced. Full text of this legacy bill has been preserved at
http://big09.angelfire.com/AkakaS675Amended091312.pdf

Nearly all previous versions of the Akaka bill during its 13 year lifespan included a provision such as "The Native Hawaiian governing entity and Native Hawaiians may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission."

However, the final legacy version of the Akaka bill introduced on September 13, 2012 said the following -- it is an explicit endorsement of gambling casinos for the Hawaiian tribe: "The Native Hawaiian governing entity is subject to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) (including regulations promulgated pursuant to that Act by the Secretary or the National Indian Gaming Commission)." That sentence clearly anticipates that the Hawaiian tribe will have gambling casinos, and those casinos will be permitted and regulated the same way as all other tribal

casinos. The new bill added that the Native Hawaiian governing entity "may not conduct gaming activities (within the meaning of section 4 of that Act (25 U.S.C. 2703) unless the State of Hawaii permits such an activity for any purpose by an individual, organization, or entity." That last sentence clearly means that if the State of Hawaii ever allows any form of legalized gambling, even as small as a permit for one church to have a Saturday night bingo game, then the Hawaiian tribe is allowed to have full-blown casinos even in Hawaii, as well as in other states.

There have been numerous efforts for many years in the state legislature to pass bills allowing gambling. Powerful mainland groups send lobbyists to the Hawaii legislature and to make appearances on TV and radio programs in hopes they will reap huge profits if gambling is ever allowed. A commonly used name for Las Vegas is "Hawaii's 9th Island" because so many Hawaii people go there so often to gamble (So why not keep the profits in Hawaii by letting them gamble here?).

Senator Akaka's legacy version of the bill even included a "Carcieri fix" specifically for the Hawaiian tribe at a time when any other tribe recognized after 1934 was ineligible for gambling: "Any action taken by the Secretary pursuant to the Act of June 18, 1934 (commonly known as the 'Indian Reorganization Act') (25 U.S.C. 461 et. seq.) for the Native Hawaiian governing entity is ratified and confirmed to the extent that the action is challenged based on the question of whether the Native Hawaiian governing entity was federally recognized or under Federal jurisdiction on June 18, 1934."

Even when the Akaka bill had the provision forbidding the tribe to sponsor gambling, there were bills in the state legislature to place casinos on the Hawaiian Homelands; and those bills were supported by OHA and DHHL who probably imagined that when the Akaka bill passed then the tribe would take over the homelands and thus acquire casinos built at the expense of state taxpayers.

Here are three bills in the Hawaii legislature, as listed and described on the website of HCALG (Hawaii Coalition Against Legalized Gambling), which clearly show the eagerness of OHA and DHHL to put casinos on the Hawaiian Homelands. The people backing these bills obviously did not

believe that state laws prohibiting gambling would stand in the way of establishing bingo parlors and even full-blown casinos on the Hawaiian homelands. If they thought it could be done even before there was a federally recognized Hawaiian tribe, then how much more confident will they be after the tribe has been created?

In 2011-2012: HB1225 -- Official description: Allows bingo to be conducted by 1 licensee at 1 location on lands designated by the Hawaiian homes commission. Creates Hawaii bingo commission within department of commerce and consumer affairs to regulate bingo. Allocates 20% of general excise tax on gross receipts to the state general fund; 1% for a compulsive gambler program; up to 4% for administrative expenses; and the balance for deposit into the Hawaiian home lands trust fund.

HB1227 -- Official description: Authorizes the Hawaiian homes commission to allow gaming on Hawaiian home lands and to consult with the Hawaiian Homes Commission Act, 1920 beneficiaries and designate specific Hawaiian home lands parcels for the purposes of establishing casino gaming operations. Creates the Hawaii gaming commission to regulate casino gaming operations. Imposes a wagering tax on gross receipts of casino gaming operations and provides for distribution to the general fund and Hawaiian home lands trust fund.

HB2379 -- Official description: Authorizes the Hawaiian homes commission to allow gaming on Hawaiian home lands and to consult with the Hawaiian Homes Commission Act, 1920 beneficiaries and designate specific Hawaiian home lands parcels for the purposes of establishing gaming operations. Creates the Hawaii gaming commission to regulate gaming operations. Imposes a wagering tax on gross receipts of gaming operations and provides for distribution to the general fund and Hawaiian home lands trust fund.

Section 8. In light of item #5 above, the Hawaiian tribe cannot be prohibited from participating automatically in all the benefit programs intended for the mainland tribes, despite assurances to the contrary in the NPRM. The sheer size of the Hawaiian tribe will result in the Hawaiian tribe hogging the federal benefit programs; and that factor, combined with federal budget cutbacks, will deprive the mainland tribes of funds they have come to rely upon. Thus the Department of Interior, in zealously pushing for federal recognition of a Hawaiian tribe, is violating its fiduciary obligation to protect the mainland tribes which have come to depend upon DOI.

The current Notice of Proposed Rulemaking includes essentially the same promise regarding federal government benefit programs available to tribes generally, as the promise DOI made regarding gambling; and the same rebuttal can be made.

Federal Register NPRM, p. 59123:
"To the extent they [tribes] raised concerns, the predominant one was the rule's potential impact, if any, on Federal Indian programs, services, and benefits -- that is, federally funded or authorized special programs, services, and benefits provided by Federal agencies (such as the Bureau of Indian Affairs and the Indian Health Service) to Indian tribes in the continental United States or their members because of their Indian status."

RESPONSE BY DOI: "Generally, Native Hawaiians are not eligible for Federal Indian programs, services, or benefits unless Congress has expressly and specifically declared them eligible. Consistent with that approach, the Department's proposed rule would not alter or affect the programs, services, and benefits that the United States currently provides to federally recognized tribes in the continental United States unless an Act of Congress expressly provides otherwise. Federal laws expressly addressing Native Hawaiians will continue to govern existing Federal programs, services, and benefits for Native Hawaiians and for a reorganized Native Hawaiian government if one reestablishes a formal government-to-government relationship with the United States. The term

“Indian” has been used historically in reference to indigenous peoples throughout the United States despite their distinct socio-political and cultural identities. Congress, however, has distinguished between Indian tribes in the continental United States and Native Hawaiians when it has provided programs, services, and benefits. Congress, in the Federally Recognized Indian Tribe List Act of 1994, 108 Stat. 4791, defined “Indian tribe” broadly as an entity the Secretary acknowledges to exist as an Indian tribe but limited the list published under the List Act to those governmental entities entitled to programs and services because of their status as Indians. 25 U.S.C. 479a(2), 479a-1(a). The Department seeks public comment on the scope and implementation of this distinction, and which references to “tribes” and “Indians” would encompass the Native Hawaiian Governing Entity and its members."

CONKLIN'S REBUTTAL REGARDING BOTH GAMBLING AND THE LIKELIHOOD OF HOGGING GENERAL TRIBAL BENEFIT PROGRAMS:

Federal Register NPRM, p. 59132 says the following: "Upon reestablishment of the formal government-to-government relationship, the Native Hawaiian Governing Entity will have the same government-to-government relationship under the United States Constitution and Federal law as the government-to- government relationship between the United States and a federally recognized tribe in the continental United States, and the same inherent sovereign governmental authorities." That's very clear!

But then the NPRM goes on to say the following, which is actually only a prediction that is clearly counteracted by the quote just now provided: "The Native Hawaiian Governing Entity, its political subdivisions (if any), and its members will not be eligible for Federal Indian programs, services, and benefits unless Congress expressly and specifically has declared the Native Hawaiian community, the Native Hawaiian Governing Entity (or the official name stated in that entity’s governing document), its political subdivisions (if any), its members, Native Hawaiians, or HHCA-eligible Native Hawaiians to be eligible."

That predicted restriction is unenforceable, because the Hawaiian tribe "will have the same government-to-government relationship under the United States Constitution and Federal law as the government-to- government

relationship between the United States and a federally recognized tribe in the continental United States, and the same inherent sovereign governmental authorities." This matter will no doubt be promptly litigated, and the Hawaiian tribe will then have the same ability to engage in gambling and to access federal Indian benefit programs as any other tribe. As noted in section #5 of this testimony, any restriction on accessing federal Indian benefit programs which might be included in the initial governing document of the Hawaiian tribe can be amended or removed by the Hawaiian tribe, after it has received federal recognition, without needing DOI approval.

The following language is from S.1783 introduced in the 107th Congress on December 7, 2001, but is typical of language found in nearly all versions of the bill throughout its 13-year history, until the final legacy version.

SEC. 8. APPLICABILITY OF CERTAIN FEDERAL LAWS.
(a) INDIAN GAMING REGULATORY ACT- Nothing contained in this Act shall be construed as an authorization for the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).
(b) INELIGIBILITY FOR INDIAN PROGRAMS- Nothing contained in this Act shall be construed as an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs or the Indian Health Service for any persons not otherwise eligible for such programs or services.

What turned out to be the final version of the Akaka bill was introduced on September 13, 2012, only 3 months before Senator Akaka retired, as an amendment in the nature of a substitute for S.675 of the 112th Congress; and passed the Committee on Indian Affairs on a voice vote within one minute of being introduced. Full text of this legacy bill has been preserved at
http://big09.angelfire.com/AkakaS675Amended091312.pdf

The final legacy version of the Akaka bill said nothing at all regarding ineligibility for Indian programs. A prohibition against automatic participation in Indian programs intended for mainland tribes would have been effective because Congress has plenary power over all the tribes.

But a tribe created by an administrative rule cannot be stopped from participating in mainland Indian programs merely by a provision in its initial governing document, since the Hawaiian tribe, once federally recognized, is free to amend its governing document without needing federal approval. Also, the absence of such a prohibition in the final legacy version of the Akaka bill shows the enduring intention of the Hawaii Congressional delegation to have the Hawaiian tribe participate fully in those programs.

Section 9. Despite promises in the NPRM, a Hawaiian tribe, like all federally recognized tribes, would indeed threaten the sovereign immunity of federal and State lands, and also threaten private land titles. A federally recognized Hawaiian tribe would have the same right as mainland tribes to invoke the Indian Non-intercourse Act and the concept of aboriginal land title. Administrative granting of federal recognition to a Hawaiian tribe as contemplated in NPRM imposes no time limit for final global settlement of historical grievances, even though some previous versions of the Akaka bill did impose such a time limit.

The NPRM on page 59126 of the Federal Register makes the following statements: "Section 50.44(f) makes clear that reestablishment of the formal government-to-government relationship will not affect title, jurisdiction, or status of Federal lands and property in Hawaii. This provision does not affect lands owned by the State of Hawaii or provisions of State law. ... And nothing in this proposed rule would alter the sovereign immunity of the United States or the sovereign immunity of the State of Hawaii."

Those promises regarding federal and state lands cannot be delivered. The NPRM does not even bother to make corresponding promises regarding private land titles in Hawaii -- promises which DOI must also be aware could not be delivered.

From 1790 to 1834 a series of six laws were passed by Congress to protect Indian tribes from unfair or deceptive land transactions whereby tribes often gave away or sold their land very cheaply to white businessmen or to state or municipal governments. Those laws, collectively known as the INDIAN NON-INTERCOURSE ACT, required the approval of Congress before any land transactions with Indian tribes could be confirmed lawfully. During recent decades numerous tribes have gone to court demanding huge amounts of land or money based on claims that tribal lands were sold without Congressional approval a century or two ago and must now be given back (including about 1/3 of the entire State of Maine; and entire towns in upstate New York with thousands of homes owned by individual

landowners in those fully developed towns). Thousands of homeowners have been unable to get mortgages or to sell their homes because of the cloud on their land title when a tribe files a lawsuit under the non-intercourse act. Thus private lands are attacked along with federal, state and municipal lands.

It apparently makes no difference whether a tribe received federal recognition before or after the non-intercourse laws were passed; and it apparently makes no difference whether the States where the lands are located were admitted to the Union before or after the non-intercourse laws were passed or before or after lands were transferred by the United States to those former territories which then became States. Tribal attacks upon federal, state, and private land titles have been made in numerous lawsuits throughout the United States. The situation will be no different in Hawaii if a federally recognized tribe is created here. We know that from the example of Alaska, which was admitted to the Union as a State in the same year as Hawaii, and where the federal and state governments considered it necessary to pass the Alaska Native Claims Settlement Act (ANCSA) in 1971 in order to guarantee the validity of federal, state, and private land titles against claims asserted by federally recognized Alaskan Native groups.

Some versions of the Akaka bill make it abundantly clear that Hawaii's U.S. Senators and Representatives were well aware that granting federal recognition to a Hawaiian tribe would indeed trigger the applicability of the Indian Non-Intercourse Act to federal, state, and private lands in Hawaii -- therefore the Akaka bill included protection against it.

The Akaka bill S.310 of the 110th Congress protected the State of Hawaii against such claims by the Hawaiian tribe. It said:
"SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS. (c) Real Property Transfers- The Indian Trade and Intercourse Act (25 U.S.C. 177), does not, has never, and will not apply after enactment to lands or lands transfers present, past, or future, in the State of Hawaii. If despite the expression of this intent herein, a court were to construe the Trade and Intercourse Act to apply to lands or land transfers in Hawaii before the date of enactment of this Act, then any transfer of land or natural resources located within the State of Hawaii prior to the date of enactment of this Act,

by or on behalf of the Native Hawaiian people, or individual Native Hawaiians, shall be deemed to have been made in accordance with the Indian Trade and Intercourse Act and any other provision of Federal law that specifically applies to transfers of land or natural resources from, by, or on behalf of an Indian tribe, Native Hawaiians, or Native Hawaiian entities."

Another version of the Akaka bill had even more explicit language to guarantee federal and state sovereign immunity:

"(2) FEDERAL SOVEREIGN IMMUNITY- (A) SPECIFIC PURPOSE- Nothing in this Act is intended to create or allow to be maintained in any court any potential breach-of-trust actions, land claims, resource-protection or resource-management claims, or similar types of claims brought by or on behalf of Native Hawaiians or the Native Hawaiian governing entity for equitable, monetary, or Administrative Procedure Act-based relief against the United States or the State of Hawaii, whether or not such claims specifically assert an alleged breach of trust, call for an accounting, seek declaratory relief, or seek the recovery of or compensation for lands once held by Native Hawaiians. (B) ESTABLISHMENT AND RETENTION OF SOVEREIGN IMMUNITY- To effectuate the ends expressed in section 8(c)(1) and 8(c)(2)(A), and notwithstanding any other provision of Federal law, the United States retains its sovereign immunity to any claim that existed prior to the enactment of this Act (including, but not limited to, any claim based in whole or in part on past events), and which could be brought by Native Hawaiians or any Native Hawaiian governing entity. Nor shall any preexisting waiver of sovereign immunity (including, but not limited to, waivers set forth in chapter 7 of part I of title 5, United States Code, and sections 1505 and 2409a of title 28, United States Code) be applicable to any such claims. This complete retention or reclaiming of sovereign immunity also applies to every claim that might attempt to rely on this Act for support, without regard to the source of law under which any such claim might be asserted. (C) EFFECT- It is the general effect of section 8(c)(2)(B) that any claims that may already have accrued and might be brought against the United States, including any claims of the types specifically referred to in section 8(c)(2)(A), along with both claims of a similar nature and claims arising out of the same nucleus of operative facts as could give rise to claims of the specific types referred to in section 8(c)(2)(A), be

rendered nonjusticiable in suits brought by plaintiffs other than the Federal Government."

"(3) STATE SOVEREIGNTY IMMUNITY- (A) Notwithstanding any other provision of Federal law, the State retains its sovereign immunity, unless waived in accord with State law, to any claim, established under any source of law, regarding Native Hawaiians, that existed prior to the enactment of this Act. (B) Nothing in this Act shall be construed to constitute an override pursuant to section 5 of the Fourteenth Amendment of State sovereign immunity held under the Eleventh Amendment."

It's obvious that the reason for placing such protections into earlier versions of the Akaka bill was to prevent the Hawaiian tribe from doing all those things listed above as being prohibited. So it must be assumed that without those protections the Hawaiian tribe can do those things. Note the extremely technical nature of that language. There's no way a State governor or legislator would even be aware of many of those issues unless someone raises them. Federal Indian policy is extremely complex.

Clearly Senators Akaka and Inouye thought there was a very real threat from the Indian Non-Intercourse Act. They thought it was important to put those protections into the Akaka bill. But none of that protective language would be applicable to a Hawaiian tribe created and recognized through administrative rule-making or executive order.

None of that language is in the NPRM. That whole concept regarding the Indian Non-Intercourse Act is never raised in NPRM. And regardless of whatever promises might be included in a DOI Final Rule, such promises fall by the wayside once the Hawaiian tribe actually gets federal recognition, because the tribe will then be free to change its governing document and tribal laws however it chooses without needing permission from DOI. Federal recognition of a Hawaiian tribe by means of an Act of Congress could exercise the plenary power of Congress over the Indian tribes to include such a guarantee that the Indian Non-Intercourse Act would not apply in Hawaii; but the Department of Interior has no power to impose or enforce such a guarantee, especially in light of the fact that the Hawaiian tribe will be created with the same inherent sovereignty and right to self-determination as the mainland tribes, and also the fact that the Final

Rule proclaimed in the Federal Register of October 19, as described in section #5 of this testimony, will allow the Hawaiian tribe, like any mainland tribe, to amend its governing document without needing approval from DOI.

The ceded lands of Hawaii are the former crown lands and government lands of the Kingdom of Hawaii. Following the revolution of 1893 which overthrew the monarchy, the nation of Hawaii continued as an independent nation under the new government of the Republic of Hawaii. Since the crown lands had been held by the Kingdom government to provide income to support the monarch in his/her capacity of head of state (i.e., King or Queen), and there was no longer a monarch, the crown lands now became public lands that were legally and politically indistinguishable from the rest of the government lands. Four years later, in 1897, the Republic of Hawaii offered a treaty of annexation, which the U.S. accepted in 1898. The bargain agreed to by the two governments was that Hawaii would cede the public lands of Hawaii to the U.S. in return for the U.S. paying off the accumulated public debt of the Kingdom and Republic, on condition that the ceded lands would be held as a public trust with all income being used for the benefit of the people of Hawaii for education and other public purposes. The Hawaii statehood admission act of 1959 returned ownership of the ceded lands to the new State of Hawaii, except for national parks and military bases.

In Hawaii there's great controversy over the "ceded lands" and assertions by Hawaiian activists that all lands formerly owned by the government and/or the monarch of the Kingdom of Hawaii were improperly ceded to the U.S. at the time of annexation (1898) and continue to be improperly held by the federal and state governments today. The ceded lands include all Hawaii federal lands such as military bases and national parks; and about 95% of all the land and water owned by Hawaii state and county governments used for schools, airports, harbors, roads, parks, drinking and irrigation, etc. If a Hawaiian tribe is created and gets federal recognition, it would be armed with the Indian non-intercourse act just like all the genuine Indian tribes. The Hawaiian tribe would be free to file lawsuits to take control of such lands or to receive massive compensation for them, similar to what has happened on the mainland even in long-established towns in Maine, New York, and many other places.

There have been several lawsuits over the years filed by the Office of Hawaiian Affairs against the State of Hawaii regarding the ceded lands. In the most recent case, when the State of Hawaii tried to sell a parcel of ceded lands, OHA filed a lawsuit to stop that particular sale and to prohibit the state from any further sales. On December 5, 2002 Hawaii circuit court judge Sabrina McKenna ruled against OHA, concluding that the State of Hawaii has a right to sell ceded lands.

OHA appealed Judge McKenna's decision. On January 31, 2008 the Hawaii Supreme Court ruled 5-0 that Judge McKenna was mistaken. The Hawaii Supreme Court ruled that the State of Hawaii is permanently prohibited from selling any ceded lands until such time as a settlement has been reached regarding the claims of Native Hawaiians. That decision was based on the 1993 U.S. apology resolution in which the U.S. "confessed" to helping overthrow the monarchy in 1893, and the U.S. acknowledged that Native Hawaiians have never relinquished their claims to Hawaii lands. The State of Hawaii filed a petition for certiorari with the U.S. Supreme Court asking it to review and overturn the state Supreme Court decision. Twenty-nine other states shortly thereafter filed an amicus brief supporting Hawaii's petition for certiorari. On October 1, 2008 the U.S. Supreme Court granted the petition for certiorari. On March 31, 2009 the U.S. Supreme Court ruled 9-0 to overturn the Hawaii Supreme Court's ruling. Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163, 175 (2009).

Native Hawaiians, represented by OHA, have repeatedly asserted that Native Hawaiians collectively own the ceded lands. In the 1970s a sovereignty group went to Congress demanding federal recognition. Its name shows the importance it placed on the concept of aboriginal land title: The acronym for its name was ALOHA whose letters stood for Aboriginal Lands of Hawaiian Ancestry. The most well-known Hawaiian creation legend says that the gods mated and gave birth to these islands as living beings. The gods mated again and gave birth to a baby boy who, according to a twisted interpretation asserted by Hawaiian sovereignty activists, is the primordial ancestor from whom all native Hawaiians (and only native Hawaiians) are descended. Therefore anyone with a drop of Hawaiian native blood is a child of the gods and a brother to the lands of Hawaii in a genealogical relationship where people lacking Hawaiian blood are not participants. The twisted version of this creation legend thus

provides a theological basis for Hawaiian religious fascism, according to which Native Hawaiians as a racial group have a divine right to rule over the Hawaiian islands. Until now Native Hawaiians have been acting as merely a racial group, to whom has been given a branch of the State government to assert claims to racial entitlements. But if this racial group now receives federal recognition as an Indian tribe, it will be empowered to assert the same demands as the mainland tribes regarding aboriginal land title and the Indian Non-Intercourse Act, threatening all federal, State, and private land titles. The DOI is powerless to deliver on promises to the contrary made in the Notice of Proposed Rulemaking.

Administrative granting of federal recognition to a Hawaiian tribe as contemplated in NPRM imposes no time limit for final global settlement of historical grievances, even though some previous versions of the Akaka bill did impose such a time limit. For example On April 7, 2004 Senator Akaka introduced major amendments to the Akaka bill, then known as S.344. The new Section 8(c)(2) provided a time limit of 20 years after enactment of the bill for any claims to be filed regarding things that happened at any time before enactment of the bill. Thus all claims related to the revolution of 1893, annexation of 1898, ceded lands, etc. would need to be filed by the tribe in the U.S. District Court in Honolulu within that time limit. Of course those claims might take many years to be settled or adjudicated. Here's the actual language of the time limit:

"JURISDICTION; STATUTE OF LIMITATIONS.--The U.S. District Court for the District of Hawaii shall have original jurisdiction over any existing claim against the United States arising under Federal law existing on the date of enactment of this Act and relating to the legal and political relationship between the United States and the Native Hawaiian governing entity provided that the claim is filed in the district court within 20 years of the date of enactment of this Act, and provided further that the Court of Federal Claims shall continue to have exclusive jurisdiction over any claim otherwise within the jurisdiction of that court."

Section 10. The NPRM does not purport to provide protection against -- does not even mention -- the massive changes to the laws of Hawaii that would result from the sudden intrusion of federal Indian law if a Hawaiian tribe gets federal recognition. A Hawaiian tribe, and/or federal Indian law, would have jurisdiction over Hawaii citizens with no native blood, and also over ethnic Hawaiians who choose not to join the tribe. Examples of new legal issues with which Hawaii's people are unfamiliar include the Indian Child Welfare Act and the Violence Against Women Act. The federal NAGPRA law, as well as State laws, allow a Hawaiian tribe to assert rights regarding native burials on state, county, or private lands even when the tribe does not own those lands.

Hawaii's people are already familiar with the federal NAGPRA law, and corresponding state laws, which give the Office of Hawaiian affairs and the Hui Malama I Na Kupuna O Hawai'i Nei special standing to file lawsuits or intervene in construction projects where native Hawaiian burials have already been encountered or are likely to be found. A federally recognized Hawaiian tribe would have greater power in such matters, and would presumably be backed by the virtually unlimited resources of the U.S. Department of Justice.

Hawaii's people are already familiar with how severely the federal NAGPRA law and its state counterparts impact various projects on federal, state, and private lands even when there was no expectation that difficulties might arise. But Hawaii's people are totally unfamiliar with ICWA and VAWA, which would suddenly become applicable in Hawaii and would intrude directly into the most private aspects of family life (such as divorce, child custody, adoption, and accusations of violent crime) the moment a Hawaiian tribe gets federal recognition.

Consider the Indian Child Welfare Act. The Supreme Court, on June 25, 2013 issued a highly controversial decision in Adoptive Couple v. Baby Girl, also known as the Baby Veronica case, concerning interpretation of the ICWA. The original purpose of ICWA was to protect the future population levels of federally recognized Indian tribes, and the cultural knowledge of

their members, by stopping Indian children from being adopted by people who have no Indian blood or are not members of the child's tribe. If one biological parent is a member of a federally recognized tribe and the other parent is not, then ICWA says that both the Indian parent and the tribe have very strong rights to demand that custody of the child be given to the Indian parent or to another member of the tribe, rather than to a biological or adoptive parent with no Indian blood. The best interest of the child, which is usually paramount in child custody or adoption rulings, is completely irrelevant under ICWA. To put it bluntly: it's more important to protect an Indian tribe with thousands of members from dying out than to protect any particular child by ensuring it will be adopted into a stable family with good finances and good moral values.

In the Baby Veronica case an absentee father with two percent Cherokee blood, who was not a participant in tribal affairs, suddenly invoked the Indian Child Welfare Act at the behest of the tribe to nullify an adoption of a child he had previously abandoned and after he had signed documents waiving his parental rights. The biological mother had no Indian blood. The state courts felt compelled to rule in favor of the father because of ICWA; state and federal appellate courts went back and forth ruling one way or the other; but the U.S. Supreme Court gave custody to the adoptive parents for technical reasons (for example the biological father had never actually had custody of the baby, so parts of ICWA did not apply). Veronica got passed around like a hot potato during her first couple years of life as one court after another reversed the decision of a previous court. The toddler might have ended up in a very bad situation merely because she has one percent Cherokee blood.

The relevance to Hawaii is obvious. For many years we have all been bombarded with news reports and victimhood propaganda saying that Native Hawaiians have the worst statistics for poverty, drug abuse, child abuse, incarceration, heart disease, diabetes, etc. We also know that the rate of intermarriage across racial lines, and the rate of unmarried girls having babies, is very high among Native Hawaiians when either the father or the mother is Native Hawaiian. At present judges are required to award child custody between divorcing parents, or among prospective adoptive parents, based on the best interests of the child. But if a Hawaiian tribe gets federal recognition, then state and federal judges will be required to

put not merely a thumb on the scale but a huge, nearly insurmountable weight in favor of an ethnic Hawaiian parent or adopter for any child who has even a single drop of Hawaiian native blood, regardless of poverty, alcoholism, drug abuse, or debilitating illness. An absentee ethnic Hawaiian father of very low Hawaiian blood quantum who previously signed documents waiving parental rights can suddenly show up in court demanding custody of his long abandoned child; or an attorney representing the tribe can make such a demand even without the father. Even if the demand is somehow dismissed (as it was in the Baby Veronica case), the monetary and emotional costs of protracted litigation could be horrendous for the individuals and governments, not to mention the toll on the child.

No version of the Akaka bill has ever provided any protection against the Indian Child Welfare Act. Very few people in Hawaii have heard of it. Yet its effects on child custody and adoption in Hawaii would be huge.

The Violence Against Women Act (VAWA) was reauthorized by Congress in 2013 following lengthy and highly contentious debate. A main purpose of VAWA is to strengthen the authority of federally recognized tribes to use their police powers and their tribal courts to prosecute serious crimes on Indian reservations -- especially domestic violence and rape. In previous years VAWA did not allow the tribal justice system to prosecute non-Indians; the state and county lack jurisdiction on an Indian reservation; and the federal bureaucracy was slow; so often crimes on the reservation committed by non-Indians would simply be ignored. One of the most controversial provisions newly added in this reauthorized VAWA is that tribal police and tribal courts now have jurisdiction to enforce tribal laws against criminals who are not members of the tribe and who are not even Indians.

The right to due process and trial by a jury of one's peers is likely to be severely affected if a person with no native blood is arrested by tribal police, forced into a Hawaiian tribal court with tribal laws and jurors who are all tribal members. The situation would be especially worrisome for Caucasians because of more than a century of racial grievances by ethnic Hawaiians against Caucasian Americans. In Hawaii racial hate crimes target Caucasians as victims more than any other racial group, with Native

Hawaiians as the perpetrators. The Southern Poverty Law Center published two articles about this issue in the Fall 2009 issue of its quarterly "Intelligence Report" -- a publication that usually focuses on hate crimes by Caucasian skinheads, neo-Nazis, and Ku Klux Klan against blacks, jews, and homosexuals. Interestingly, one of the two articles, by Larry Keller, was entitled "Roots of Resentment Go Way Back" and was basically a way of blaming the victims and justifying the motivations of the perpetrators by citing alleged historical grievances by Native Hawaiians against Caucasians regarding colonization, armed invasion and overthrow of the monarchy, illegal annexation, etc -- the same topics touted by the Department of Interior in both the ANPRM and the NPRM as justifications for creating a Hawaiian tribe. Both articles from the Southern Poverty Law Center, along with commentary by the author of the present testimony, are available at
http://www.angelfire.com/big09a/RacialHateCrimesHawSPLC.html

Section #17 of this testimony proves that ethnic Hawaiian people live in every Census tract in Hawaii, and large numbers of them live in each of the 50 states. A map shows that lands likely to be claimed by a Hawaiian tribe are scattered throughout all areas of Hawaii. Thus in Hawaii the impact of VAWA on people with no native blood would be vastly greater than on the mainland due to the wide scattering of ethnic Hawaiian people and the wide scattering of likely Hawaiian tribal lands.

No version of the Akaka bill has ever provided any protection against the Violence Against Women Act. Very few people in Hawaii have heard of it. Yet it would have huge effects on criminal jurisdiction, prosecution, and racial conflict in Hawaii. Something as outrageous as the Massey Case from 80 years ago, but in reverse, would not be inconceivable.

Section 11. The Notice of Proposed Rulemaking repeatedly refers to a “reorganized Native Hawaiian government" or “reestablishing a government-to-government relationship with the Native Hawaiian community.” But there never was a government of a unified archipelago of Hawaii where the government consisted solely of Native Hawaiians nor where the citizenry with voting and property rights were solely Native Hawaiian. Thus there was never a Native Hawaiian government which could now be reorganized. All you could do is create one out of thin air with no basis in history. Genuine tribes are recognized because they already exist. Genuine tribes were not created centuries ago the way the Kingdom of Hawaii was created -- by using guns and ships provided by Caucasians, with Caucasians occupying high-level leadership positions in the tribal government. Genuine tribes are not newly created the way the Hawaiian tribe is being created -- by non-Indians passing laws in the State legislature and providing money for race-based elections, assisted by the Department of Interior telling them how to write their governing documents in such a way as to ensure federal recognition.

On page 59119 of the Federal Register NPRM, the Department of Interior replies to the following issue: "Some commenters opposed Federal rulemaking on the basis that the Kingdom of Hawaii had evolved into a multicultural society by the time it was overthrown, and that any attempt to reorganize or reestablish a ‘‘native’’ (indigenous) Hawaiian government would consequently be race-based and unlawful."

But that is not an accurate characterization of the objection being made.

The DOI response focuses on the fact that many Native Hawaiians nevertheless continued to engage in uniquely Hawaiian cultural practices and organized themselves into clubs for that purpose; and the fact that U.S. law requires that federal recognition of a tribe can be given only to an indigenous (i.e., race-based) group.

Let me make it clear that neither of those facts is relevant to the objection being made.

The objection is that there was never a Hawaiian tribe with which the U.S. government had a relationship. There was never was a government of a unified archipelago of Hawaii where the government leaders consisted solely of Native Hawaiians nor where the citizenry with voting and property rights were solely Native Hawaiian. The Kingdom of Hawaii was created and sustained only because of the active participation of men who had no aboriginal blood. Indeed, a large number of cabinet ministers, legislators, and department heads in the Kingdom of Hawaii were Caucasians, including many who were native-born in Hawaii or who took the loyalty oath to become naturalized. Thus there was never a Native Hawaiian government which could now be reorganized.

The objection is that the Department of Interior is trying to create a brand new race-based tribal government where none ever existed before. You claim to be "reorganizing" or "recognizing"; but in reality you are inventing something new out of thin air and engaging in a coverup by calling it "reorganizing." Let's review history to grasp this essential objection to the NPRM.

For more than a thousand years, from the time the Hawaiian islands were first settled until 1810, there was constant warfare among the natives. Each chief or warlord ruled over parts of one island, or perhaps as much as two or three islands. But there was never a government presiding over all native Hawaiians or encompassing a unified archipelago of the eight major islands. The natives had no metal except what washed up in driftwood; so their weapons were quite primitive and none of the local warlords could defeat all the other ones, especially on other islands.

The first recorded contact between Europeans and native Hawaiians occurred when British explorer Captain Cook arrived in 1778 at Waimea, Kaua'i. He stayed only briefly and then resumed his journeys. Later he returned to the islands, circling Maui offshore for a couple weeks before finally dropping anchor and staying for a while at Kealakekua, Hawai'i Island. He was greeted ceremonially as a god because his spectacular arrival at Kealakekua coincided with the Makahiki period when prophecy

said the god Lono would return to that place (The name Kealakekua means pathway of the god). The elderly high chief of that district came aboard Captain Cook's ship. Accompanying the high chief was a young native chieftain named Kamehameha, who saw the metal tools on the ship, saw the guns and swords, and saw the ship's cannons being fired. He immediately realized how such powerful weapons, and oceangoing ships, could enable him to conquer all the Hawaiian islands.

Gradually more Europeans arrived. Kamehameha acquired large stockpiles of weapons, and also the services of some British sailors. He defeated the other warlords on his home island (Hawaii Island), and then invaded and conquered Maui, Moloka'i, Lana'i, Kaho'olawe, and finally O'ahu in the famous Battle of Nu'uanu Pali in 1795. After twice failing to invade Kaua'i due to bad weather and disease, he prepared a fleet of war canoes for a third attempt. Kaumuali'i, king of Kaua'i and Ni'ihau, finally made a deal to surrender sovereignty to Kamehameha in return for being allowed to remain as governor of his own island. Kamehameha The Great had finally unified all the 8 major islands under his rule. 1810 is accepted by all historians as the first year when there was a unified Kingdom of Hawaii encompassing all the islands and including all the native Hawaiians.

Without British weapons, British men to teach the natives how to use them, and British men performing as battlefield generals, Kamehameha could never have succeeded in doing what no native chief had been able to do for a thousand years -- unifying all of Hawaii.

The Hawaiian Kingdom was created with Caucasians in leadership roles in battle during the late 1700s. The Kingdom was sustained and governed with Caucasians in leadership roles throughout its 83 year history from 1810 to 1893.

Kamehameha's closest advisor was Englishman John Young, who trained the troops and led them in battle. He became a high chief and Governor of Hawaii's largest island, which was Kamehameha's home island -- Hawaii Island, which gave its name to the entire archipelago. Young was given a house immediately next to the great heiau Pu'ukohola, which had been built by Kamehameha to fulfill a prophecy that the chief who built it would become conqueror of all the islands. The oldest bones in Mauna Ala, the

Royal Mausoleum, belong to John Young, whose tomb is in the shape of a heiau (ancient-style stone temple) and is guarded by a pair of pulo'ulo'u (sacred taboo sticks). Although John Young was the earliest Caucasian high chief and governor, there were many others who came after him.

The Kingdom's first Constitution, marking the beginning of a Western- style government, was proclaimed in 1840. From then until the monarchial government was overthrown in 1893, most of the cabinet ministers, nearly all the department heads and judges, and 1/4 to 1/3 of the members of the legislature were Caucasian. More than 1000 men from China, and some from Japan, took the oath to become naturalized subjects of the Kingdom, with full voting and property rights. University of Hawaii Professor Jonathan Osorio's book "Dismembering Lahui" includes several pages listing the members of the Hawaiian Kingdom legislature's House of Nobles and House of Representatives at different dates throughout the Kingdom's history; and it's easy to see the numerous non-native names among the legislators.

In 1890, under King Kalakaua, ethnic Hawaiians were already a minority. Between 1890 and 1900 there was rapid immigration, primarily from Asia, further reducing the ethnic Hawaiian percentage of the population. The explosion of Asian population in Hawaii was partly due to King Kalakaua's trip to Japan in 1881 and his invitation for Japanese laborers for the Hawaii sugar plantations. The following figures are taken from the Native Hawaiian Databook:

Hawai'i Census of 1890 (Kingdom): Total population 89,990; Hawaiian 34,436; Part Hawaiian 6,186. Therefore ethnic Hawaiians (full or part) total 40,622 out of 89,990 which is 45%.

Hawai'i Census of 1896 (Republic): Total population 109,020; Hawaiian 31,019; Part Hawaiian 8,485. Therefore ethnic Hawaiians (full or part) total 39,504 out of 109,020 which is 36%.

U.S. Census of 1900 (Territory): Total population 154,001; Hawaiian 29,799; Part Hawaiian 9,857. Therefore ethnic Hawaiians (full or part) total 39,656 out of 154,001 which is 26%. Japanese were 61,111 out of 154,001 which is an astonishing 40%, far outnumbering any other ethnic group.

Straight-line interpolation is not entirely appropriate due to differences in which month the census was done, and the accelerating rate of immigration; but the approximate figures for 1893 (overthrow of the monarchy) and 1898 (annexation) would be:

1893 (overthrow) ethnic Hawaiians (full or part) 40,063 out of 99,505 which is 40%.

1898 (annexation) ethnic Hawaiians (full or part) 39,580 out of 131,511 which is 30%.

The U.S. Department of State, Office of the Historian has a small webpage about the relationship between the United States government and the Kingdom of Hawaii, at https://history.state.gov/countries/hawaii

It says "On December 20, 1849, the U.S. and the Kingdom of Hawaii signed a Treaty of Friendship, Commerce, and Navigation and Extradition. The treaty, negotiated by U.S. Secretary of State John M. Clayton and the Hawaiian special Commissioner to the Government of the United States James Jackson Jarves, was signed in Washington, D.C." Notice that the special Commissioner authorized to sign a treaty on behalf of the Kingdom of Hawaii was a Caucasian from New England.

The State Department historian also says "On January 30, 1875, United States Secretary of State Hamilton Fish and the Kingdom of Hawaii's Envoy Extraordinary and Minister Plenipotentiary to the United States Elisha H. Allen signed a Treaty of Reciprocity. This treaty provided for duty-free import of Hawaiian agricultural products into the United States. Conversely, the Kingdom of Hawaii allowed U.S. agricultural products and manufactured goods to enter Hawaiian ports duty-free. This treaty was originally intended to last for a duration of seven years." Notice that the Kingdom of Hawaii's Envoy Extraordinary and Minister Plenipotentiary to the United States was Elisha H. Allen, a Caucasian from New England who had served as an American congressman, lawyer and diplomat; and then moved to Hawaii where he became a judge and diplomat for the Kingdom of Hawaii.

The point is that right from the beginning, and throughout the history of the Kingdom of Hawaii, people with no native blood were intimately involved in creating, sustaining, and governing it. There never was a Hawaiian nation limited to ethnic Hawaiians as a racial group. The Kingdom was fully multiracial in both its citizenry and its government. Nearly all "Native Hawaiians" have some or most of their ancestry from Europe, America, and Asia. Non-natives cannot be pushed out of land ownership and governance in Hawaii any more than non-native ancestry can be cleansed from the blood of "Native Hawaiians."

It is blatantly false to say that a group of people defined by race, required to have Hawaiian native ancestry, could in any way be a reorganization or revival of a previously sovereign multiracial Hawaiian nation. If the State of Hawaii and/or the U.S. government create a Hawaiian tribe through the Kana'iolowalu racial registry or any similar process, they will be creating a wholly artificial entity that never existed before. The U.S. Department of Interior has no authority to single out a racial group and endow it with governmental authority.

All the following statements in the Notice of Proposed Rulemaking are factually incorrect and serve to bolster an immoral intention. Yes, it's nasty to read so many repetitive quotes in this comment. But it's even more nasty to have a document in the Federal Register which follows the well-known propaganda technique of repeating a lie so many times that people become numb and start to believe it. "Reestablishing a Formal Government-to-Government Relationship With the Native Hawaiian Community" (Fed Regist p. 59113). "facilitate the reestablishment of a formal government-to-government relationship with the Native Hawaiian community" (Fed Regist p. 59113). "reorganize a Native Hawaiian government" (Fed Regist p. 59113). "the Native Hawaiian community itself would determine whether and how to reorganize its government." (Fed Regist p. 59114). "criteria for reestablishing a formal government-to-government relationship between the United States and the Native Hawaiian community." (Fed Regist p. 59114). "there has been no formal, organized Native Hawaiian government since 1893" (Fed Regist p. 59114) -- BUT THERE WAS NO NATIVE HAWAIIAN GOVERNMENT BEFORE THEN EITHER! "sovereign Native Hawaiian government" (Fed Regist p. 59114) -- NEVER EXISTED. "a process to reestablish a formal

government-to-government relationship with the Native Hawaiian community." (Fed Regist p. 59114) -- YOU CANNOT RE-ESTABLISH SOMETHING THAT NEVER EXISTED. "Reestablishing a formal government-to-government relationship with a reorganized Native Hawaiian sovereign government" (Fed Regist p. 59117). "the reestablishment of a formal government-to-government relationship with the Native Hawaiian community." (repeated about 6 times on Fed Regist p. 59118). "Federal rulemaking to facilitate reestablishment of a formal government-to-government relationship." (Fed Regist. p. 59119). "facilitate the reestablishment of a formal government-to-government relationship with a reorganized Native Hawaiian government" (Fed Regist. p. 59119). "to reestablish a formal government-to-government relationship with a reorganized Native Hawaiian government." (Fed Regist p. 59123). "reestablishing a formal government-to-government relationship with the United States." (Fed Regist p. 59125). "to reestablish a formal government-to-government relationship." and "reestablishment of the formal government-to-government relationship" (repeated numerous times) (Fed Regist p. 59126).

Section 12. NPRM refers to “the special political and trust relationship that congress has established between that [the Native Hawaiian] community and the United States.” But it is doubtful whether such a trust relationship exists -- the assertion that such a trust relationship exists has been a political football, alternately denied and affirmed and denied depending on which political party controls the Presidency or Congress.

There are two theories about an alleged federal trust relationship with ethnic Hawaiians. One theory is that the repeated generosity of Congress in passing legislation to give handouts to ethnic Hawaiians has established such a trust relationship. For example, on page 35298 the Federal Register says "Over many decades, Congress has enacted more than 150 statutes recognizing and implementing a special political and trust relationship with the Native Hawaiian community. Among other things, these statutes create programs and services for members of the Native Hawaiian community that are in many respects analogous to, but separate from, the programs and services that Congress has enacted for federally recognized tribes in the continental United States."

Commonsense shows that concept of how a trust relationship gets established is nonsense. Here's a parody of it. On Monday I pass by a beggar on my way to work and drop a dollar into his tin cup. On Tuesday I do it again. Also on Wednesday. But on Thursday I walk past the beggar and do not put anything into his tin cup. The beggar then shouts and runs after me, demanding the dollar he says I owe him. He claims my actions on the first three days have established a "trust relationship." And when I hesitate, he demands I sign a document pledging to give him "his" dollar every day forever. Clearly my generosity on the first three days does not impose any legal or moral obligation on me to continue giving the beggar "his" dollar. I do not owe him anything. His attitude shows the danger that my generosity will injure him by making him dependent on me, and make him resentful and perhaps violent if I refuse to comply with his expectations. Indeed, that's the attitude that over 850 racial "entitlement" programs have engendered in the "Native Hawaiian community." See a compilation of the programs as of a few years ago, at http://4hawaiiansonly.com

How did those 150 Hawaiian racial entitlement programs cited in the Akaka bill and the Federal Register get established? Senators Akaka and Inouye sat on the Indian Affairs Committee for decades. Until 2013 Hawaii was the only state that had both of its senators serving together on the Indian Affairs Committee; and they did it together year after year. Why did Akaka and Inouye do that when there were no Indian tribes in Hawaii? It's all about the pork barrel; i.e., bringing billions of federal dollars home to Hawaii. Over the years, whenever a bill came through the committee intended to provide federal benefits to real Indian tribes, they quietly inserted the words "and Native Hawaiians." What a clever strategy! And then, after enough of those bills get enacted into law, it is claimed that the passage of these bills shows that Congress treats "Native Hawaiians" just like Native Americans and Native Alaskans! It is claimed that a "federal trust relationship" has been established with "Native Hawaiians" which now finally deserves to be formally recognized. That's just as ridiculous as the beggar claiming I have established a trust relationship with him.

A second theory is that provisions have been written into laws, especially the Hawaiian Homes Commission Act (1921) and the Hawaii statehood Admissions Act (1959), which give Congress authority to supervise the way certain lands in Hawaii are administered by the State of Hawaii on behalf of ethnic Hawaiians, and that relationship effectively makes the United States a trustee for ethnic Hawaiians with at least 50% native blood quantum (now 25% after a law was passed allowing descendants of 25% to inherit a lease from a 50%er to whom it was originally granted).

This theory has a degree of plausibility. And there are several official memorandums written over the years by high officials of the Department of Interior specifically focused on the alleged trust relationship. The problem is that the memorandums change from affirming to denying and back to affirming the trust relationship, depending entirely whether the writer is working for a Democrat or Republican administration. Democrats always assert the trust relationship exists; Republicans say there is no trust relationship -- just as Democrats pushed the Akaka bill for 13 years while Republicans blocked it. In other words, whether the trust relationship exists is a purely political assertion, not a clear and convincing legal conclusion. The timing of those memorandums is also highly politicized, occurring at

the end of one party's governance and followed by the opposite assertion near the beginning of the next administration of the opposite political party. The timing of the memorandums asserting that a trust relationship exists is also closely tied to the timing of other political events related to ethnic Hawaiians; namely, the apology resolution of 1993.

On January 19, 1993, the last full day of the Republican administration of President George H.W. Bush (the elder), Thomas L. Sansonetti, Solicitor General of the Department of Interior, issued a 20-page official Opinion (Memorandum number M-36978) that there is no federal trust relationship with Native Hawaiians. On page 20 his concluding paragraph said "For the reasons discussed above, we conclude that the United States is not a trustee for native Hawaiians. We further conclude that the HHCA [Hawaiian Homes Commission Act] did not create a fiduciary responsibility in any party, the United States, the Territory of Hawaii, or the State of Hawaii. Deputy Solicitor Ferguson's opinion of August 27, 1979, is superseded and overruled to the extent that it is inconsistent with this memorandum."

But later that same year, on November 15, 1993, after Democrat Bill Clinton had assembled his cabinet and subcabinet officials, the new Solicitor General of the Department of Interior, John D. Leshy, issued a one-page un-numbered Opinion formally withdrawing the Sansonetti Opinion without giving good legal reasons why. Leshy's Opinion was issued on November 15 to coincide with the joint resolution apologizing to ethnic Hawaiians for the U.S. role in the overthrow of Hawaii's monarchy, which passed the Senate on October 27, passed the House on November 15, and was signed by President Clinton on November 23, 1993.

Toward the end of his second term President Clinton sent high officials of the U.S. Department of Interior and Department of Justice to Hawaii in December 1999 to hold "reconciliation" hearings asking ethnic Hawaiians what goodies they would like to get from the government to help compensate them for the overthrow; and then on October 23, 2000, just weeks from the end of his Presidency, Bill Clinton's DOI and DOJ jointly published the propaganda book "From Mauka to Makai: The River of Justice Must Flow Freely."
http://www.doi.gov/ohr/library/upload/Mauka-to-Makai-Report-2.pdf

Now remember that the Republican Sansonetti Opinion concluded that "Deputy Solicitor Ferguson's opinion of August 27, 1979, is superseded and overruled to the extent that it is inconsistent with this memorandum." Who was President in 1979? Democrat Jimmy Carter. And so the claim there is a trust relationship established by law is shown to be a political football.

The wheel has now once again turned full circle, as the Democrat President Obama sends officials from the Department of Interior and Department of Justice to Hawaii to hold public hearings to somehow develop some procedure for creating a Hawaiian tribe and giving it federal recognition -- a process timed to reach a conclusion barely before the end of Obama's Presidency.

The "Mauka to Makai" report on pp. 39-40 explores a longer time frame regarding the alleged trust relationship. It says:

"The United States has never acted to enforce the trust protections against the State. The United States' view on the Federal Government's responsibility to Native Hawaiians has changed over the years. First, in 1979, Deputy Solicitor Frederick Ferguson responded to a letter inquiring what role the United States held with regard to Native Hawaiians in the context of the HHCA and the subsequent transfer of lands under the HHCA to the State of Hawai'i through the Admission Act. Despite the transfer of lands and administrative responsibility to the state in 1959, the Deputy Solicitor reasoned that the role of the United States under the HHCA remained that of a trustee as evidenced by the fact that the United States retained the authority to enforce the provisions of the HHCA. The Solicitor specifically stated that "[a]lthough the United States transferred the lands and the responsibility for administering the act to the state under the Admission Act, the Secretary of the Interior retained certain responsibilities . . . which should be considered to be more than merely ministerial or nondiscretionary." (letter from Frederick Ferguson, Deputy Solicitor U.S. Department of the Interior to the U. S. Commission on Civil Rights at 3 (Aug. 27, 1979)). The letter further stated "it is the Department's position that the role of the United States under section 5(f) [of the Admissions Act] is essentially that of a trustee...". (Id.).

Then, on January 19, 1993, Solicitor Thomas Sansonetti overruled the Department's prior position that the United States was a trustee with regard to Native Hawaiians under the HHCA. He issued an opinion that set forth the broad proposition that the United States had little responsibility under the HHCA, which caused a great deal of controversy in the Native Hawaiian community. (Memorandum from Thomas Sansonetti, Solicitor, U.S. Department of the Interior to the Counselor to the Secretary and Secretary's Designated Offices for the HHCA, The Scope of Federal Responsibility for Native Hawaiians Under the Hawaiian Homes Commission Act (M-36978) (Jan. 19, 1993)).

As a result of the controversy surrounding the Sansonetti opinion and pending litigation in the Federal court on whether there was a Federal trust responsibility to Native Hawaiians, Solicitor John Leshy withdrew the Sansonetti opinion in its entirety on November 15, 1993. (Statement of John Leshy, Solicitor, U.S. Department of the Interior (Nov. 15, 1993)). Because the question of a Federal trust responsibility and an alleged corresponding duty to sue on behalf of Native Hawaiians was in litigation, the Solicitor also stated, "[t]o avoid confusion, I am at the same time disclaiming any future Departmental reliance upon an August 27, 1979, letter of the Deputy Solicitor (overruled in the [Sansonetti] opinion) to the extent it could be construed as inconsistent with the position of the United States in the litigation." That litigation resulted in the decision in Han v. United States Department of Justice, 45 F. 3d 333 (9th Cir. 1995) where the court ruled: "Assuming without deciding that a general trust ... relationship exists between the United States and Native Hawaiians similar to that between the United States and recognized Indian tribes, the [Hawaiian] admission act does not impose any duty upon the [Federal] government to bring an enforcement action against the State of Hawaii ..."

Subsequently, the United States took the clear position that the United States has a trust responsibility to Native Hawaiians. See the Brief of Amicus Curiae United States at 22, Rice v. Cayetano 120 S. Ct. 1044 (2000). In that brief, the Solicitor General stated that: "Congress does not extend benefits and services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once-sovereign nation as to whom the United States has a recognized trust responsibility." (Brief of Amicus Curiae United States at 22, Rice v.

Cayetano 120 S. Ct. 1044 (2000)). The Supreme Court did not decide the trust responsibility question in Rice, but the majority did note that: “It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes.” (120 S. Ct. at 1057).”

The conclusion of this portion of testimony regarding an alleged trust relationship between the United States and "the Native Hawaiian community" is as follows. The fact that generous benefits have been given repeatedly over time does not create a trust relationship nor any sort of ongoing obligation between donor and recipient. The assertion that there is a federal trust relationship with ethnic Hawaiians is a political football affirmed by Democrat administrations but denied by Republican administrations, demonstrating that the assertion is a matter of politics but not established in law. Even if the Hawaiian Homes Commission Act (1921) and its incorporation into the Hawaii statehood Admissions Act (1959) are viewed as establishing a federal trust relationship, the largest group with whom that relationship would exist would be native Hawaiians with at least 50% (or perhaps now 25%) blood quantum; but it could well be argued that only the smaller group of people officially registered on the DHHL waiting list would have that trust relationship; or perhaps only the much smaller list of people who actually have been granted a lease from DHHL would have that trust relationship. The alleged trust relationship based on HHCA certainly cannot be used to open the door to federal recognition of a governing entity for more than 527,000 people who have as little as one drop of Hawaiian blood. The fact that the U.S. has never taken action to enforce the alleged trust relationship, even in the face of well-documented and highly publicized corruption and mismanagement by DHHL, tends to show that even in a Democrat administration the government does not feel sufficiently confident that the alleged trust relationship actually exists.

Section 13. Authoritative sources since 2001 warn that creating a race-based government for ethnic Hawaiians would be both unconstitutional and bad public policy: U.S. House Judiciary Committee subcommittee on the Constitution; U.S. Commission on Civil Rights; and others.

The U.S. Commission on Civil Rights spoke loud and clear against the Akaka bill in 2006 and 2009; and in September 2013 four Commissioners sent a letter to President Obama warning that it would be unconstitutional to use administrative rulemaking or executive order to create a Hawaiian tribe and give it federal recognition.

In January 2006 the U.S. Commission on Civil Rights held a hearing on the Akaka bill at its Washington D.C. headquarters. Two supporters and two opponents presented testimony with cross-examination by Commissioners. In May the Commission issued its booklet-length report opposing the Akaka bill. "The Commission recommends against passage of the Native Hawaiian Government Reorganization Act of 2005, or any other legislation that would discriminate on the basis of race or national origin and further subdivide the American people into discrete subgroups accorded varying degrees of privilege." The complete report approved by a 5-2 vote including the controversial "findings", and some news reports and commentaries, are at http://tinyurl.com/ocap3

August 28, 2009: U.S. Commission on Civil Rights letter to Congressional leaders once again blasted the Akaka bill: calling it unconstitutional, racially divisive, setting a bad precedent, and contrary to the multiracial polity of the Hawaiian Kingdom. On official stationery signed by Commissioners. http://tinyurl.com/kqt39k

September 16, 2013: 4 of the 8 members of the U.S. Commission on Civil Rights jointly wrote a strongly-worded 5-page letter to President Obama opposing any attempt to use executive action to give federal recognition to an Akaka tribe. The letter reiterated reasons for opposing the concept of the Akaka bill, expressed in official statements by USCCR in previous years, and added objections to the new concept of using executive authority to do what Congress has refused to do for 13 years. The USCCR

letter, dated September 16, 2013 on official letterhead and bearing the signatures of the 4 Commissioners, can be seen at
http://tinyurl.com/nnqtnvt

In 2001 and 2005 the House Committee on Judiciary, and its subcommittee on the Constitution, took the unusual step of publicly opposing the Akaka bill even though a different committee had jurisdiction over "Indian" legislation.

On September 26, 2000 Congressman Neil Abercrombie succeeded in passing the Akaka bill in the House by a stealth maneuver. He placed it on the calendar of non-controversial bills to be passed by unanimous consent during the dinner hour when only a handful of Congressmen were present, all of whom were lined up to pass their own bills through the same procedure. He sandwiched it between two other bills regarding bureaucratic transfers of small parcels of land in Washington D.C. It passed in six minutes. But the bill never passed in the Senate.
The following year, in a new Congress, Judiciary Committee Chairman Jim Sensenbrenner was warned that a similar stealth maneuver might be tried again. On July 19, 2001 Chairman Sensenbrenner wrote an urgent letter to Speaker Dennis Hastert demanding that the Akaka bill be killed, or at least referred to his committee for hearings on its (un)constitutionality. The entire letter can be seen at
http://tinyurl.com/49p55

Chairman Sensenbrenner wrote in part: "I request that the bill not be brought to the floor of the House for a vote until the Committee on the Judiciary has had an opportunity to conduct oversight hearings on the constitutionality of creating a quasi-sovereign state limited to persons of the Native-Hawaiian race. ... as the Supreme Court stated in Rice, '[i]t is a matter of some dispute ... whether Congress may treat the native Hawaiians as it does the Indian tribes.' And if Congress is powerless to treat the Native-Hawaiian race in the same manner in which it treats Indian tribes, then the establishment of a quasi- sovereign state limited to persons of the Native-Hawaiian race would likely be in contravention of the Constitution. According to the Supreme Court, any racial preference enacted into law must satisfy the strict scrutiny standard to be deemed

constitutional under the Equal Protection Clause -- a standard that is rarely met."

Four years later the Akaka bill was expected to come to the floor of the Senate immediately after the August recess. Once again Judiciary Chairman Sensenbrenner did his best to derail it. Although his committee did not have jurisdiction over the bill, he nevertheless had his Subcommittee on the Constitution hold a hearing on July 19, 2005, exactly four years after his letter to Speaker Hastert. The hearing title was "Can Congress Create A Race-Based Government? The Constitutionality of S. 147/H.R. 309" Two attorneys testified in favor of the bill, including Hawaii Attorney General Mark Bennett; while two attorneys testified against the bill, including Constitutional law expert Bruce Fein. Subcommittee Chairman Steve Chabot said "I believe that this bill, and the companion bill in the Senate, raise constitutional questions of such magnitude that we would be doing a disservice to the public and to our constituents if we did not closely examine the constitutional implications of H.R. 309. ... unlike Native American Indian and Alaskan tribes, the only factor that would bind together a quasi- sovereign Native Hawaiian government if formed today would be race. Chairman Chabot's complete statement, some news reports, some videos and some of the testimony is available at http://tinyurl.com/c3kg9

Constitutional law expert Bruce Fein published several articles opposing the Akaka bill, some of which were republished in the Congressional Record at the request of Senator Jon Kyl. Mr. Fein also wrote a monograph "Hawaii Divided Against Itself Cannot Stand." Mr. Fein's essay is of special interest to scholars because of his analysis of the apology resolution of 1993 as well as the provisions of the Akaka bill. Links to download all these items are at
http://tinyurl.com/65waz

Editorials, newspaper columns, and statements by politicians are not exactly authoritative, but they do show careful thinking and sometimes courage. Some of these items are statements by nationally known experts and opinion leaders from outside Hawaii who have nothing to gain or lose personally by what happens in Hawaii, but who are patriotic Americans defending fundamental principles. Several hundred items have been

compiled on a webpage: Major Articles Opposing the Hawaiian Government Reorganization bill (Akaka bill) and the creation of a state-recognized tribe under Hawaii Act 195 (Session laws of 2011) -- INDEX for years 2000 - 2014.
http://tinyurl.com/5eflp

Section 14. Page 67 Authoritative sources confirm the Hawaiian revolution of 1893 was legitimate and the U.S. owes nothing to ethnic Hawaiians beyond what is owed to all the citizens of the United States: 808-page report of the U.S. Senate Committee on Foreign Affairs (1894); Native Hawaiians Study Commission report (jointly authorized by Senate and House, 1983); the 1993 apology resolution and rebuttals to it; letters from at least 19 foreign heads of state granting formal de jure recognition to the Republic as the rightful government of Hawaii (1894); legitimacy of the Treaty of Annexation (1898).

The United States owes to Native Hawaiians the same things it owes to all citizens -- things like protection of life, liberty, property, and the rule of law; and assistance to individuals who are unable to help themselves.

But does the United States owe Native Hawaiians anything else, in addition to what it owes all citizens? Does the U.S. owe reparations to Native Hawaiians for the overthrow of the Hawaiian monarchy in 1893? Does the U.S. owe Native Hawaiians special treatment, group rights, or political sovereignty on account of anything that happened in the past, or on account of current economic or social afflictions?

The simple answer is "No." There are many reasons for that answer.

Two of those reasons are major reports that were commissioned by Congress specifically for the purpose of studying what, if anything, the U.S. owes to Native Hawaiians. One report was published 121 years ago, in 1894. Another was published 32 years ago, in 1983. We do not need to reinvent the wheel every generation. These reports are just as valid today as when they were first produced. Both reports were swept under the rug by Hawaiian activists determined to extract land, money, and power from the U.S. government to the maximum extent possible. The resolution of sentiment passed by Congress in 1993 apologizing for the overthrow of the monarchy would never have been passed if Senators and Congressmen had been familiar with reports their predecessors had commissioned. Fortunately those two reports from 1894 and 1983 are now easily available

on the internet, after years of being hidden away in dusty archives. Following are brief descriptions of what's in those two reports, with links allowing anyone to find and read them. After those two reports and their implications have been discussed, then we will also describe authoritative analyses showing that the apology resolution is filled with falsehoods and has produced bad consequences; and that the Hawaiian revolution of 1893 and annexation of 1898 were legitimate exercises of self-determination under international law.

THE MORGAN REPORT (U.S. Senate, 1894)

A revolution in 1887 by 1500 armed local men had forced King Kalakaua to agree to a new Reform Constitution (often called the Bayonet Constitution) giving up most of his powers but retaining his figurehead status as King. The U.S. played no part in that event. On January 17, 1893 the same local revolutionaries took the final step and overthrew the monarchy.

There were credible threats of violence and arson as the Hawaiian revolution of 1893 moved from rumor to reality from January 14-17, including mass meetings of opposing groups in the Armory and on the Palace grounds. The U.S. representative in Hawai'i (Minister Stevens) asked Captain Wiltse of the U.S.S. Boston for help. Wiltse sent 162 sailors and marines ashore to protect American lives and property and to prevent rioting -- the same sort of peacekeeping mission done on several previous occasions in Honolulu, and also done in recent years in Granada, Haiti, and Liberia. U.S. forces remained scrupulously neutral; did not conspire beforehand with the revolutionaries; did not provide assistance during the revolution; did not fire a shot or take over any buildings. They spent the night inside a building behind where the Post Office is now located, not threatening the Palace or the Government Building (Ali'iolani Hale). The mere presence of U.S. troops in Honolulu might have encouraged the revolutionaries and discouraged the Queen's forces; although there is also testimony under oath that some royalists thought the U.S. troops would support the Queen.

U.S. President Grover Cleveland came into office a few weeks after the revolution. He was a friend of Queen Lili'uokalani, and an isolationist opposed to U.S. expansion. He immediately withdrew from the Senate a

treaty of annexation proposed by the revolutionary government that had been approved by outgoing President Harrison. Cleveland sent a new representative James Blount (who was never confirmed by the Senate) to Hawai'i with secret orders to destabilize the revolutionary Provisional Government of President Sanford B. Dole and to restore the Queen. Blount tried to stir up trouble; and he sabotaged negotiations whereby Lili'uokalani was offering to abandon any efforts at restoration in return for a lifetime pension. Blount assured Lili'uokalani that President Cleveland would get her back on the throne; and she passed along that message to her supporters. Later, in December 1893, U.S. Minister Albert Willis (officially confirmed by the Senate to be Blount's replacement as Cleveland's representative) wrote a letter to Hawaii President Dole on behalf of the U.S. government ordering Dole to step down and restore the Queen. At the same time the U.S. Navy was trying to intimidate the Dole government by conducting noisy nearshore gun practice and mock amphibious assaults. When all Cleveland's efforts failed because of the strength and determination of the revolutionary government, Cleveland published Blount's report and referred the matter to the Senate Committee on Foreign Affairs to investigate the U.S. role in the overthrow and to recommend what should be done (he was hoping Congress might approve the use of force to overthrow Dole).

In early 1894, after two months of hearing sworn testimony under cross examination in open session, the Senate Committee on Foreign Affairs, chaired by Democrat Senator James Morgan, published an 808-page report concluding that the U.S. had not conspired with the Hawaii revolutionaries beforehand and had not assisted them during the revolution. The Morgan report repudiated a previous report by Cleveland's hatchet-man Blount. It included evidence that Blount had listened to the royalists and excluded the revolutionaries. Witnesses whom Blount had interviewed in Honolulu also testified under oath and cross examination that Blount had made false statements about what the witnesses had told Blount in Honolulu. As a result of the Morgan report the Senate passed a resolution that there should be no further U.S. interference in Hawaii, thus destroying Cleveland's hope for approval of U.S. intervention to restore the Queen. Also as a result of the Morgan report, President Cleveland gave up any further efforts on the Queen's behalf; he extended formal diplomatic recognition de jure (rather than merely de facto) to the Dole government,

and Minister Willis engaged in diplomatic negotiations regarding further implementation of agreements that had been initiated under the monarchy. The Dole government held power for more than 5 years, including all 4 years of an initially hostile President Cleveland, and in the face of an attempted armed counter-revolution (January 1895) in which several men were killed and many were imprisoned. The Dole government was not entirely democratic, and might not have enjoyed the support of the majority of Hawaii's people. But it was given official diplomatic recognition by the heads of state of all the nations who had previously recognized the monarchy; in the same way as other oligarchies or post-revolutionary governments around the world.

The Morgan report, and President Cleveland's turnabout, should have settled once and for all that the U.S. did not overthrow the Hawaiian monarchy, and does not owe any reparations to Native Hawaiians. Indeed, the U.S. during the first year of Grover Cleveland's administration provided the best possible kind of reparations by trying aggressively to undo the Hawaiian revolution forthwith. But when the apology resolution came up in the Senate 99 years later, even the strongest opponents of that resolution had forgotten all about the Morgan report and meekly said they had no quarrel with the history contained in the "whereas" clauses of the apology resolution -- a historical narrative filled with errors and distortions that the Morgan report would have easily corrected.

All 808 pages of the Morgan Report can be viewed as photographed from the original document, and each page has also been digitized to enable searching and copying. Summaries of the testimony are also provided along with some historical commentaries. See http://morganreport.org

See also a heavily footnoted essay "Hawaii Statehood -- straightening out the history-twisters. A historical narrative defending the legitimacy of the revolution of 1893, the annexation of 1898, and the statehood vote of 1959" at http://www.angelfire.com/big09a/StatehoodHistUntwistedFull.html

THE NATIVE HAWAIIANS STUDY COMMISSION (U.S. Senate and House, 1983)

The Native Hawaiians Study Commission was created by the Congress of the United States on December 22, 1980 (Title III of Public Law 96-565). The purpose of the Commission was to "conduct a study of the culture, needs and concerns of the Native Hawaiians." The Commission released to the public a Draft Report of Findings on September 23, 1982. Following a 120-day period of public comment, a final report was written and submitted on June 23, 1983 to the U.S. Senate Committee on Energy and Natural Resources and to the U.S. House of Representatives Committee on Interior and Insular Affairs.

The NHSC examined the history of Hawaii and the current conditions (1980) of Native Hawaiians. One purpose of the commission was to explore whether Native Hawaiians have special needs, and what those needs might be. Another purpose of the commission was to explore whether the United States has any historical, legal, or moral obligation to meet the special needs of Native Hawaiians by providing them with political sovereignty or race-specific group rights.

The commission found that Native Hawaiians have higher rates than other ethnic groups for indicators of dysfunction in health, education, income, etc. The commission concluded that the U.S. has no obligation to remedy those problems in any way other than the usual assistance given by government to all individuals afflicted with difficulties.

Portions of the "Conclusions and Recommendations" section of the NHSC final report focus on topics of special interest regarding the Akaka bill and the more recent Department of Interior effort to proclaim a new administrative rule to grant federal recognition to ethnic Hawaiians as though they are a tribe.

Two conclusions relevant to the issue of federal recognition of a Hawaiian tribe might be described as follows:

1. There is no historical, legal, or moral obligation for the U.S. government to provide race-based reparations, assistance, or group rights for Native Hawaiians.

2. Affirmative outreach is appropriate to ensure Native Hawaiians are given the assistance they need; but race-based or racially exclusionary programs are not recommended. Native Hawaiians may be disproportionately afflicted by some specific medical or social problems. Native Hawaiians should receive affirmative outreach to ensure they are aware of and receive help from existing programs open to all needy people. When considering what new programs government should sponsor, care should be taken to target some of those new programs to areas of concern which disproportionately afflict Native Hawaiians. However, the NHSC carefully worded its recommendations to avoid proposing race-based or racially exclusionary programs or group rights.

Following are some quotes from the "Conclusions and Recommendations" section of the NHSC report. These particular quotes are highlighted because of their relevance to any proposal to create a Hawaiian tribe. The full set of conclusions can be found on pp. 23-32 of the report. The conclusions regarding lack of a federal trust relationship with Native Hawaiians, and lack of any obligation to pay reparations, are more fully explored in the NHSC section entitled "Existing Law, Native Hawaiians, and Compensation" found on pp. 333-370 including 198 footnotes citing both Kingdom of Hawaii and U.S. government actions and legal decisions.

NHSC CONCLUDES THERE IS NO HISTORICAL, LEGAL, OR MORAL OBLIGATION FOR THE U.S. TO GIVE RACE-BASED REPARATIONS, GROUP RIGHTS, OR POLITICAL SOVEREIGNTY TO NATIVE HAWAIIANS -- QUOTES FROM THE REPORT

"To summarize the Commission's findings with regard to the overthrow of the Hawaiian monarchy: Based upon the information available to it, the Commission concluded that Minister John L. Stevens and certain other individuals occupying positions with the U.S. Government participated in activities contributing to the overthrow of the Hawaiian monarchy on January 17, 1893. The Commission was unable to conclude that these activities were sanctioned by the President or the Congress. In fact, official

government records lend strong support to the conclusion that Minister Stevens' actions were not sanctioned." (page 29)

"Besides the findings summarized above, the Commission concludes that, as an ethical or moral matter, Congress should not provide for native Hawaiians to receive compensation either for loss of land or of sovereignty. Reviewing the situation generally, including the historical changes in Hawaii's land laws and constitution before 1893, the Hawaiian political climate that led to the overthrow, the lack of authorized involvement by the United States, and the apparent limited role of United States forces in the overthrow, the Commission found that on an ethical or moral basis, native Hawaiians should not receive reparations." (page 29)

"The relations between the United States and Hawaii up to the time of annexation were relations between two separate, sovereign nations, not between a sovereign and those subject to its sovereignty." (page 25)

"Generally, the most likely possible theories for the award of compensation to native groups for loss of land were aboriginal title or recognized title doctrines." (page 25)

"The law has developed specific tests for establishing aboriginal title: the group must be a single land-owning entity; there must be actual and exclusive use and occupancy of the lands; the use and occupancy must be of a defined area; the land must have been used and occupied for a long time before aboriginal title was extinguished. Additionally, title must have been extinguished by the government of the United States, not by another body, such as the government of Hawaii before the United States annexed Hawaii. Finally, some law must give the native group, here the native Hawaiians, a right to compensation for loss of aboriginal title. The Commission finds that the facts do not meet the tests for showing the existence of aboriginal title." (pp. 25-26)

"Even if the tests had been met, the Commission finds that such title was extinguished by actions of the Hawaiian government before 1893, and certainly before annexation, which was the first assumption of sovereignty by the United States." (page 26)

"Finally, even if these tests had been met, neither the Fifth Amendment to the United States Constitution nor current statutes provide authority for payment of compensation to native Hawaiians for loss of aboriginal title." (page 26)

"The law also has developed specific legal requirements for compensation of loss of lands by recognized title. The Commission examined the question of whether treaties and statutes, the Joint Resolution of Annexation, or the Fifth Amendment to the United States Constitution provide a basis for payment under the theory of recognized title, and concluded that no basis exists." (page 26)

"The Commission examined whether a trust or fiduciary relationship exists between the United States and native Hawaiians and concluded that no statutes or treaties give rise to such a relationship because the United States did not exercise sovereignty over the Hawaiian Islands prior to annexation, and the Joint Resolution of Annexation, No. 55 (July 7, 1898) did not create a special relationship for native Hawaiians." (page 26)

"The Commission considered whether native Hawaiians are entitled to compensation for loss of sovereignty, and found no present legal entitlement to compensation for any loss of sovereignty." (page 26)

NHSC CONCLUDES THERE SHOULD BE AFFIRMATIVE OUTREACH TO NATIVE HAWAIIANS BUT NO RACE-BASED OR RACIALLY EXCLUSIONARY PROGRAMS -- QUOTES FROM THE REPORT

The commission recommended that government programs be targeted to deal with problems that disproportionately affect Native Hawaiians, to ensure that they receive the help they especially need. But notably the commission did not recommend singling out a specific racial group for benefits that would exclude other groups. Benefits are to be given to all individuals afflicted with a particular problem, regardless of race; and if Native Hawaiians are disproportionately afflicted then they will receive a disproportionate share of the benefits of such programs without any need for programs limited by race.

The "Conclusions and Recommendations" section of the NHSC report makes clear that there should be special outreach to Native Hawaiians to ensure that they are made aware of government programs from which they could get assistance, and to ensure that new and existing programs be focused on problems that disproportionately affect Native Hawaiians. But the Commission's recommendations never propose to create race-based programs exclusively for Native Hawaiians. Here are some quotes illustrating the careful wording of recommendations for affirmative outreach but avoiding race-based or racially exclusionary programs:

"[C]onsideration should be given to a wide variety of Federal programs that are already available or that could be made available to help address specific needs. Private, local, and State officials in Hawaii should take the initiative to become aware of available programs, secure and disseminate information on them, and ensure that native Hawaiians have equal access to those programs." (page 28)

"The Commission recommends: ... Making sure that Federal programs for vocational training funded through block grants are targeted to groups most in need, including native Hawaiians. ... Initiating efforts to ensure that information on specific Federal programs (for example, supplemental food program for women, infants, and children) is disseminated through native Hawaiian organizations, and recruit eligible native Hawaiians to participate in these programs. Ensuring that a fair share of Federal block grant monies are directed toward alleviating specific health problems, including those of concern to native Hawaiians, such as infant mortality and child and maternal care. Giving higher priority to native Hawaiian sites in considering nominations for the National Register of Historic Places; activating the State Historic reservation Plan and revising, in consultation with native Hawaiians, the plan in an effort to ensure protection of ancient Hawaiian artifacts and sites." (page 29)

"The Commission also recommends that the heads of all Federal departments and agencies act to ensure that the needs and concerns of native Hawaiians, to the extent identified and defined in the Commission's Report, be brought to the attention of their program administrators; that these administrators consult officials in Hawaii for further guidance on specific programs; and, once this guidance is received, consider actions

that could be taken to ensure full and equal access by native Hawaiians to various assistance programs." (page 30)

The Native Hawaiians Study Commission Report is available in digitized format to enable searching and copying, at http://wiki.grassrootinstitute.org/mediawiki/index.php?title=Native_Hawaiians_Study_Commission_Report

HAWAIIAN REPARATIONS: NOTHING LOST, NOTHING OWED by Patrick W. Hanifin, esq.; Hawaii Bar Journal, XVII, 2 (1982).

An important article written by attorney Patrick Hanifin was published in the Hawaii Bar Journal in 1982. Mr. Hanifin wrote his essay in response to publication of a draft report of the Native Hawaiians Study Commission.

Here are Mr. Hanifin's own words at the beginning of his essay (Footnotes suppressed and paragraphing altered to emphasize issues in the NPRM):

"The basic thesis of this article is simple. Most Hawaiians owned no land in 1893 and had
no political power. No Hawaiian lost land because of the Revolution and few permanently lost
power. Those who lost nothing could claim nothing for damages; those who lost something are
dead. Since there is no moral right to inherit political power, the losers' descendants have no
moral right to reparations. Reparations are payments made to correct past injustices. They should not be confused with payments made to help someone because he is poor through no fault of his own. A man gets welfare because he is poor; he gets reparations because he has been wronged. Proponents of Hawaiian reparations assume that if they can show that American
intervention in the 1893 Revolution was unjust then it automatically follows that the United
States government owes enormous reparations in cash, land and political power to Hawaiians.
The Aboriginal Lands of Hawaiian Ancestry Association (ALOHA) suggests that a billion

dollars cash and several billion dollars worth of land would be a fair amount. The Office of
Hawaiian Affairs (OHA) has suggested that the Hawaiians may be entitled to the present value
of the former Crown lands and Government lands of the Hawaiian Monarchy -- over 1.75 million
acres.

"OHA has also argued that the Hawaiians are also entitled to substantial powers of self-
government: roughly like Indian tribes, they should form a state within a state.

"The issue is whether the law should be changed to fit the opinion that Hawaiians have a
moral right to reparations. If there were now a legal right to reparations the Hawaiians could
have sued the U.S. government and won years ago. There would be no need for a special
commission or a special act of Congress. This claim is before Congress rather than the courts
because there is now no legal remedy for the alleged moral wrong.

"Even assuming that American intervention in 1893 was improper, no moral right to
reparations follows. Advocates of reparations have ignored at least nine other questions which
must be answered before they can prove their case:

"1. What did the alleged "victim" have at the time of the "theft?" If he did not have it,
it could not have been stolen.
2. Of what the "victim" had, what did he have a moral right to at the time of the
"theft?" If he had no moral right to it, he has no moral right to get it back or to get
compensation for its loss.
3. What was taken from whom?

4. Assuming that what was taken was taken immorally, has any of it been restored?
5. If the "victims is dead, do any of his descendants inherit his moral claim for
reparation?
6. Who, if anyone, inherits it?
7. Have any benefits been received by the victim" or his heirs as a result of the
"thefts?
8. Should reparations be reduced by the amount of those benefits?
9. If people disagree on which moral principles decide these questions, how do we
decide which is the true moral principle to be applied? This question is buried at
the bottom of the whole discussion, for if there is no agreement on moral principle
there can be no agreement that the reparations are morally due."

Mr. Hanifin's lengthy, heavily footnoted article, which answers those questions, can be downloaded in pdf format. An informal summary of it published in a newspaper is also available. A tribute to Mr. Hanifin with biographical information and some of his other publications is also available. To find all this material in one place, go to:
http://www.angelfire.com/hi2/hawaiiansovereignty/hanifinreparations.html

THE APOLOGY RESOLUTION AND REBUTTALS TO IT

In his short story "The Man Upstairs" P.G. Wodehouse wrote: "It is a good rule in life never to apologize. The right sort of people do not want apologies, and the wrong sort take a mean advantage of them." We've seen the truth of that here in Hawai'i with the 1993 Congressional apology to Native Hawaiians.

The U.S. "apology resolution" (USAR) refers to P.L.103-150, a joint resolution passed in Congress and signed by President Clinton in 1993 -- a resolution of sentiment commemorating the centennial of the Hawaiian revolution of 1893 and apologizing to Native Hawaiians for the U.S. role in the overthrow of the monarchy. Full text of USAR, and a comparison of it

with the full text of the Newlands Resolution of 1898 whereby the U.S. accepted the Treaty of Annexation offered by the Republic of Hawaii, can be found at
http://www.angelfire.com/bigfiles90/2ResosCompared.html

Constitutional law expert Bruce Fein published several articles opposing the Akaka bill, some of which were republished in the Congressional Record at the request of Senator Jon Kyl. Mr. Fein also wrote a monograph "Hawaii Divided Against Itself Cannot Stand." Mr. Fein's essay is of special interest to scholars because of his analysis of the apology resolution of 1993 as well as the provisions of the Akaka bill. Links to download all these items are at
http://tinyurl.com/65waz
Bruce Fein's point-by-point criticism of the Hawaiian apology resolution is on pp. 5-18 of his monograph "Hawaii Divided Against Itself Cannot Stand" directly available in pdf format at:
http://www.angelfire.com/hi5/bigfiles3/
AkakaHawaiiDividedFeinJune2005.pdf

Here are my own rebuttals to the Apology Resolution, contained in whereas clauses in a resolution proposed to the Hawaii state legislature. Some of the footnotes are lengthy, so they are suppressed here; but everything can be found along with further analysis at:
http://www.angelfire.com/big09/ApologyReso20thAnniv.html

Whereas the U.S. apology resolution (USAR) PL 103-150 incorrectly apologizes solely to Native Hawaiians for the U.S. role in overthrowing the monarchy in the Hawaiian revolution of 1893, but any apology (if owed at all) should be directed to all the multiracial population of Hawaii in 1893; and whereas the apology should especially include the large numbers of Caucasians who were native-born or naturalized subjects of the Kingdom, many of whom served as judges, members of the legislature, and were a majority of department heads, teachers and officers of the government; and whereas the racially exclusive apology creates divisiveness because it causes ethnic Hawaiians to believe they are entitled to racially exclusive ownership of Hawaii and racially exclusive government handouts [n#1]; and

Whereas USAR is filled with twisted half-truths and outright falsehoods about the history of Hawaii and especially the Hawaiian revolution of 1893 [n#2]; and

Whereas Senator Inouye assured his colleagues during the floor debate in 1993, that USAR would never be used to justify a demand for secession, [n#3] yet numerous Hawaiian sovereignty groups have been using it that way for 20 years [n#4]; and

Whereas Senator Inouye assured his colleagues during the floor debate in 1993, that USAR would never be used to justify demands for restitution in the form of special race-based government handouts; [n#5] yet USAR has been cited in the "findings" preambles of every major bill introduced by Senators Inouye and Akaka to provide federal recognition to Native Hawaiians as an Indian tribe, and to provide special race-based programs in housing, healthcare, education, etc. [n#6]; and

Whereas USAR has prompted many ethnic Hawaiians to clog the courts with bogus assertions that the federal and state governments are illegal in Hawaii and hence lack jurisdiction over them to enforce requirements for vehicle registrations and driver licenses [n#7]; and

Whereas activists have used USAR to insist the U.S. flag must not fly over 'Iolani Palace, to assert ethnic Hawaiian takeovers of the Palace, and to oppose government regulations for use of Palace grounds[n#8]; and

Whereas USAR has been used in two different campaigns a decade apart by a Hawaiian sovereignty activist in collaboration with realtors to perpetrate a scam by asserting that the "illegal overthrow of the monarchy" means that deeds to private property are not valid unless re-certified by the activist acting as an agent of the Hawaiian kingdom, and clients are charged around $2,000 for a bogus title search, and bogus documents are filed with the Bureau of Conveyances placing a cloud on valid deeds, and ignorant clients are persuaded to stop paying mortgages on the theory that the mortgages are not valid, and title insurance companies are sued to pay the clients when mortgages are foreclosed [n#9]; and

Whereas USAR caused local and federal courts to be tied up for a decade in a ceded lands lawsuit filed by OHA and several individual ethnic Hawaiians where the USAR was the primary focus of attention, and a 5-0 decision by the Hawaii Supreme Court was overturned by a 9-0 decision of the U.S. Supreme Court [n#10]; and

Whereas the U.S. Senate Committee on Foreign Affairs held two months of hearings in 1894 with testimony under oath and cross-examination regarding the U.S. role in the Hawaiian revolution of 1893 and concluded that U.S. peacekeepers had neither caused nor assisted the revolution; and whereas a joint House/Senate Native Hawaiians Study Commission reached the same conclusion in 1983 following two years of public hearings and extensive commentaries by experts[n#11]; and

Whereas the people of Hawaii are disgusted by the gross abuse of the U.S. apology resolution to attack the sovereignty of the State of Hawaii and to disrupt the unity and equality of our people [n#12]

Now therefore BE IT RESOLVED by the House of Representatives of the Twenty-seventh Legislature of the State of Hawaii, Regular Session of 2013, the Senate concurring, that the Legislature hereby expresses its desire that PL103-150, commonly known as the apology resolution, be rescinded

Some of the footnotes are lengthy, so they were suppressed here; but everything can be found along with further analysis at:
http://www.angelfire.com/big09/ApologyReso20thAnniv.html

LEGITIMACY OF THE HAWAIIAN REVOLUTION (1893) AND THE TREATY OF ANNEXATION (1898)

The Notice of Proposed Rulemaking mentions that numerous oral and written comments made in 2014 to the Advance Notice of Proposed Rulemaking expressed the opinion that the United States lacks jurisdiction in Hawaii, and especially lacks jurisdiction to establish a Hawaiian tribe, for the reasons that the revolution of 1893 was "illegal" and that there is no Treaty of Annexation between the United States and Hawaii. The apology resolution is often cited by Hawaiian secessionists as a "confession" that

the overthrow of the monarchy was a crime under international law. The alleged absence of a Treaty of Annexation bolsters the assertion that Hawaii is under a prolonged belligerent military occupation by the U.S.

BUT THE REVOLUTION OF JANUARY 17, 1893 WAS LEGITIMATE. WE KNOW THIS FOR AT LEAST THREE WELL-DOCUMENTED REASONS, TWO OF WHICH ARE FOUNDED IN INTERNATIONAL LAW.

(a) From January 18 and 19 every consul of all the nations that had consulates in Honolulu delivered a letter to President Dole granting diplomatic recognition de facto. That means those consuls agreed that the Provisional Government had taken power, and those nations would now do business with the PG rather than with the ex-queen. De facto recognition is all a consul is empowered to grant. Also, de facto is the only level of recognition given to a self-described temporary provisional government. The PG immediately drafted a treaty of annexation and sent it on the next ship headed to America. Since the PG was hoping to be annexed promptly, it felt no need to establish a permanent republic, and no need to seek full-fledged recognition de jure. Complete text of all letters of de facto recognition from local consuls in Honolulu, January 17-19, 1893; as taken from the Morgan Report, are at
http://tinyurl.com/9f4vh4

(b) As noted above, the Morgan Report contained 808 pages of testimony under oath, in open session, with severe cross-examination, which established the fact that the 162 U.S. peacekeepers did not give any assistance to the revolutionaries, did not take over any buildings, did not patrol the streets, and were not actually needed because the revolutionary Provisional Government was firmly in control of maintaining law and order. The revolution was done by a militia of armed local men without U.S. help.

(c) Realizing that President Cleveland would block Hawaii's annexation for the remaining three years of his Presidency, and now assured by the Senate resolution that the U.S. would stop trying to overthrow the Provisional Government, the temporary PG decided to create a permanent Republic. There were several reasons for doing this, including greater stability and job security for government employees (most of whom had kept the same jobs they held under the monarchy); and a hope for full-

fledged international recognition. The PG convened a Constitutional Convention (which included at least five delegates with native Hawaiian surnames) and held elections for a legislature and President (the Speaker of the House was full-blooded native Hawaiian John Kaulukou). In a political gesture showing its continuing wish for annexation, the date of July 4, 1894 was chosen to officially establish the Republic of Hawaii by publication of its Constitution. Full text of the Constitution of the Republic, and information about the Constitutional Convention that produced it, are available at:
http://tinyurl.com/262svm

Hawaii President Dole spoke with the local consuls of foreign nations. He gave them copies of the Constitution, asked them to notify their home governments about the creation of the Republic of Hawaii, and requested full diplomatic recognition. A New York Times article of July 22, 1894 repeats a news report that arrived in San Francisco by ship from Honolulu; about the creation of the Republic of Hawaii on July 4, the huge multiracial crowd celebrating it on the streets of Honolulu, a weak protest by dejected royalists, and the immediate de facto recognition given to the Republic by U.S. Minister Willis and various local consuls from other nations. See http://www.angelfire.com/big09a/RepublicNYT1894July22.pdf

During the following six months President Dole received the letters of full diplomatic recognition he had requested. The archives of the State of Hawaii has the original letters addressed to President Dole personally signed by kings, queens, emperors, and presidents of at least 20 nations on 4 continents, written in 11 languages, formally granting full diplomatic recognition de jure to the Republic as the rightful government of the nation of Hawaii. Among the signers were Queen Victoria of England, two Princes of China on behalf of the Emperor, the Tsar of Russia, the King and Queen of Spain; the President of France, the President of Brazil, and yes, even President Grover Cleveland. Ex-queen Lili'uokalani herself formally recognized the Republic by means of her letter of abdication and her oath of loyalty, which are included among the documents. A couple years later the Emperor of Japan personally signed a letter to President Dole raising the Japanese consulate to the status of Legation -- a status never enjoyed by the Kingdom. Thus the Republic of Hawaii was internationally

recognized as a full-fledged member of the family of nations and as the rightful successor to the Kingdom.

Photographs of the letters of recognition have been placed on a webpage at
http://www.angelfire.com/big11a/RepublicLettersRecog.html
The historical significance of those letters and their implications for statehood, attempted creation of a Hawaiian tribe, and the ceded lands; are explained at
http://tinyurl.com/2pxqgz

THERE IS INDEED A TREATY OF ANNEXATION, OFFERED BY THE REPUBLIC OF HAWAII IN 1897 AND ACCEPTED BY THE UNITED STATES IN 1898.

The history twisters say that there was never a treaty of annexation. They say the U.S. joint resolution of annexation is merely an internal law of the U.S. with no effect on Hawaii, because the U.S. Congress cannot unilaterally pass a law that has any effect outside its own borders. They say that under international law a treaty is the only way for the U.S. to annex another nation. They say that the ceded lands are actually stolen lands, because the Republic had no legitimacy to give those lands to the U.S. and because an internal law passed by Congress has no authority to reach out and grab the lands of a foreign nation. They say that a petition opposing annexation was signed by 38,000 men, women, and children, constituting 95% of all ethnic Hawaiians then living. But all those claims are false.

We saw above the proof that the Republic of Hawaii was internationally recognized as a full-fledged member of the family of nations, replacing the previously recognized but now defunct monarchy. Full recognition by all the major nations was the method whereby international law acknowledged that the revolution of 1893 had been legitimate. Full recognition gave the Republic the right under international law to speak on behalf of the nation, and to offer a treaty of annexation. The Republic of Hawaii offered a treaty of annexation in 1897 in a document ratified by its legislature in accord with its constitution. The U.S. accepted that offer in 1898 by means of a joint resolution. The vote was 42-21 in the Senate (exactly 2/3) and 209-91 in the House (well above 2/3).

The U.S., like any nation, has the right to decide for itself what method to use for accepting an offer of a treaty. It's a matter of U.S. law, not international law, whether the U.S. can use a joint resolution as a method of ratifying a treaty. The same method of joint resolution had been used to accept the annexation of Texas in 1845. No protest against the idea of annexation or the method of ratifying annexation was filed by any nation, either with the U.S. or with the Republic of Hawaii. All the treaty-partners of the Kingdom of Hawaii accepted the Republic, and later the U.S., as the rightful sovereign successor governments to carry forward those treaties following the revolution of 1893 and annexation of 1898.

There was a protest against annexation in the form of a petition signed by 21,269 Hawaii residents in 1897. Most of the signatures are by ethnic Hawaiians, but some are by people of other ethnicities. Interpolation of census data shows there were about 39,542 ethnic Hawaiians in 1897; so if all the signatures were from ethnic Hawaiians then 54% of them signed. Thus, on average, an ethnic Hawaiian today who looks for the signatures of his ancestors will find that only about half of them alive in 1893 actually signed the petition. However, all people were eligible to sign the petition, regardless of ethnicity and regardless whether they had voting rights (for example, women and children did not have voting rights but thousands of them signed the petition). Therefore the entire population of Hawaii at the time is the appropriate number for assessing the percentage who signed. Interpolation yields 120,265 as the population in 1897, which means the 21,269 signatures represent only 18% of the population. The Great Statehood Petition of 1954, with 120,000 signatures (see below), had a higher percentage of signers. The statehood plebiscite of 1959 had 94.3% YES votes, and even its strongest detractors admit that represents about 1/3 of the entire voting-age population.

Sovereignty activists today like to say there never was a treaty of annexation between Hawaii and the U.S. That's why the following webpage is important: "Treaty of Annexation between the Republic of Hawaii and the United States of America (1898). FULL TEXT OF THE TREATY, and of the resolutions whereby the Republic of Hawaii legislature and the U.S. Congress ratified it. The politics surrounding the treaty, then and now." http://www.angelfire.com/big09a/TreatyOfAnnexationHawaiiUS.html

For additional discussion of the annexation, see "Was the 1898 annexation illegal?" at
http://tinyurl.com/4e5bw

A very important book was published in 2011 by William M. Morgan, Ph.D. entitled "Pacific Gibraltar: U.S. Japanese Rivalry Over the Annexation of Hawaii, 1885-1898." See a detailed book review with summaries of each chapter and numerous lengthy quotes, at
http://www.angelfire.com/big09/PacificGibraltarBookReview.html

Here are some of the main points in that book in relation to Annexation: Japan demanded unlimited immigration to Hawaii with or without labor contracts, and demanded they be given voting rights the same as whites and Hawaiians. Several warships were sent to Honolulu by Japan, U.S., and Britain. The Republic of Hawaii was eventually forced to pay $75,000 in reparations to the Japanese for the costs of the immigrants who had been rejected and sent back. There was a diplomatic/military crisis between Japan and the U.S. in 1897, over Japanese immigration to Hawaii; and Hawaii's strategic location; were the major causes of U.S. desire to accept Hawaii's offer of annexation. There was never any thought of forcible annexation of Hawaii by the U.S. Annexation was initiated by the request of the government of Hawaii, which wrote and submitted a treaty to the U.S., first in 1893 and then again in 1897 (after Grover Cleveland's term ended). Hawaii repeatedly sent its own government officials to Washington to seek annexation by lobbying with U.S. Senators, Representatives, and cabinet officers. Sometimes U.S. politicians resisted or were less than enthusiastic, but Hawaii officials kept on trying.

Regarding the actual process of Annexation, the "Pacific Gibraltar" book says that Joint resolution by both House and Senate was always given equal consideration as a method of annexation; those favoring annexation never felt constrained to do annexation solely by a 2/3 vote of the Senate. It was always a political question to choose the method most likely to succeed, and the previous annexation of Texas by joint resolution was cited as a precedent. The Speaker of the House was strongly opposed, and had the power to unilaterally block it. They decided to start in the Senate so that Senate passage would put pressure on the House Speaker. But careful

counting showed they were two or three votes short of the necessary 2/3 in the Senate. And there would be a filibuster. Near-unanimous pressure from House Republicans and the McKinley administration forced the House Speaker to allow a vote, and it passed 209-91 on June 15, 1898. The Filibuster in the Senate was broken when annexation supporters demanded the Senate stay in session on July 3 and 4 (holiday); an agreement was reached to adjourn for the holiday with a guarantee of a vote on July 6, when it passed 42-21. President McKinley signed it on July 7. The book gives the impression there was never an actual vote in the Senate that fell short of 2/3. That impression comes because no such actual vote is ever mentioned. It might be correct. I, Ken Conklin, am unable to find mention of any actual vote on annexation by the Senate at any time in the 1890s except for the final vote of 42-21 on July 6, 1898 on the joint resolution. The book does make clear that because of opposition by the Speaker of the House who had the power to block any piece of legislation on his own authority, annexationists thought it would be best to try the Senate first. But whip counts in the Senate showed that the treaty was 2 or 3 votes short of 2/3, and there would be a filibuster which could block even a simple majority vote (apparently there was no cloture procedure back then). So pressure was brought on the Speaker who allowed a vote in the House; then the filibuster in the Senate was overcome when opponents did not want to ruin the 4th of July holiday. According to the well-researched book, the anti-annexation petitions by Hawaiian groups Hui Aloha 'Aina and Hui Kalai'aina had no practical effect at all. Polling of Senators by newspapers and party whips before and after the petitions were presented in 1897 showed that no Senator changed his commitment on account of the petitions.

Section 15. Evidence that "Native Hawaiians" and also the general citizenry of Hawaii do not want federal recognition of a "Native Hawaiian" governing entity or tribe. Zogby survey; two Grassroot Institute surveys; newspaper and OHA scientific surveys show ethnic Hawaiians and the general population place "nationbuilding" at bottom of priorities; informal newspaper polls show majority opposes creating a Hawaiian tribe and racial entitlements; hundreds of essays from 2000 to 2014 by nationally known experts and opinion-makers.

Over the years there have been numerous surveys of public opinion regarding federal recognition for a Hawaiian tribe. Some of those surveys were designed by and paid for by the Office of Hawaiian Affairs as part of its propaganda to shape public opinion and/or to use when lobbying Congress to pass the bill; those surveys are therefore not credible. Some of those surveys were designed and paid for by the Honolulu Advertiser or the Honolulu Star-Bulletin newspapers, which have consistently and repeatedly editorialized in favor of the Akaka bill; and the results are not credible because the company paid to perform the surveys (Ward Research) was the same company routinely paid by the Office of Hawaiian Affairs to do surveys of "Native Hawaiians" to measure the effectiveness of OHA programs or to make decisions about prioritizing OHA goals. All the surveys referred to thus far were done by survey-takers who are local Hawaii residents, sitting face-to- face with survey respondents or contacting them by phone, under circumstances where respondents might have felt reluctant to tell their true feelings for fear they might offend another local person.

The most reliable and credible survey on the Akaka bill and Hawaiian racial entitlements was done by the highly reputable professional Zogby International company, where the survey takers lived outside Hawaii, probably had no knowledge about or personal involvement in the highly controversial issues raised in the survey, and respondents would realize they were not talking with neighbors or other local people.

An announcement from Zogby International dated November24, 2009 provides the results of its survey of 501 voters in Hawaii from 11/18/09

through 11/23/09, whose margin of error is +/- 4.5 percentage points. 51% of all respondents say they are firmly decided against the bill or leaning against it, while 60% of all respondents who have a firm decision one way or the other oppose the bill. Overall, 51% oppose the bill, 34% support it and 15% are not sure. With regard to racial discrimination, only 28% say the bill is fair. 58% say there should be a vote by all Hawaii voters, regardless of race, before the bill can become law; only 28% say no vote is needed. 76% oppose higher taxes to pay for a Hawaiian tribe. Only 7% favor separate laws and regulations for a new native government. 60% say the ceded lands are for all of the people of Hawaii; only 21% say they should be for native Hawaiians only. See complete results including the wording of the questions, in the announcement at http:// big09a.angelfire.com/AkakaZogbyReleased121509.pdf

Previously, in 2005 and 2006, the Grassroot Institute of Hawaii commissioned surveys done by a professional polling firm outside Hawaii. Both surveys called every publicly listed landline telephone in the State of Hawaii -- 290,000 households.

The Grassroot survey results from 2005 showed 67.11% of all respondents oppose the Akaka Bill. 44.88% of respondents said they would be less likely to vote for an elected official who supported the Akaka bill. 22.71% of all respondents identified themselves as Native Hawaiians, which is slightly more than the percentage of Native Hawaiians in Hawaii's population. More data, including the wording of the questions and a spreadsheet, can be found at
http://www.angelfire.com/hi5/bigfiles3/AkakaScientificSurvey070505.html

The other Grassroot survey, released May 23, 2006, once again called all 290,000 Hawaii households with publicly listed landline phones. The purpose of the second survey was to reconfirm the first survey and to gather very detailed political and demographic information about the respondents including topics not addressed in the first survey. 18.84% of respondents said they are Native Hawaiian. 66.95 percent of the entire state continue to oppose the Akaka bill. 80.16 percent of Hawaii's residents do not support laws that provide preferences for people groups based on their race. 69.89 percent of Hawaii's residents want to vote on the Akaka Bill before it is considered at the national level. Results were also broken

down according to whether respondents were Republicans or Democrats, supporters of Ed Case vs. supporters of Dan Akaka in the Democrat primary for U.S. Senate, and other topics. Detailed results, including numerous detailed spreadsheets, are at http://www.angelfire.com/hi5/bigfiles3/AkakaGRIHsurvey052306.html

In 2003 two different scientific surveys were done to discover the relative importance of various priorities as ranked by the people of Hawaii in general, and by ethnic Hawaiians in particular. One survey was paid for by the Honolulu Advertiser newspaper, and conducted by the data-gathering and analysis company Ward Research which is often used by OHA. The other survey was paid for directly by the Office of Hawaiian Affairs -- it included data gathered both at public long-range planning meetings hosted by OHA in numerous neighborhoods, and also a survey conducted by the data-gathering and analysis company SMS Research which is frequently hired by OHA to do in-house surveys. Both surveys produced remarkably similar results. It is also interesting that the results were nearly the same for ethnic Hawaiians as for the general public. Top priorities are education, healthcare, housing, the environment, and traffic. The lowest priorities are Native Hawaiian rights, race-based handouts -- and, lowest of all -- ethnic Hawaiian "nationhood" (i.e., the Akaka bill or administrative rule-making to create a Hawaiian tribe). For complete details, including links to charts and graphs published on the newspaper website, see: http://www.angelfire.com/hi2/hawaiiansovereignty/prioritieshawnonhaw.html

Newspaper online polls are not scientific surveys, and represent only the views of those who take time to respond. Nevertheless, they are good indicators of public opinion among newspaper readers who are generally well-informed and sufficiently concerned about particular issues to respond to polls on those issues. All the newspapers in Hawaii have editorially supported the Akaka bill for many years, and are now supporting the Kana'iolowalu nation-building process and also the Department of Interior rule-making concept for creating a hawaiian tribe. So it is especially significant that every newspaper poll on these issues during the period from 2000 to 2014 has shown strong public opposition to race-based political sovereignty for ethnic Hawaiians. Often the margin of opposition has been

fairly close to the levels shown in the two Grassroot scientific surveys and the Zogby scientific survey.

75% of respondents opposed the Akaka bill in an on-line poll conducted by the Honolulu Star-Bulletin newspaper. In March 2005 the Honolulu Star-Bulletin asked the question "Would you like to see the Akaka bill become law?" When the poll ended, the votes were "Yes" 436 and "No" 1301. This poll is especially significant because the Star- Bulletin has repeatedly editorialized in favor of the Akaka bill for several years. Although this poll was neither a scientific sample like the initial Grassroot Institute survey, nor a comprehensive survey like the final Grassroot survey that contacted all 290,000 households with telephones; it nevertheless measures the opinions of people who feel strongly enough about the issue to take the time to respond to the poll (the newspaper eliminated multiple votes from the same computer). For details of the Star-Bulletin poll, see: http://www.angelfire.com/hi2/hawaiiansovereignty/AkakaSBpollmarch2005.html

The Maui News took an an online poll open for about two weeks in July 2005. The question was: "The Akaka Bill granting Native Hawaiians federal recognition has been held up in Congress by a group of Republican senators. What do you think Congress should do?" When the poll closed on July 28, 8075 votes had been cast with the following results: Reject the Akaka Bill: 58.2 %. Pass the Akaka Bill: 36.2 %. Revise and pass the Akaka Bill: (0.7 %. Don't know: 5.0 %. The Maui News has conducted many polls on many topics, and there seems to be no permanent URL to preserve the results of any particular poll once the next poll has started.

Every day the Honolulu Star-Advertiser posts a "Big Question" poll which offers several possible answers and asks readers to vote online. On August 14, 2013 the Honolulu Star-Advertiser asked the following poll question: Should President Obama use his executive authority to achieve federal recognition for Native Hawaiian sovereignty?
B. No (70%, 2,103 Votes)
A. Yes (30%, 911 Votes)
Total Voters: 3,014
http://hawaii-newspaper.com/polls/honolulu-star-advertiser-poll-archive/

On June 2, 2014, immediately after an editorial propagandizing in favor of federal recognition for a Hawaiian tribe, the Star-Advertiser Big Question was "What kind of future do you favor for Native Hawaiians?" Four choices were offered. The winner, with 41% of the vote, was "No entitlements at all." In second place "Federal recognition" with 31%. "The status quo" got 22%; and "Independence" got only 6%.
http://poll.staradvertiser.com/honolulu-star-advertiser-poll-archive/

During July the Star-Advertiser published additional propaganda in favor of federal recognition for a Hawaiian tribe, warning that failure to get such recognition would endanger Hawaii's racial entitlements empire. (The entitlements are unconstitutional under the 14th Amendment equal protection clause, but federally recognized Indian tribes are allowed to engage in racial discrimination). On July 15, following more of this propaganda, the Star-Advertiser once again ran a poll: "Should the U.S. Department of Interior keep open the process for federal recognition of Native Hawaiians?" 67% said NO.
http://poll.staradvertiser.com/honolulu-star-advertiser-poll-archive/

Of course there are individual opinions on all sides of controversial issues. In some ways individual opinions are less worthy of attention that scientific surveys or even the online opinion polls conducted by newspapers where hundreds or thousands of people express their opinions. Nevertheless individual opinions are sometimes written by people with expertise, or by nationally-known columnists followed by large numbers of readers -- these are writers who have nothing personal to gain from whatever might happen, and who speak from a larger perspective. They do not hold salaried positions or consultation contracts with the wealthy, powerful Hawaiian institutions whose lifeline is federal grants for race-based programs. From 2000 to 2014 a collection of hundreds of these opinions has been compiled. See: Major Articles Opposing the federal Hawaiian Government Reorganization bill (Akaka bill) and the creation of a state-recognized tribe under Hawaii Act 195 (Session laws of 2011) -- INDEX for years 2000 - 2014
http://tinyurl.com/5eflp

Section 16. People of all races jointly own Hawaii as full partners. It would be historically, legally, and morally wrong to push people with no native blood to the back of the bus. Why the metaphors of stolen car or stolen house are wrong. The battle for hearts and minds of Hawaii people of Asian ancestry. President Obama himself opposes tribalism and erecting walls between natives and immigrants. The history of the Black civil rights movement is instructive -- Martin Luther King's model of full integration won the hearts and minds of African Americans and of all Americans, defeating the racial separatism of the "Nation of Islam."

Section 11 of this testimony concluded that right from the beginning, and throughout the history of the Kingdom of Hawaii, people with no native blood were intimately involved in creating, sustaining, and governing it. There never was a Hawaiian nation limited to ethnic Hawaiians as a racial group. The Kingdom was fully multiracial in both its citizenry and its government. Nearly all "Native Hawaiians" have some or most of their ancestry from Europe, America, and Asia. Non- natives cannot be pushed out of land ownership and governance in Hawaii any more than non-native ancestry can be cleansed from the blood of "Native Hawaiians."

The social contract for a century beginning in 1778 was that Hawaiians supplied land, Europeans and Americans supplied money and technological expertise, and Asians supplied labor. Since the late 1800s all groups have supplied everything. Everyone worked together as full partners to help the Kingdom grow and prosper. And I hope it we all will continue as full partners going forward.

This full partnership among equals, between natives and non-natives, is unprecedented among the Indian tribes on the continent. A few tribes might have had a few Caucasians who were welcomed into the tribe; and in rare cases the Caucasians might have intermarried and spent their lives as members of the tribe or (very rarely) might even have held leadership positions. But in Hawaii the natives eagerly embraced Caucasian and Asian newcomers not only sexually but also spiritually, culturally, economically, and politically. Especially during the late 1700s and early 1800s it wasn't a

case of newcomers overwhelming and dominating the natives, forcing them to abandon their religion and their lands; rather it was the natives in huge numbers choosing to assimilate to the European and Asian lifestyles and attitudes.

A rhetorical phrase has become popular, in which ethnic Hawaiians call themselves "hosts" and those without native ancestry are relegated to the status of "guests." This concept is illustrated in the work of Lily Dorton, who renamed herself Lilikala Kame'eleihiwa -- a tenured professor and former Chair of the Center for Hawaiian Studies at the University of Hawai'i flagship campus at Manoa. She discusses the concept of hosts vs. guests in her book "Native Land and Foreign Desires" (Honolulu: Bishop Museum Press, 1992). She uses the term "foreigner" to refer to anyone who lacks Hawaiian native ancestry; thus, even a Caucasian or Asian person whose family has been born and raised in Hawaii for eight generations spanning perhaps 200 years would be called a "foreigner."

Here's what she says, starting at page 325: "Foreigners must learn to behave as guests in our 'aina and give respect to the Native people. If foreigners cannot find it in their hearts to do this, they should leave Hawaii. If foreigners truly love Hawaiians they must support Hawaiian sovereignty. They must be humble and learn to serve Hawaiians. If foreigners love us and want to support our political movements they must never take leadership roles. Leadership must be left to [ethnic] Hawaiians, for we can never learn to lead our Lahui [race-based nation] again until we do it ourselves. Foreigners who love us can donate their land and money into a trust fund for Hawaiian economic self- sufficiency, to promote agriculture, aquaculture, fishing and the Native initiative for sovereignty."

This evil concept cries out for rebuttal. It is historically, legally, and morally wrong to regard people as mere guests when they have multiple generations here, or they were born and raised here, or Hawaii has been their permanent home for many years.

For at least 25 years Hawaiian sovereignty activists have used two analogies to stake their claims, talking about a stolen car or a stolen house.

The stolen car analogy was raised in some of the Department of Interior's public hearings in Hawaii in Summer 2014. Here's a typical example of it written by Foster Ampong on June 6, 2004 (cleaned up for grammar and spelling). It might have been published in "The Maui News" or else was being circulated through emails

"It is like my grandfather steals your grandfather's car 111 years ago ... in this stolen car, he drives past your grandfather numerous times throughout their respective lives ... my grandfather eventually dies, his son/ my father inherits it knowing how the car came into his family's possession ... drives past your father numerous times throughout their respective lives ... my father now dies and I inherit this car knowing all the historical facts ... drive past you numerous times, while your family is still walking with no car ... however, you are more cognitive and educated ... you make an issue of this crime and stolen property my family still has, and rightfully so. I eventually write and offer you an apology and admit to the culpability and crime ... give you this apology and say oops, I am sorry for my grandfathers action ... THEN DRIVE OFF WITH YOUR FAMILY'S CAR!!!!!!!! OK, Now my brother wants to just say lets just forget all this stuff and accept what my family is offering to heal wounds and such ... and by the way, my family is going to keep the stolen car because it is part of what YOUR FAMILY IS NOW AGREEING TO!!!!!! [i.e., the Akaka bill or nation-within-a-nation status including federal assistance programs]

Here's my rebuttal about the car.

The story about the stolen car left out the letter "t". It wasn't a car, but merely a carT. And it became a car only because the Hawaiian got help from several wealthy and knowledgeable neighbors who who bought a lot of stuff and worked side by side to turn that broken-down carT into a car.

See, the Hawaiians had not yet invented the wheel, and didn't have horses; so that old CART was actually a travois -- a type of sled formerly used to carry goods, consisting of two joined poles dragged by a person or dog. So when newcomers showed up in the ahupua'a and became friends, they offered to help the Hawaiian family. The Hawaiians eagerly accepted. The newcomers invested a lot of money and expertise. They brought in wheels for the cart, and horses to make it easier to pull. Later they built a roof over

the cart to keep the rain out. Now it was a very useful cart, and fancy too. The Hawaiians and their neighbors were full partners who had built and improved the cart together. Later the newcomers bought an engine and turned what used to be a broken old cart into a fast and powerful car.

But now all of a sudden the great-grandchildren of the original Hawaiians started talking crazy. They said the car everyone had built together actually belonged to them alone and the newcomers had stolen it. Go figure! The real thief today is the person trying to take the car away from us all and drive off with it as though he alone owns it.

Analogy of the stolen house

The following analogy of the stolen house was included in an anonymous e-mail widely circulated in August, 2001, with subject header "How Hawaiians feel about the overthrow." Let's pretend I visit your house: You offer me food and rest. I decide to stay. I order you and your family around, use your things and rearrange the rooms. I take down your photos and religious symbols, replace them with my own and make you speak my language. One day, I dig up your garden and replace it with crops that I can sell. You and your family must now buy all your food from me. Later, I invite my father and his buddies over. They bring guns. We take your keys. I forge a deed and declare my father to be owner of the house. I bring more people. Some work for me. Some pay me to stay in your house. I seize your savings and spend it on my friends. You and your family sleep on the porch. Finally, you protest. Being reasonable, I let you stay in a corner of the house and give you a small allowance, but only if you behave. I tell you, "Sorry, I was wrong for taking the house." But when you demand your house back, I tell you to be realistic. "You are a part of this family now, whether you like it or not," I say. "Besides, this is for your own good. For all that I have done for you, why aren't you grateful?"

Here's the analogy of the stolen house written by Michael Locey and published in the Garden Island News letters to editor on December 31, 2002, which I have excerpted and cleaned up:
A Hawaiian mo'olelo: David has some land. He lives on and uses it for business that feeds his family. Fred comes to visit. Fred and his friends tell David: "now you have to live under our rules... or leave all together". Fred

goes to see Sam who is in the business of taking over other people's property and provides muscle for Fred. Fred offers Sam David's property. Sam says "Too hot", so Fred goes back to Sam with phony paperwork for a fictitious owner "Alice" and sells David's home to Sam. Fred disappears ... Alice was never real, and Sam has David's home. Do you call it the home Alice ceded to Sam? You do if you are trying to conceal the fact that it is stolen. The reality is it's David's home, and it will remain so until David says otherwise. Sam uses the home for business. Is he entitled to the money he makes from David's stolen home? Is Sam entitled to keep David's home? Sam argues his business is superior to David's and serves the community better, that he is a better suited to run David's home. Sam's friends and family all live well while David's family goes hungry. (Here's where the Akaka Bill comes in) Sam says he will RECOGNIZE David's rights to live in the home if David agrees Sam has the right to live there and make the rules. He even offers to feed David's family if they agree to Sam's terms. David's family divides against itself ... some believing it's all over; their home is lost and they must take what they can get. Others in David's family will never give up their birthright. Sam bribes a handful of people in David's family to convince David and his family to give up their claims to the land. Fact: Crown and Government Lands belong to the Crown and Government of the Kingdom of Hawaii until Hawaiians say otherwise. (Beware of claims extinguishments by a governing entity elected by and representing Hawaiians.) The same goes for political control of the Hawaiian Islands. This is today; tomorrow is closer than you might think. Hawaiians, tell your children.

Here's a letter to editor written by myself, Ken Conklin, and published in the Garden Island News on January 6, 2003. For the present testimony I have removed the portion filled with historical facts in order to focus on the analogy of the stolen house.

Michael Locey's "Historical Analogy" (GIN 12/31/02) was wildly inaccurate. Now, here is Mr. Locey's "Hawaiian mo'olelo" as corrected.

David lives on a large tract of land and uses some of it to feed his family. His family lives in a little grass shack. Fred comes to visit. David is amazed by Fred's material and spiritual wealth, and asks Fred and his friends to help him. David gives up his old religion even before meeting Fred's priest.

David likes Fred's religion and adopts it as his own. Fred also helps David learn to read and write. As a century goes by, David and his children ask Fred and his friends to help build a new house and learn new methods for using the land to produce great wealth. David's family, and Fred and his friends, all work together to build a huge mansion. They move into the mansion and live together, while also getting wealthy from using new methods and machinery to make the land more productive. Most of Fred's grandchildren and their friends decide they'd like to form a partnership and incorporate with the next valley over. Some of David's grandchildren like that idea too, but most don't like it. The conflict gets pretty bad, but the people favoring the partnership seem stronger than those opposing it, and also get a few friends from that neighboring valley to help a little. The partnership sponsors win, and the corporation is formed. There's no turning back now.

Some of David's descendants who had opposed the partnership even go to work at corporate headquarters in the other valley, and many of David's descendants work in the satellite offices near home. More houses are built, and new friends come to live in them who are not descended from either David or Fred.

David grows old and dies, and Fred and his friends also grow old and die. But their children and grandchildren for several generations continue living and playing together, sometimes intermarrying but always building more houses together on their shared land, while farming and fishing with equipment they buy or build together as full partners. People from outside have a hard time telling which children are descended from David and which are not. Even some of the children and their parents don't know for sure.

Then all of a sudden, 200 years after David and Fred became close friends, a few of David's great great grandchildren get selfish and go a little crazy. They get jealous of all the people in the 'ohana who are doing so well but are not descended from David. The crazy, selfish ones start talking stink about the "outsiders," and start saying "this land belongs only to us; this house is ours; it's time for all you guests to get out or start paying rent; we're gonna call the cops." Some of David's craziest descendants actually go to see the cops, who tell them there's nothing really wrong going on and

they should all just try harder to get along. Some of David's descendants build high walls around a few houses and pieces of land, and try to keep out anyone who can't prove David was an ancestor. But after a while the community elders order the walls to be torn down and say everyone should try to get along together.

(Here's where the Akaka Bill [and the Department of Interior's proposed rule for creating a Hawaiian tribe administratively] comes in). Some of David's descendants got some friends of theirs at headquarters to try to CREATE a new rule that David's descendants can build those walls and keep out Fred's descendants. Some of Fred's descendants even think that might be a good idea if it's what David's descendants want, while some of David's descendants think the David-only walls should enclose just about everything they all used to share. Some folks not descended from either David or Fred, but who love all their descendants, say "Can't we just all get along?"

There's a struggle underway for the hearts and minds of Hawaii's people of Asian ancestry regarding the issue of Hawaiian sovereignty. A book published in 2008 by our University of Hawaii Press, entitled "Asian Settler Colonialism", is a piece of strident propaganda by zealous advocates for race-based political sovereignty for ethnic Hawaiians. The book tries to lay a guilt trip on Hawaii's Asian population in hopes of enlisting them to support an ethnic Hawaiian agenda of blood nationalism. The good thing about this book is that it brings brings to public awareness a truly frightening belief-system. People inclined to support Hawaiian sovereignty, but who lack native blood, will discover that they are actually supporting the destruction of their own hard-won freedoms and individual rights. Asian "settlers" in Hawaii are told that unless they enlist as footsoldiers in the Hawaiian sovereignty movement to throw off the yoke of American occupation, they are guilty of collaborating with Caucasians in the oppression of ethnic Hawaiians. The book is deeply insulting to Hawaii's people of Asian ancestry. "Asian Settler Colonialism: From Local Governance to the Habits of Everyday Life in Hawai'i" edited by Candace Fujikane and Jonathan Y. Okamura. Honolulu: University of Hawaii Press, 2008. A detailed book review, including lengthy quotes and rebuttals, is at http://www.angelfire.com/big09a/AsianSettlerColonialism.html

The first insult to Hawaii's people of Asian ancestry comes by telling them that they are guilty of collaborating with Caucasians to oppress ethnic Hawaiians. The next insult comes by telling them that even if their families have lived in Hawaii for several generations, they are merely "settlers" in someone else's homeland and they have a duty to abandon their hard-won equal rights in order to accept a position of subservience to ethnic Hawaiians. Perhaps the deepest insult of all is the book's attempt to undermine the patriotism of Asian Americans by telling them they have a moral duty to help Hawaiian sovereignty activists liberate Hawaii from American colonialism and rip the 50th star off the flag. If anyone thinks this paragraph is an exaggeration, or a case of fear-mongering, then please read the entire book review, including the book's five-page celebratory explanation of the metaphors in a political cartoon showing Hawaii's first Filipino Governor, Ben Cayetano, lynching a Native Hawaiian in order to give pleasure to a Caucasian.

Will Hawaii's people of Asian ancestry remain loyal to the United States, or will they join with ethnic Hawaiian nationalists seeking to kick the U.S. completely out of Hawaii and create a racial supremacist independent Hawaii? Will Hawaii citizens of Asian descent see themselves primarily as victims of historical domination and exploitation by Caucasians, and join the ethnic Hawaiian grievance industry expressing resentment and demanding group reparations for "people of color"? Or will they see themselves as individuals whose forebears freely came to Hawaii to work as sugar plantation laborers, nurses, and hotel maids to make a better life and who succeeded in harvesting a piece of the American dream for themselves, their families, and descendants?

An effort has been underway for 15 years to enable creation of a phony Indian tribe through the Akaka bill, and current efforts by the Omaba administration to change administrative rule-making in the Department of Interior. It's understandable that powerful, wealthy race-based institutions work hard to do everything possible to protect the flow of federal dollars to themselves. But why would the rest of Hawaii's people want to build a wall of apartheid?

A great American president, Ronald Reagan, once looked at the Berlin wall and said "Mr. Gorbachev, tear down this wall." And not long after, through

the power of many hands working together on both sides of the wall, that's exactly what happened.

In July 2008 presidential candidate Barack Obama gave a ringing endorsement of the ideal of inter-racial unity, making clear that divisiveness and tribalism must come to an end. Here's what he said in the shadow of the Berlin wall: "... the greatest danger of all is to allow new walls to divide us from one another. ... The walls between races and tribes; natives and immigrants; Christian and Muslim and Jew cannot stand. These now are the walls we must tear down. ... Not only have walls come down in Berlin, but they have come down in Belfast, where Protestant and Catholic found a way to live together; in the Balkans, where our Atlantic alliance ended wars and brought savage war criminals to justice; and in South Africa, where the struggle of a courageous people defeated apartheid."

The whole purpose of the Akaka bill and the proposal for administrative creation of a Hawaiian tribe is to divide the lands and people of Hawaii along racial lines. -- to declare that the descendants of natives should be a hereditary elite with a racially exclusionary government walling out all who lack a drop of the magic blood.

Why should such an abomination be inflicted on us in the very place where King Kauikeaouli Kamehameha III proclaimed racial unity and equality as law? In the first sentence of the first Constitution (1840) of the multiracial Kingdom of Hawaii, the King wrote: "God hath made of one blood all races of people to dwell upon this Earth in unity and blessedness." Why should we now erect a wall of racial separatism in the land of aloha? Please, Mr. President, help bring us together instead of ripping us apart.

On March 15, 2009 I wrote a letter to President Obama asking him to consider the history of the Black civil rights movement and therefore to change his mind and to oppose the Akaka bill. Here is a portion of that letter. The complete letter is at
http://www.angelfire.com/big09a/AkakaObamaOpenLetter.html

Sir, you have a deep personal understanding of the quest for racial identity because of your own black/white heritage. You know the historical struggle for identity within the African-American community. Elijah Muhammad's

Nation of Islam, and the early Malcolm X, advocated racial separatism and portrayed the white man as a devil. Some radicals called for setting aside several southern states for a Nation of New Africa.

Fortunately Martin Luther King used Gandhi's spiritual tool of non- violence to appeal to people's inner goodness, which led to full integration. After his pilgrimage to Mecca Malcolm X understood the universal brotherhood of people of all races, but was gunned down by the separatists when he tried to persuade them to pursue integration.

In your extensive work as a community organizer you saw how some demagogues use racial grievances to stir up hatred, and leaders use victimhood statistics to build wealthy and powerful institutions on the backs of needy people who end up getting very little help. During your campaign for the Presidency the whole nation saw your heart-rending decision to reject the outrageously divisive black liberation theology in the rhetoric of the pastor whose church you had belonged to for 20 years.

Sir, the same struggles go on within the ethnic Hawaiian community. The Akaka bill would empower the demagogues and racial separatists. The Akaka bill is supported primarily by large, wealthy institutions; not by the actual people they claim to represent. Institutions like the $400 Million Office of Hawaiian Affairs, and the $9 Billion Kamehameha Schools, seek to entrench their political power. They want an exemption from the 14th Amendment requirement that all persons be given the equal protection of the laws regardless of race.

But Hawaiians are voting with their feet against the Akaka bill. After five years [2009] and untold millions of dollars in advertising, fewer than one-fourth of those eligible have signed up for the Kau Inoa racial registry likely to be used as a membership roll for the Akaka tribe. Sadly, if the bill passes then the separatists will be able to create their tribe even though the majority of ethnic Hawaiians oppose the idea. And 80% of Hawaii's people, having no native blood, will see our beautiful Hawaii carved up without even asking us.

Section 17. Administrative rule-making should not be used to enact legislation explicitly rejected by Congress during 13 years when megabucks were spent pushing it. Legitimate authority for rule-making should not be regarded as a license for arbitrary and capricious rule-breaking. If the rules are changed in such a radical way to allow such a fully assimilated, scattered group as "Native Hawaiians" to get federal recognition, hundreds of other groups cannot be denied.

The first sentence of the U.S. Constitution, Article 1, Section 1, says "All legislative Powers hereby granted shall be vested in a Congress of the United States ..."

Article 2 Section 1 says "The executive Power shall be vested in a President of the United States of America." article 2, Section 3 says "...[H]e shall take Care that the Laws be faithfully executed ..." The executive branch has no authority to legislate, only to FAITHFULLY execute what Congress legislated.

During the past few years President Obama has repeatedly overstepped his authority and encroached on the powers of Congress, as the Supreme Court has ruled 9-0 on at least 12 recent cases. When there's a law he doesn't like, he simply refuses to enforce it, as shown when he refused to defend in court the Congressionally mandated Defense of Marriage Act, thereby failing to "take care that the laws be faithfully executed." He unilaterally decided to administratively pass the "Dream Act" which Congress had very recently voted to reject, by ordering immigration officials to decline to deport illegal immigrants who had been brought to America when they were children.

In both of those cases President Obama asserted that he has "prosecutorial discretion" to choose which laws to enforce, and against which criminals, because resources are limited and choices must be made. There are many more examples too numerous to list here. But the assertion that discretion is needed because of limited resources is simply not credible when a highly controversial law enacted after lengthy Congressional deliberation is ignored or undermined because the President

disagrees with Congress. It is not sufficient merely to say that Congress is caught in gridlock and unable to act, therefore I will use my pen and my phone to do what Congress seems unable to do. Inaction by Congress is a form of action -- Congress is not mired in gridlock; rather it chooses not to pass a new law. The President violates the separation of powers if he uses his pen to do what Congress refuses to do.

On November 9, 2015 the Fifth Circuit Court of Appeals upheld a federal district court judge's previous ruling in Texas v. United States granting an injunction to block President Obama from implementing executive orders creating a new program "Deferred Action for Parents of Americans" and expanding another program "Deferred Action for Childhood Arrivals." Both the district court and the court of appeals noted that Congress had refused to pass legislation to establish such programs -- very much like Congress repeatedly refused to pass the Akaka bill during the thirteen years it was active in Congress from 2000 through 2012. Both courts also cited the severe impact on Texas if the programs were allowed to be implemented -- very much like the severe impact on Hawaii if the Department of Interior's proposed rule were implemented to give federal recognition to a Hawaiian tribe.

It's generally acknowledged that the executive branch has the authority to exercise "implementation latitude" to write regulations to implement laws passed by Congress, because those laws are often broad in scope, are sometimes vague and need interpretation, or fail to take account of all the details encountered in daily life. But all such uses of executive authority in exercising implementation latitude must be done in conformity with the intent of Congress and not in opposition to it.

Using an executive order or administrative rule-making to create a new law rejected by Congress is far worse than refusing to faithfully execute a law enacted by Congress. It has nothing to do with using discretion in the face of limited resources to choose which laws to ignore. Administrative creation of a new law which Congress has rejected is a blatantly unconstitutional usurpation of the power of Congress and probably an impeachable offense.

What the Department of Interior is trying to do through administrative rule-making to create a phony Hawaiian tribe is exactly opposite to the clear

intent of Congress, which has repeatedly refused to enact the Akaka bill during a 13-year period from 2000 through 2012. What the Department of Interior is trying to do with rule-making in this situation is not an exercise of implementation latitude; it is rather a violation of the separation of powers -- an attempt to seize the power of Congress to legislate on a topic where Congress has spoken in opposition to what DOI is trying to do. The executive branch only has the authority to make rules to implement laws passed by the legislative branch; the executive branch does not have the power to legislate through rule-making a policy which Congress has repeatedly rejected.

For many years the Department of Interior has been in the business of discovering Indian tribes which it says have always existed but are only now coming to the attention of the federal government and seeking "acknowledgment" as federally recognized tribes. Recognition allows the federal government to take land into trust, making it federal land where tribal businesses escape state and local taxation, and where local zoning laws no longer apply; thus allowing the tribe to build casinos and rake in megabucks. A tribe can own land communally on behalf of its members, and can have its own laws and institutions separate and apart from the non-Indian population.

A very clear set of rules has long been in place spelling out in legal jargon the commonsense understanding of what distinguishes a real Indian tribe from merely a bunch of Indians "on the loose" as it were. I believe, but am not certain, that a majority of people who have Native American ancestry are not members of any tribe and would not be eligible to join a tribe even if they wanted to.

The seven mandatory criteria a group of Indians must prove they satisfy in order to get federal recognition are found at 25 CFR 83.7. All 7 criteria must be satisfied; failure to meet even one of the 7 has been the reason why some groups were rejected. So-called "Native Hawaiians" clearly fail at least three of the criteria.

"A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present." But as discussed in another section of this testimony, ethnic

Hawaiians eagerly embraced Europeans, Americans, and Asians not only sexually but also spiritually, economically, culturally, and politically; becoming thoroughly integrated and assimilated; living, working, praying, and playing together throughout the 1800s, 1900s, and still today. May it always be so! We don't want the Department of Interior to pull us apart.

"The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present." But as discussed in another section of this testimony, native Hawaiians never had a unified government of all 8 major islands where the people being governed, or their political leaders, were entirely of Hawaiian ancestry. A unified Kingdom of Hawaii existed only after 1810, and was created only with the indispensable materials and leadership supplied by England. A majority of its cabinet ministers, nearly all department heads, and perhaps 1/4 to 1/3 of the members of its legislature were Caucasians. The only people and places today where the leaseholders and the governing authority are entirely native Hawaiian are the Department of Hawaiian Homelands, which was artificially created by an Act of Congress, the Hawaiian Homes Commission Act passed in 1921. The tribe now being created through the Kana'iolowalu process based on Act 195 (Hawaii Session Laws of 2011) is vastly larger than the number of DHHL leaseholders or waiting list placeholders.

"A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures." But there is no Native Hawaiian Governing Entity and no Constitution or governing document; and there has never been any such thing. The closest things would be the Kingdom of Hawaii Constitutions of 1840, 1852, 1864, and 1887; but those Constitutions governed a multiracial nation in which ethnic Hawaiians of any blood quantum had already declined to a minority of about 40% at the time the monarchial government was overthrown in 1893.

In a series of 15 community meetings throughout Hawaii in June and July, 2014, Assistant Attorney General Sam Hirsch asserted that the Department of Interior has authority to rewrite the rules for federal recognition. He even said there were one or two sentences in the 9th Circuit Court of Appeals

ruling in Kahawaiola'a which could be interpreted to mean that DOI can change its longstanding rules in such a way to make it possible for a Hawaiian tribe to be recognized.

I'm not a lawyer. But even if I were, I'm sure that Sam Hirsch and his battery of highly paid lawyers would figure out some way to torture the Kahawaiola'a ruling or the enabling legislation for the rules in 25 CFR 83.7 until it screams "uncle" and says OK go ahead and do what you want to do. But just because he can do it does not mean he should.

If The Department of Interior tries to gerrymander the long-accepted criteria that distinguish a genuine tribe from a mere group of unaffiliated Indians, in such a way as to allow ethnic Hawaiians to be recognized as a tribe. then it seems unimaginable that the new rules could prevent hundreds of other groups that are not really tribes from getting federal recognition. Just look at three of the criteria described above which ethnic Hawaiians clearly fail to meet. If those criteria were deleted from the requirements to facilitate recognition of Mr. Hirsch's favorite group, there would no doubt be a large number of brand new federally recognized tribes very soon.

What Sam Hirsch seems to be advocating resembles a practice sometimes used by unscrupulous companies and contractors in cahoots with each other where the company puts out a request for proposals, a contractor bribes a company official to write the specifications in such a way that only that particular contractor can easily meet them, and then the company awards the contract. Or, as is said more informally: if the football team has trouble scoring a field goal, just move the goalposts closer for them.

I remember on my elementary school playground there was a bully who would change the rules whenever he wasn't winning. It looks like the Department of Interior is the biggest bully in Hawaii today. Fortunately the American voters collectively are bigger. The next Republican President will put a muzzle on the snout of DOI and put it back in its cage. The affable Sam Hirsch will find a happy retirement home among his friends in the ethnic Hawaiian community, even if he has trouble pronouncing the magic codeword Kahawaiola'a.

Section 18. The people and lands that might be cobbled together to create a Hawaiian tribe are fully integrated, fully assimilated, and widely scattered throughout all neighborhoods in Hawaii and all 50 states. Genuine tribes began long ago as demographically homogeneous and geographically compact; and the purpose of federal recognition is to enable them to continue their lifestyle and self-governance. But federal recognition for a Hawaiian tribe would take things in the opposite direction -- herding into demographic and geographic racial ghettos people and lands that have long been fully assimilated, widely scattered, and governed by a multiracial society. Map showing public lands likely to be demanded by a Hawaiian tribe; Census 2010 table showing number of Native Hawaiians in every state; Census 2010 table showing number of Native Hawaiians in every census tract in Hawaii.

The following information is provided in this section of testimony.

1. A four-color map shows all eight major Hawaiian islands and identifies some (but not all) of the lands that a Hawaiian tribe might expect to govern. The map was retrieved on July 2, 2014 from http://aloha4all.org/wordpress/basic-issues/land-map/

Areas in white are private lands that might remain unaffected by creation of a Hawaiian tribe. However, some very large amounts of private lands are owned by wealthy race-based institutions which are likely to re-incorporate under the authority of a race-based Hawaiian tribe in order to avoid taxes and racial discrimination lawsuits. For example, Kamehameha Schools Bishop Estate is the largest private landowner, holding approximately 9% of all the land in Hawaii, and also owns buildings and large tracts of land in other states.

Lands colored orange are more than 200,000 acres of Hawaiian Homelands governed by the Department of Hawaiian Homelands

under the Hawaiian Homes Commission Act passed by Congress in 1921. There are more than 60 geographically separate DHHL parcels on 6 islands, but only the largest ones are shown on the map. Leases can originally be issued only to people with at least 50% Hawaiian native blood quantum, although a lessee's child can inherit with 25% or more native ancestry.

Areas colored green are federal lands including military bases and national parks. Only the largest federal areas are shown. Hawaiian activists have asserted that many of these areas are sacred in their religion or their history.

Areas colored blue are state lands.

All the federal lands, and approximately 95% of all lands owned by the state government, are "ceded lands." These are formerly the government and crown lands of the Hawaiian kingdom which were ceded to the U.S. in the 1898 Treaty of Annexation. Later the lands now owned by the State of Hawaii were ceded back under terms of the statehood act of 1959. The U.S. apology resolution of 1993 says all the ceded lands were taken from Native Hawaiians against their will and without compensation -- that assertion is untrue for many reasons, but Hawaiian activists have been asserting it for decades. The activists cite the apology resolution as evidence that the U.S. has admitted its theft of the land, and many Hawaii citizens have come to believe it. Today's Hawaiian activists say all these lands rightfully belong to Native Hawaiians collectively and should be handed over to a future sovereign independent nation of Hawaii or, presumably, to any tribal government created under the U.S. Department of Interior.

2. A table shows the number of Native Hawaiians living in each of the 50 states according to Census 2010, and their percentage of each state's total population. The table was retrieved on July 2,

2014 from the Native Hawaiian Databook for Census 2010 results at
http://www.ohadatabook.com/QT-P9_United%20States.pdf

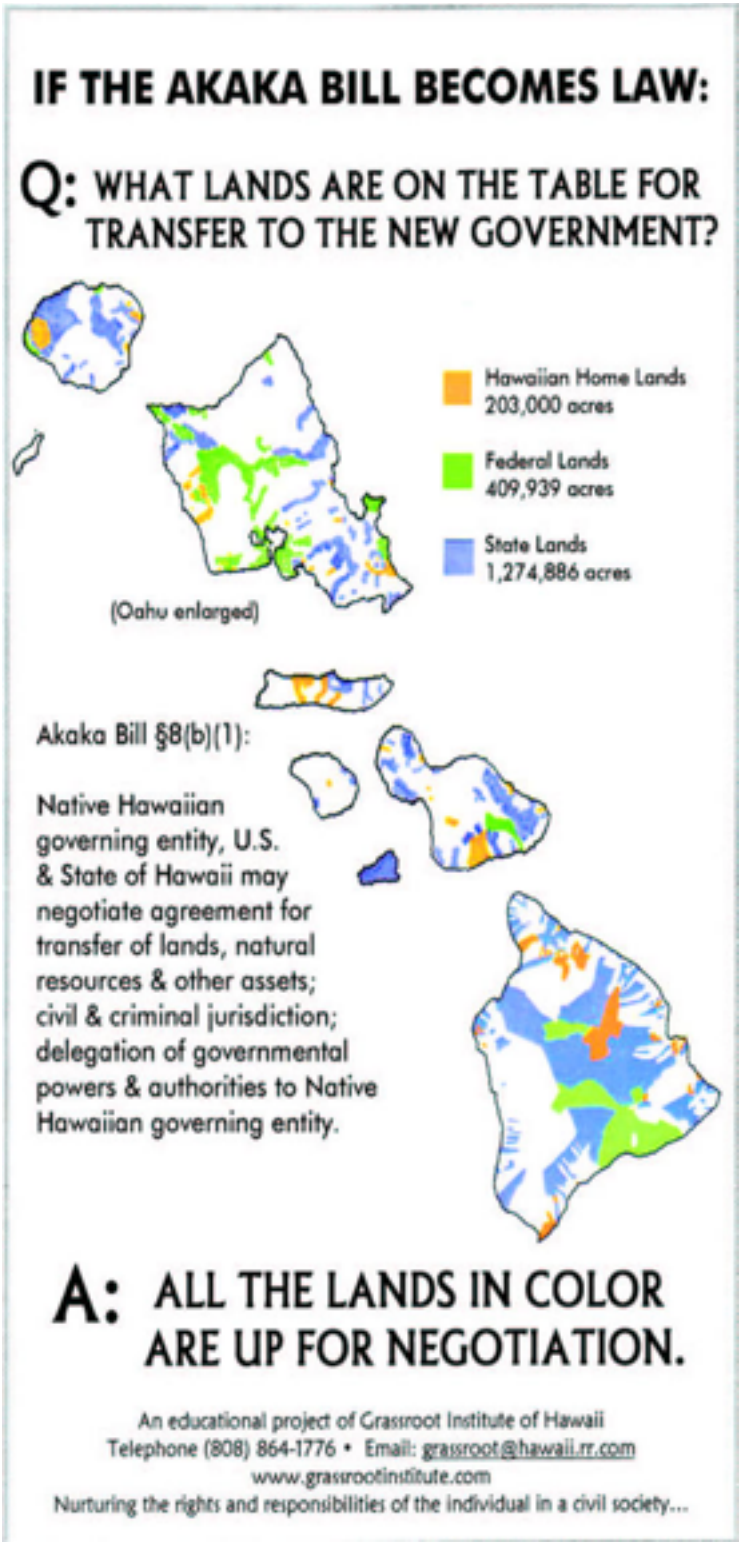
Some states have a large number of Native Hawaiians, who might very well create their own branches of a Hawaiian tribe and might then purchase land in those states, have the Department of Interior place it into trust, and build casinos or other tax-exempt businesses such as gasoline stations and liquor stores. For example, in 2010 California had 74,932 Native Hawaiians -- a large increase above the 60,000 living there in 2000. Nevada had 16,399 mostly clustered in Las Vegas.

The point is that ethnic Hawaiians are scattered throughout all states. In Census 2010, 289,970 ethnic Hawaiians live in Hawaii out of 527,077 nationwide, meaning that 45% of the potential members of a Hawaiian tribe live outside Hawaii! Is there any genuine Indian tribe so widely scattered?

It's important to use the columns at the right, which identify "Native Hawaiian" as anyone having at least one drop of Hawaiian blood -- the same definition used in all versions of the Akaka bill from 2000 through 2012 and the same definition contemplated for the tribe being created by the State of Hawaii Kana'iolowalu process and Department of Interior rule-making. But the columns at the left are also interesting, because they claim to show how many "pure Hawaiians" there are -- these are people who claimed only "Native Hawaiian" ancestry on the Census form even though they could have claimed all their multiracial ancestries by checking more than one race box. There are probably no more than a few thousand "pure Hawaiians." But Kamehameha schools and OHA and other Hawaiian racialist institutions urged their beneficiaries to check only the one box for "Native Hawaiian" for fear that government handouts might be diluted for people whose racial pedigree was diluted. The vast

majority of those who identified as "pure Hawaiian" did so to emphasize the strength of their social/political activism, even though by doing so they repudiated what in many cases was the majority of their ancestors. For example Hawaii shows 80,337 "pure" Hawaiians, which is absurd; California shows 21,423 "pure" Hawaiians, Nevada shows 6,459 and even New York shows 1,802 "pure" Hawaiians which is probably more than the number of "pure" Hawaiians who actually exist in Hawaii.

3. A lengthy table shows the number of "Native Hawaiians" in each and every Census tract in the State of Hawaii. It clearly shows that ethnic Hawaiians are widely dispersed and thoroughly assimilated throughout all neighborhoods of the state. There are a few tracts where ethnic Hawaiians are more than 50% of the population -- that happens on the Hawaiian Homelands created by Congress in 1921, which have artificially rounded up native Hawaiians and herded them into racial ghettoes. Why is the percentage of Native Hawaiians not 100% in these ghettoes? Because only the leaseholder is required to have at least 50% Hawaiian blood; but spouses, children, and other family members might have much less native ancestry or even no native ancestry at all. For purposes of measuring the dispersion of ethnic Hawaiians throughout all Census tracts, it's important to use the columns at the right, which identify "Native Hawaiian" as anyone having at least one drop of Hawaiian blood -- the same definition used in all versions of the Akaka bill from 2000 through 2012 and the same definition contemplated for the tribe being created by the State of Hawaii Kana'iolowalu process and Department of Interior rule-making. The table was retrieved on July 2, 2014 from the Native Hawaiian Databook for Census 2010 results at
http://www.ohadatabook.com/QT-P9_Tracts.xls



Transfer of land and natural resources. The sponsors of the bill have said that the approximately 200,000 acres of Hawaiian home lands plus the island of Kahoolawe would be given to the new government. But the bill specifies no limit on the amount of land to be transferred. In the past, OHA has demanded all the ceded lands (former government and crown lands), including those held by the U.S. for military bases, national parks and civil purposes.

Crazyquilt of separate enclaves. This map shows that, unlike typically contiguous Indian reservations, the proposed Native Hawaiian government's territory would be a patchwork of separate sovereign enclaves.

Visualize the transmission lines. Indian tribes charge right-of-way fees for transmission lines across reservations or interrupt service. Look at the map above and visualize the transmission lines for electricity, telephone, gas, cable, water, sewer, storm drain, traffic lights and street lights. Every one that crosses the territory of the proposed Native Hawaiian government would be fair game for right-of-way charges or interruption of service.

Your utility bills. Imagine the effect on your home utility bill. You will pay more, not because you receive better service, but only because a sovereign Hawaiian government has the right to charge for or withhold transmission over its sovereign territory. Ditto for utilities to business, emergency services, airports, harbors, parks, military bases, national parks, the University of Hawaii and the summit of Mauna Kea

QT-P9 - United States: Race reporting for the Native Hawaiian by Selected Categories: 2010

2010 Census Summary File 1

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see http://www.census.gov/prod/cen2010/doc/sf1.pdf.

Geography	Native Hawaiian						Total Population
	Native Hawaiian Alone [1]		Native Hawaiian Alone & Combination within Same Race [2]		Native Hawaiian Alone or in Any Combination [3]		
	No.	%	No.	%	No.	%	
Alabama	522	0.01%	553	0.01%	1,529	0.03%	4,779,736
Alaska	949	0.13%	1,117	0.16%	3,006	0.42%	710,231
Arizona	3,837	0.06%	3,986	0.06%	9,549	0.15%	6,392,017
Arkansas	537	0.02%	552	0.02%	1,251	0.04%	2,915,918
California	21,423	0.06%	22,940	0.06%	74,932	0.20%	37,253,956
Colorado	1,783	0.04%	1,858	0.04%	5,670	0.11%	5,029,196
Connecticut	322	0.01%	328	0.01%	1,017	0.03%	3,574,097
Delaware	74	0.01%	78	0.01%	266	0.03%	897,934
District of Columbia	75	0.01%	77	0.01%	264	0.04%	601,723
Florida	2,809	0.01%	2,912	0.02%	8,023	0.04%	18,801,310
Georgia	1,319	0.01%	1,409	0.01%	3,976	0.04%	9,687,653
Hawai'i	80,337	5.91%	84,480	6.21%	289,970	21.32%	1,360,301
Idaho	637	0.04%	669	0.04%	1,921	0.12%	1,567,582
Illinois	1,122	0.01%	1,151	0.01%	3,636	0.03%	12,830,632
Indiana	728	0.01%	742	0.01%	2,223	0.03%	6,483,802
Iowa	381	0.01%	408	0.01%	1,109	0.04%	3,046,355
Kansas	505	0.02%	527	0.02%	1,554	0.05%	2,853,118
Kentucky	541	0.01%	573	0.01%	1,505	0.03%	4,339,367
Louisiana	466	0.01%	481	0.01%	1,245	0.03%	4,533,372
Maine	115	0.01%	123	0.01%	350	0.03%	1,328,361
Maryland	634	0.01%	658	0.01%	2,346	0.04%	5,773,552
Massachusetts	520	0.01%	536	0.01%	1,780	0.03%	6,547,629
Michigan	753	0.01%	775	0.01%	2,708	0.03%	9,883,640
Minnesota	573	0.01%	584	0.01%	1,847	0.03%	5,303,925
Mississippi	252	0.01%	259	0.01%	699	0.02%	2,967,297
Missouri	958	0.02%	1,045	0.02%	2,673	0.04%	5,988,927
Montana	295	0.03%	303	0.03%	868	0.09%	989,415
Nebraska	227	0.01%	239	0.01%	794	0.04%	1,826,341
Nevada	6,459	0.24%	6,860	0.25%	16,339	0.61%	2,700,551
New Hampshire	120	0.01%	121	0.01%	385	0.03%	1,316,470
New Jersey	674	0.01%	689	0.01%	2,066	0.02%	8,791,894
New Mexico	660	0.03%	683	0.03%	1,854	0.09%	2,059,179
New York	1,802	0.01%	1,862	0.01%	5,108	0.03%	19,378,102
North Carolina	1,389	0.01%	1,438	0.02%	4,182	0.04%	9,535,483
North Dakota	88	0.01%	91	0.01%	282	0.04%	672,591
Ohio	928	0.01%	950	0.01%	3,037	0.03%	11,536,504
Oklahoma	942	0.03%	1,002	0.03%	2,766	0.07%	3,751,351
Oregon	3,060	0.08%	3,229	0.08%	9,719	0.25%	3,831,074

Pennsylvania	940	0.01%	975	0.01%	3,043	0.02%	12,702,379
Rhode Island	96	0.01%	106	0.01%	397	0.04%	1,052,567
South Carolina	570	0.01%	589	0.01%	1,654	0.04%	4,625,364
South Dakota	95	0.01%	99	0.01%	336	0.04%	814,180
Tennessee	771	0.01%	802	0.01%	2,224	0.04%	6,346,105
Texas	4,794	0.02%	4,955	0.02%	13,192	0.05%	25,145,561
Utah	1,911	0.07%	2,340	0.08%	6,525	0.24%	2,763,885
Vermont	47	0.01%	49	0.01%	158	0.03%	625,741
Virginia	1,410	0.02%	1,473	0.02%	4,699	0.06%	8,001,024
Washington	5,861	0.09%	6,373	0.09%	19,863	0.30%	6,724,540
West Virginia	141	0.01%	145	0.01%	442	0.02%	1,852,994
Wisconsin	547	0.01%	572	0.01%	1,638	0.03%	5,686,986
Wyoming	147	0.03%	152	0.03%	457	0.08%	563,626
TOTAL	156,146	0.05%	164,918	0.05%	527,077	0.17%	308,745,538

[1] One category alone (e.g., Samoan).

[2] One category alone (as in footnote 1), or in combination with one or more other categories within the same race group (e.g., Native Hawaiian, Samoan, and Other Pacific Islander). Individuals are included in each category.

[3] One category alone (as in footnote 1), or in combination with one or more other categories within the same race group (as in footnote 2), or in combination with any other race group (e.g., Native Hawaiian, Samoan, White, and Black or African American).

Source: U.S. Census Bureau, 2010 Census.
2010 Census Summary File 1, Tables PCT8, PCT9, PCT10

QT-P9 - Hawaii-Census Tracts: Race reporting for the Native Hawaiian by Selected Categories: 2010						
2010 Census Summary File 1						
NOTE: For information on confidentiality protection, nonsampling error, and definitions, see http://www.census.gov/prod/cen2010/doc/sf1.pdf.						
Geography	**Native Hawaiian**					
	Native Hawaiian Alone [1]		**Native Hawaiian Alone or in Combination with one or More other Categories of same race [2]**		**Native Hawaiian Alone or in Any Combination [3]**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Hawaii County	15,812	8.5%	16,355	8.8%	54,919	29.7%
Census Tract 201	304	5.8%	311	6.0%	1,170	22.4%
Census Tract 202.02	361	14.1%	362	14.1%	696	27.1%
Census Tract 203	386	9.8%	407	10.3%	1,171	29.8%
Census Tract 204	298	9.0%	309	9.4%	1,074	32.6%
Census Tract 205	500	8.4%	533	9.0%	1,945	32.8%
Census Tract 206	1,637	30.4%	1,678	31.1%	3,485	64.6%
Census Tract 207.01	290	6.4%	304	6.7%	1,254	27.8%
Census Tract 207.02	270	5.6%	274	5.6%	1,250	25.7%
Census Tract 208.01	322	7.5%	328	7.6%	1,310	30.4%
Census Tract 208.02	454	7.3%	462	7.5%	1,664	26.9%
Census Tract 209	301	6.4%	304	6.4%	1,508	31.9%
Census Tract 210.03	630	9.9%	651	10.2%	2,207	34.5%
Census Tract 210.05	947	8.6%	997	9.1%	3,556	32.3%
Census Tract 210.10	670	8.5%	706	9.0%	2,555	32.4%
Census Tract 210.11	344	8.6%	358	8.9%	1,578	39.4%
Census Tract 210.13	329	6.6%	341	6.9%	1,466	29.5%
Census Tract 211.01	203	5.7%	209	5.9%	514	14.6%
Census Tract 211.06	850	11.3%	896	11.9%	2,641	35.1%
Census Tract 212.02	704	8.3%	719	8.5%	2,409	28.5%
Census Tract 213	658	11.0%	685	11.5%	1,840	30.8%
Census Tract 214.02	359	8.9%	367	9.1%	1,184	29.4%
Census Tract 215.02	444	9.2%	453	9.4%	1,338	27.6%

Census Tract 215.04	525	13.2%	561	14.1%	1,646	41.5%
Census Tract 215.07	579	6.8%	612	7.2%	2,268	26.7%
Census Tract 215.09	238	4.6%	249	4.8%	846	16.4%
Census Tract 216.01	469	6.0%	488	6.2%	1,543	19.7%
Census Tract 216.04	293	3.9%	302	4.0%	1,180	15.6%
Census Tract 217.02	1,166	12.2%	1,182	12.4%	3,655	38.3%
Census Tract 217.04	434	5.4%	448	5.5%	1,470	18.2%
Census Tract 218	542	8.6%	546	8.6%	2,284	36.1%
Census Tract 219.02	177	4.5%	180	4.6%	1,156	29.5%
Census Tract 220	65	2.5%	68	2.6%	635	24.5%
Census Tract 221.02	63	3.1%	65	3.2%	421	20.6%
Census Tract 9900	0		0		0	
Census Tract 9901	0		0		0	
Census Tract 9903	0		0		0	
Census Tract 9904	0		0		0	
Census Tract 9905	0		0		0	
Census Tract 9906	0		0		0	
Census Tract 9907	0		0		0	
Census Tract 9908	0		0		0	
Census Tract 9909	0		0		0	
Census Tract 9910	0		0		0	
Census Tract 9911	0		0		0	
Census Tract 9912	0		0		0	
Census Tract 9913	0		0		0	
Census Tract 9914	0		0		0	
Census Tract 9915	0		0		0	
Census Tract 9916	0		0		0	
Census Tract 9917	0		0		0	

Geography	Native Hawaiian					
	Native Hawaiian Alone [1]		Native Hawaiian Alone or in Combination with one or More other Categories of same race [2]		Native Hawaiian Alone or in Any Combination [3]	
	No.	%	No.	%	No.	%
Honolulu County	47,951	5.0%	51,091	5.4%	182,120	19.1%
Census Tract 1.06	123	1.6%	124	1.6%	694	9.0%
Census Tract 1.07	48	1.7%	51	1.8%	345	12.2%
Census Tract 1.08	62	1.9%	64	2.0%	306	9.4%
Census Tract 1.10	121	2.8%	123	2.9%	595	13.9%
Census Tract 1.11	134	2.7%	135	2.7%	796	15.8%
Census Tract 1.12	126	2.3%	130	2.3%	761	13.7%
Census Tract 1.14	26	1.6%	26	1.6%	128	8.0%
Census Tract 2	246	4.3%	256	4.5%	1,147	20.0%
Census Tract 3.01	70	2.1%	70	2.1%	355	10.7%
Census Tract 3.02	74	2.5%	75	2.5%	438	14.6%
Census Tract 4.01	61	2.1%	61	2.1%	253	8.7%
Census Tract 4.02	32	0.8%	32	0.8%	240	6.0%
Census Tract 5	80	2.1%	83	2.2%	326	8.6%
Census Tract 6	16	1.3%	16	1.3%	118	9.7%
Census Tract 7	57	1.9%	58	2.0%	373	12.6%
Census Tract 8	160	4.2%	162	4.3%	560	14.9%
Census Tract 9.01	30	1.1%	30	1.1%	235	8.6%
Census Tract 9.02	104	2.5%	106	2.6%	507	12.4%
Census Tract 9.03	92	3.2%	94	3.3%	439	15.4%
Census Tract 10	92	3.0%	92	3.0%	506	16.3%
Census Tract 11	183	4.7%	205	5.3%	754	19.5%
Census Tract 12.01	86	2.9%	88	3.0%	446	15.3%
Census Tract 12.02	104	3.4%	105	3.5%	486	16.0%
Census Tract 13	136	3.2%	143	3.4%	714	17.0%
Census Tract 14	68	2.7%	68	2.7%	328	12.9%
Census Tract 15	109	3.1%	113	3.2%	598	17.0%

Census Tract 16	172	4.5%	174	4.6%	620	16.4%
Census Tract 17	45	1.8%	45	1.8%	189	7.8%
Census Tract 18.01	58	3.4%	59	3.4%	151	8.8%
Census Tract 18.03	59	1.8%	67	2.0%	205	6.1%
Census Tract 18.04	29	1.6%	29	1.6%	107	5.8%
Census Tract 19.01	28	3.3%	28	3.3%	55	6.6%
Census Tract 19.03	26	0.9%	26	0.9%	119	4.3%
Census Tract 19.04	80	2.0%	83	2.1%	201	5.1%
Census Tract 20.03	41	1.7%	41	1.7%	102	4.1%
Census Tract 20.04	26	1.9%	27	1.9%	74	5.3%
Census Tract 20.05	43	1.8%	43	1.8%	138	5.8%
Census Tract 20.06	38	1.6%	42	1.8%	132	5.6%
Census Tract 21	183	4.7%	192	5.0%	670	17.3%
Census Tract 22.01	140	3.8%	151	4.1%	486	13.2%
Census Tract 22.02	62	1.8%	62	1.8%	280	8.2%
Census Tract 23	135	2.4%	140	2.5%	671	12.1%
Census Tract 24.01	89	2.9%	101	3.3%	410	13.2%
Census Tract 24.02	80	2.5%	86	2.7%	430	13.3%
Census Tract 25	91	2.3%	98	2.5%	407	10.4%
Census Tract 26	130	3.1%	136	3.2%	616	14.5%
Census Tract 27.01	131	2.6%	138	2.7%	636	12.5%
Census Tract 27.02	165	3.3%	169	3.3%	644	12.7%
Census Tract 28	63	1.7%	64	1.7%	399	10.8%
Census Tract 29	46	1.9%	47	1.9%	159	6.6%
Census Tract 30	51	1.2%	51	1.2%	415	9.6%
Census Tract 31.01	68	1.8%	71	1.9%	338	9.2%
Census Tract 31.02	37	1.1%	40	1.2%	291	8.7%
Census Tract 32	43	5.2%	43	5.2%	144	17.3%
Census Tract 33	102	9.0%	106	9.4%	314	27.7%
Census Tract 34.03	166	3.0%	177	3.2%	631	11.4%
Census Tract 34.04	137	2.9%	139	2.9%	498	10.6%
Census Tract 34.05	76	2.3%	79	2.4%	360	11.1%

Census Tract 34.06	188	3.3%	195	3.4%	731	12.7%
Census Tract 34.07	13	1.4%	13	1.4%	53	5.8%
Census Tract 35.01	54	2.4%	56	2.5%	206	9.0%
Census Tract 35.02	81	2.1%	92	2.4%	383	9.9%
Census Tract 36.01	89	2.2%	93	2.3%	434	10.6%
Census Tract 36.03	51	1.8%	60	2.1%	232	8.3%
Census Tract 36.04	42	1.7%	42	1.7%	105	4.2%
Census Tract 37	119	2.1%	121	2.2%	350	6.3%
Census Tract 38	114	2.9%	119	3.0%	391	9.8%
Census Tract 39	25	3.8%	28	4.3%	76	11.6%
Census Tract 40	45	2.9%	46	3.0%	139	9.0%
Census Tract 41	144	3.2%	148	3.3%	615	13.7%
Census Tract 42	103	3.0%	105	3.1%	313	9.1%
Census Tract 43	241	4.3%	243	4.3%	1,030	18.4%
Census Tract 44	870	16.8%	881	17.1%	2,060	39.9%
Census Tract 45	117	2.3%	121	2.4%	656	12.8%
Census Tract 46	104	2.8%	107	2.9%	536	14.4%
Census Tract 47	181	4.0%	191	4.2%	825	18.1%
Census Tract 48	404	6.0%	440	6.6%	1,583	23.6%
Census Tract 49	74	2.3%	75	2.3%	415	13.0%
Census Tract 50	127	3.1%	137	3.4%	520	12.8%
Census Tract 51	34	1.1%	35	1.1%	116	3.8%
Census Tract 52	101	3.1%	116	3.5%	329	10.0%
Census Tract 53	137	3.8%	139	3.8%	415	11.4%
Census Tract 54	50	3.1%	59	3.6%	181	11.1%
Census Tract 55	55	2.6%	75	3.6%	219	10.5%
Census Tract 56	190	2.8%	197	2.9%	652	9.7%
Census Tract 57	127	5.9%	150	7.0%	378	17.6%
Census Tract 58	128	3.7%	145	4.2%	563	16.4%
Census Tract 59	632	18.8%	641	19.1%	858	25.6%
Census Tract 60	140	2.6%	151	2.8%	431	8.0%
Census Tract 61	134	3.2%	144	3.4%	431	10.3%
Census Tract 62.01	223	3.7%	256	4.2%	744	12.3%
Census Tract 62.02	59	3.5%	90	5.3%	248	14.6%

Census Tract 63.01	134	3.6%	141	3.7%	476	12.6%
Census Tract 63.02	114	4.2%	155	5.7%	448	16.5%
Census Tract 64.01	47	2.3%	52	2.5%	209	10.2%
Census Tract 64.02	254	4.0%	284	4.4%	1,089	17.1%
Census Tract 65	151	3.3%	157	3.5%	676	14.9%
Census Tract 66	1	0.3%	1	0.3%	4	1.1%
Census Tract 67.01	100	1.7%	100	1.7%	614	10.5%
Census Tract 67.02	98	4.9%	103	5.2%	349	17.5%
Census Tract 68.02	197	2.9%	205	3.0%	934	13.7%
Census Tract 68.04	15	0.5%	21	0.7%	53	1.9%
Census Tract 68.05	177	2.9%	178	2.9%	608	9.9%
Census Tract 68.06	18	1.1%	18	1.1%	156	9.2%
Census Tract 68.08	103	2.3%	105	2.4%	526	11.9%
Census Tract 68.09	158	3.1%	169	3.4%	749	14.9%
Census Tract 69	21	0.5%	21	0.5%	112	2.9%
Census Tract 70	13	0.3%	13	0.3%	75	1.9%
Census Tract 71	29	1.1%	30	1.1%	76	2.8%
Census Tract 73.02	15	0.4%	26	0.7%	106	2.7%
Census Tract 73.03	0	0.0%	0	0.0%	1	0.3%
Census Tract 74	17	0.4%	17	0.4%	42	1.1%
Census Tract 75.02	321	23.3%	334	24.3%	345	25.1%
Census Tract 75.03	178	3.4%	181	3.5%	863	16.7%
Census Tract 75.04	185	5.8%	237	7.5%	857	27.0%
Census Tract 75.05	154	2.9%	155	2.9%	694	13.0%
Census Tract 75.06	4	0.4%	4	0.4%	7	0.8%
Census Tract 77.01	124	2.9%	136	3.2%	577	13.6%
Census Tract 77.02	214	4.2%	218	4.3%	897	17.6%
Census Tract 78.04	42	2.2%	43	2.3%	313	16.4%
Census Tract 78.05	200	3.9%	215	4.2%	1,085	21.1%
Census Tract 78.07	146	2.7%	151	2.8%	673	12.5%
Census Tract 78.08	152	4.5%	164	4.9%	669	20.0%
Census Tract 78.09	42	1.2%	44	1.3%	395	11.7%
Census Tract 78.10	95	1.7%	98	1.8%	575	10.6%
Census Tract 78.11	156	3.1%	166	3.3%	776	15.6%

Census Tract 80.01	94	4.7%	96	4.8%	443	22.1%
Census Tract 80.02	98	3.5%	99	3.5%	461	16.2%
Census Tract 80.03	211	4.5%	222	4.8%	884	18.9%
Census Tract 80.05	328	4.8%	336	4.9%	1,761	25.7%
Census Tract 80.06	102	2.1%	108	2.2%	691	14.2%
Census Tract 80.07	178	3.4%	180	3.4%	792	14.9%
Census Tract 83.01	157	3.4%	184	3.9%	802	17.2%
Census Tract 83.02	382	5.7%	416	6.2%	1,714	25.4%
Census Tract 84.02	525	6.4%	563	6.9%	2,008	24.5%
Census Tract 84.05	138	3.0%	160	3.4%	819	17.6%
Census Tract 84.06	86	1.4%	102	1.7%	934	15.6%
Census Tract 84.07	83	2.5%	94	2.8%	439	13.2%
Census Tract 84.08	80	1.7%	82	1.7%	493	10.4%
Census Tract 84.10	30	1.3%	32	1.4%	336	14.3%
Census Tract 84.11	120	3.5%	121	3.5%	761	22.1%
Census Tract 84.12	243	3.7%	259	4.0%	1,426	21.8%
Census Tract 85.02	140	6.6%	151	7.1%	519	24.3%
Census Tract 86.06	660	6.8%	706	7.3%	2,831	29.2%
Census Tract 86.09	108	5.2%	115	5.6%	357	17.3%
Census Tract 86.10	12	1.1%	12	1.1%	34	3.2%
Census Tract 86.11	3	3.6%	3	3.6%	26	31.0%
Census Tract 86.12	261	4.3%	293	4.9%	1,341	22.3%
Census Tract 86.13	69	7.6%	75	8.3%	296	32.7%
Census Tract 86.14	328	4.0%	360	4.4%	1,896	23.0%
Census Tract 86.17	381	4.1%	418	4.5%	1,928	20.6%
Census Tract 86.22	274	6.7%	303	7.4%	1,223	30.1%
Census Tract 87.01	181	2.1%	185	2.1%	868	9.9%
Census Tract 87.02	139	2.5%	143	2.6%	548	9.8%
Census Tract 87.03	230	3.4%	299	4.4%	1,161	17.0%
Census Tract 88	119	1.5%	132	1.6%	658	8.2%
Census Tract 89.06	124	3.3%	125	3.3%	705	18.7%
Census Tract 89.07	217	5.1%	231	5.5%	1,079	25.5%
Census Tract 89.08	178	3.0%	179	3.1%	1,027	17.6%

Census Tract 89.09	127	3.3%	131	3.4%	789	20.7%
Census Tract 89.12	53	2.1%	59	2.3%	220	8.6%
Census Tract 89.13	148	3.6%	158	3.8%	676	16.4%
Census Tract 89.14	96	1.9%	132	2.6%	609	11.9%
Census Tract 89.15	199	3.8%	222	4.2%	1,180	22.5%
Census Tract 89.17	122	2.7%	124	2.7%	774	17.0%
Census Tract 89.18	191	3.5%	192	3.5%	1,026	18.9%
Census Tract 89.20	165	3.8%	168	3.9%	790	18.4%
Census Tract 89.21	95	3.6%	97	3.6%	420	15.7%
Census Tract 89.22	152	2.0%	168	2.2%	1,070	14.3%
Census Tract 89.23	135	2.8%	141	3.0%	810	17.1%
Census Tract 89.24	194	2.5%	200	2.6%	1,019	13.4%
Census Tract 89.25	207	3.0%	227	3.3%	1,036	15.0%
Census Tract 89.26	45	2.9%	49	3.1%	218	13.9%
Census Tract 89.27	119	2.3%	123	2.4%	949	18.3%
Census Tract 89.28	90	2.3%	91	2.3%	642	16.5%
Census Tract 89.29	124	2.6%	124	2.6%	763	15.8%
Census Tract 89.30	36	1.4%	36	1.4%	285	11.1%
Census Tract 89.31	158	4.8%	158	4.8%	506	15.3%
Census Tract 90	10	0.6%	10	0.6%	29	1.8%
Census Tract 91	121	2.3%	130	2.4%	842	15.8%
Census Tract 92	360	4.5%	370	4.6%	2,116	26.6%
Census Tract 93	341	7.2%	366	7.7%	1,313	27.6%
Census Tract 94	299	5.8%	328	6.4%	1,354	26.3%
Census Tract 95.01	11	0.2%	17	0.3%	102	2.1%
Census Tract 95.02	11	0.3%	13	0.3%	86	2.0%
Census Tract 95.03	12	0.4%	26	0.8%	86	2.5%
Census Tract 95.04	8	0.6%	14	1.1%	32	2.5%
Census Tract 95.07	11	0.4%	21	0.8%	58	2.3%
Census Tract 96.03	1,491	14.5%	1,611	15.7%	4,985	48.4%
Census Tract 96.08	1,214	21.4%	1,306	23.0%	3,299	58.1%
Census Tract 97.01	1,111	16.7%	1,224	18.4%	3,667	55.3%
Census Tract 97.03	1,553	24.9%	1,640	26.3%	3,947	63.4%
Census Tract 97.04	640	20.9%	658	21.5%	1,686	55.0%

Census Tract 98.01	570	20.1%	603	21.3%	1,253	44.2%
Census Tract 98.02	1,188	18.6%	1,257	19.7%	3,591	56.2%
Census Tract 99.02	318	8.5%	323	8.6%	1,095	29.3%
Census Tract 99.04	213	3.6%	228	3.8%	1,067	17.8%
Census Tract 100	38	1.1%	40	1.2%	214	6.4%
Census Tract 101	495	6.3%	576	7.3%	1,651	20.9%
Census Tract 102.01	1,028	17.5%	1,146	19.5%	2,935	49.9%
Census Tract 102.02	640	8.4%	885	11.6%	2,123	27.8%
Census Tract 103.03	687	14.4%	707	14.8%	2,240	47.0%
Census Tract 103.05	491	9.7%	498	9.8%	1,991	39.3%
Census Tract 103.06	360	5.7%	373	5.9%	1,664	26.1%
Census Tract 103.08	165	5.0%	166	5.0%	809	24.4%
Census Tract 105.03	198	10.0%	213	10.8%	733	37.0%
Census Tract 105.04	567	11.1%	597	11.7%	2,213	43.3%
Census Tract 105.05	256	7.3%	261	7.4%	984	27.9%
Census Tract 105.07	510	9.4%	536	9.9%	2,056	37.9%
Census Tract 105.08	122	4.7%	122	4.7%	489	19.0%
Census Tract 106.01	378	11.0%	381	11.1%	1,262	36.9%
Census Tract 106.02	356	6.5%	359	6.6%	1,632	30.0%
Census Tract 107.01	112	3.1%	119	3.3%	549	15.0%
Census Tract 107.02	193	5.3%	208	5.7%	942	25.7%
Census Tract 108.01	8	0.3%	8	0.3%	43	1.4%
Census Tract 108.02	12	0.2%	14	0.2%	74	1.1%
Census Tract 109.01	118	3.8%	119	3.8%	502	16.0%
Census Tract 109.03	360	8.7%	377	9.1%	1,454	35.2%
Census Tract 109.04	211	5.9%	214	6.0%	984	27.6%
Census Tract 109.05	165	6.6%	169	6.7%	713	28.4%
Census Tract 110	357	8.6%	362	8.7%	978	23.6%
Census Tract 111.03	225	5.9%	245	6.5%	930	24.5%
Census Tract 111.04	315	6.5%	327	6.7%	1,268	26.1%
Census Tract 111.05	144	4.5%	144	4.5%	550	17.2%
Census Tract 111.06	329	5.6%	344	5.8%	1,438	24.3%

Census Tract 112.01	156	3.6%	158	3.6%	617	14.1%
Census Tract 112.02	23	1.4%	23	1.4%	163	10.1%
Census Tract 113	949	17.4%	1,008	18.5%	2,791	51.2%
Census Tract 114	35	0.7%	40	0.7%	80	1.5%
Census Tract 115	991	18.0%	1,050	19.1%	2,842	51.7%
Census Tract 9400.01	1,838	40.4%	1,892	41.6%	3,687	81.0%
Census Tract 9400.02	2,836	38.3%	3,038	41.1%	5,976	80.8%
Census Tract 9800	0		0		0	
Census Tract 9802	84	11.9%	95	13.5%	264	37.5%
Census Tract 9803	0		0		0	
Census Tract 9806	0		0		0	
Census Tract 9807	0		0		0	
Census Tract 9808	0		0		0	
Census Tract 9810	5	38.5%	5	38.5%	5	38.5%
Census Tract 9811	0		0		0	
Census Tract 9812	0		0		0	
Census Tract 9813	0		0		0	
Census Tract 9814	26	26.8%	26	26.8%	35	36.1%
Census Tract 9900.01	0		0		0	

Geography	Native Hawaiian					
	Native Hawaiian Alone [1]		Native Hawaiian Alone or in Combination with one or More other Categories of same race [2]		Native Hawaiian Alone or in Any Combination [3]	
	No.	%	No.	%	No.	%
Kalawao County	37	41.1%	37	41.1%	46	51.1%
Census Tract 319	37	41.1%	37	41.1%	46	51.1%
Census Tract 9900	0		0		0	

Geography	Native Hawaiian					
	Native Hawaiian Alone [1]		Native Hawaiian Alone or in Combination with one or More other Categories of same race [2]		Native Hawaiian Alone or in Any Combination [3]	
	No.	%	No.	%	No.	%
Kauai County	5,097	7.6%	5,215	7.8%	16,127	24.0%
Census Tract 401.03	210	3.2%	211	3.3%	629	9.7%
Census Tract 401.04	150	11.2%	150	11.2%	288	21.4%
Census Tract 402.04	324	6.4%	328	6.5%	1,154	22.9%
Census Tract 402.05	252	6.6%	256	6.7%	816	21.2%
Census Tract 403	585	7.0%	602	7.2%	2,176	26.0%
Census Tract 404	466	5.3%	472	5.4%	1,700	19.5%
Census Tract 405	331	5.6%	340	5.7%	1,311	22.1%
Census Tract 406.03	151	5.9%	153	6.0%	466	18.3%
Census Tract 406.04	205	6.5%	212	6.8%	723	23.0%
Census Tract 407	317	3.8%	329	3.9%	1,611	19.2%
Census Tract 408	357	9.5%	367	9.7%	1,085	28.8%
Census Tract 409	690	12.4%	718	12.9%	2,069	37.2%
Census Tract 412	146	85.9%	146	85.9%	149	87.6%
Census Tract 9400	913	24.6%	931	25.1%	1,950	52.5%
Census Tract 9901	0		0		0	
Census Tract 9902	0		0		0	
Census Tract 9903	0		0		0	

Geography	Native Hawaiian					
	Native Hawaiian Alone [1]		Native Hawaiian Alone or in Combination with one or More other Categories of same race [2]		Native Hawaiian Alone or in Any Combination [3]	
	No.	%	No.	%	No.	%
Maui County	11,440	7.4%	11,782	7.6%	36,758	23.7%
Census Tract 301	610	26.6%	615	26.8%	1,314	57.4%
Census Tract 302.01	128	5.2%	135	5.5%	412	16.8%
Census Tract 302.02	445	5.8%	448	5.9%	1,624	21.3%
Census Tract 303.01	643	8.0%	666	8.3%	1,988	24.8%
Census Tract 303.03	46	1.3%	48	1.3%	164	4.6%
Census Tract 304.02	691	8.0%	716	8.3%	2,510	29.0%
Census Tract 304.03	192	5.9%	197	6.0%	879	26.9%
Census Tract 304.04	352	6.3%	361	6.4%	1,649	29.4%
Census Tract 305.01	176	6.5%	176	6.5%	618	23.0%
Census Tract 307.05	120	3.2%	123	3.2%	592	15.6%
Census Tract 307.06	62	2.5%	70	2.9%	342	14.0%
Census Tract 307.07	237	3.0%	269	3.4%	1,017	12.7%
Census Tract 307.08	124	4.3%	131	4.5%	334	11.5%
Census Tract 307.09	74	2.0%	74	2.0%	200	5.4%
Census Tract 307.10	44	1.8%	47	1.9%	131	5.4%
Census Tract 308	997	14.4%	1,012	14.7%	2,757	39.9%
Census Tract 309.01	265	10.1%	280	10.7%	947	36.2%
Census Tract 309.02	245	7.6%	251	7.8%	920	28.7%
Census Tract 309.03	829	12.8%	847	13.1%	2,265	34.9%
Census Tract 310	611	7.3%	621	7.4%	2,139	25.4%

Census Tract 311.01	705	8.6%	723	8.9%	2,131	26.1%
Census Tract 311.02	296	5.5%	310	5.7%	1,014	18.7%
Census Tract 311.03	283	3.7%	289	3.8%	1,411	18.6%
Census Tract 314.02	288	9.6%	297	9.9%	857	28.5%
Census Tract 314.04	160	4.9%	173	5.3%	460	14.2%
Census Tract 314.05	256	4.7%	275	5.0%	832	15.2%
Census Tract 315.01	101	4.3%	102	4.3%	274	11.6%
Census Tract 315.02	140	2.8%	142	2.8%	451	9.0%
Census Tract 315.03	73	3.1%	78	3.3%	205	8.7%
Census Tract 316.01	137	4.4%	140	4.5%	611	19.5%
Census Tract 317	1,042	23.1%	1,064	23.6%	2,616	58.1%
Census Tract 318.01	732	26.6%	753	27.4%	1,865	67.8%
Census Tract 319	298	5.3%	310	5.5%	1,117	19.9%
Census Tract 320.00	38	3.8%	39	3.9%	112	11.3%
Census Tract 9800	0		0		0	
Census Tract 9900	0		0		0	
Census Tract 9902	0		0		0	
Census Tract 9912	0		0		0	

[1] One category alone (e.g., Samoan).

[2] One category alone (as in footnote 1), or in combination with one or more other categories within the same race group (e.g., Native Hawaiian, Samoan, and Other Pacific Islander). Individuals are included in each category.

[3] One category alone (as in footnote 1), or in combination with one or more other categories within the same race group (as in footnote 2), or in combination with any other race group (e.g., Native Hawaiian, Samoan, White, and Black or African American).

Source: U.S. Census Bureau, 2010 Census.

2010 Census Summary File 1, Tables PCT8, PCT9, PCT10

In July 2014 the Department of Hawaiian Homelands published a book entitled “O’ahu Island Plan” with detailed information about every parcel of land owned by DHHL on the island of Oahu. The book can be downloaded from http://dhhl.hawaii.gov/wp-content/uploads/2013/04/DHHL-OIP-Final-140708.pdf The map on this page shows DHHL lands on Oahu, colored in brown, taken from the executive summary, page ES-1. The chart shows the number of acres in each parcel, taken from the executive summary, page ES-6.

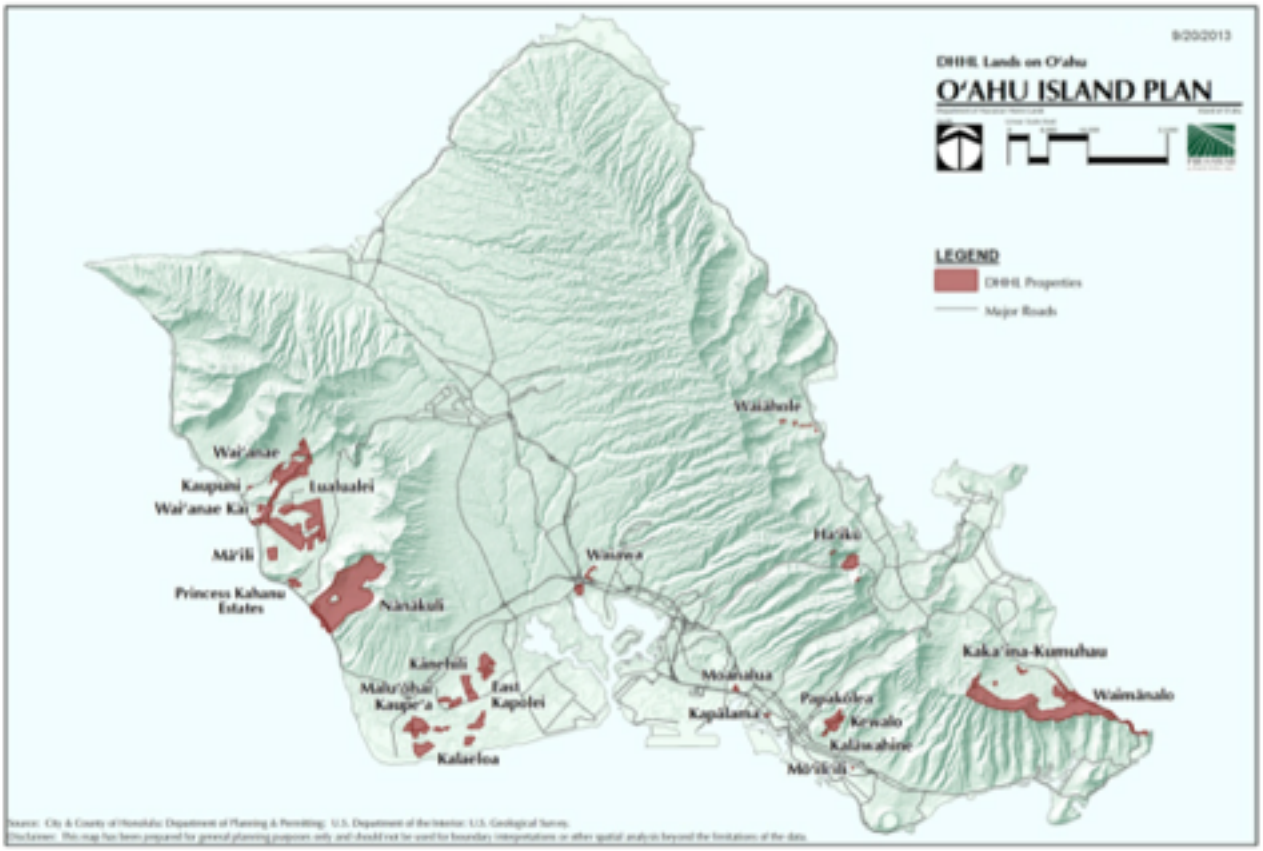
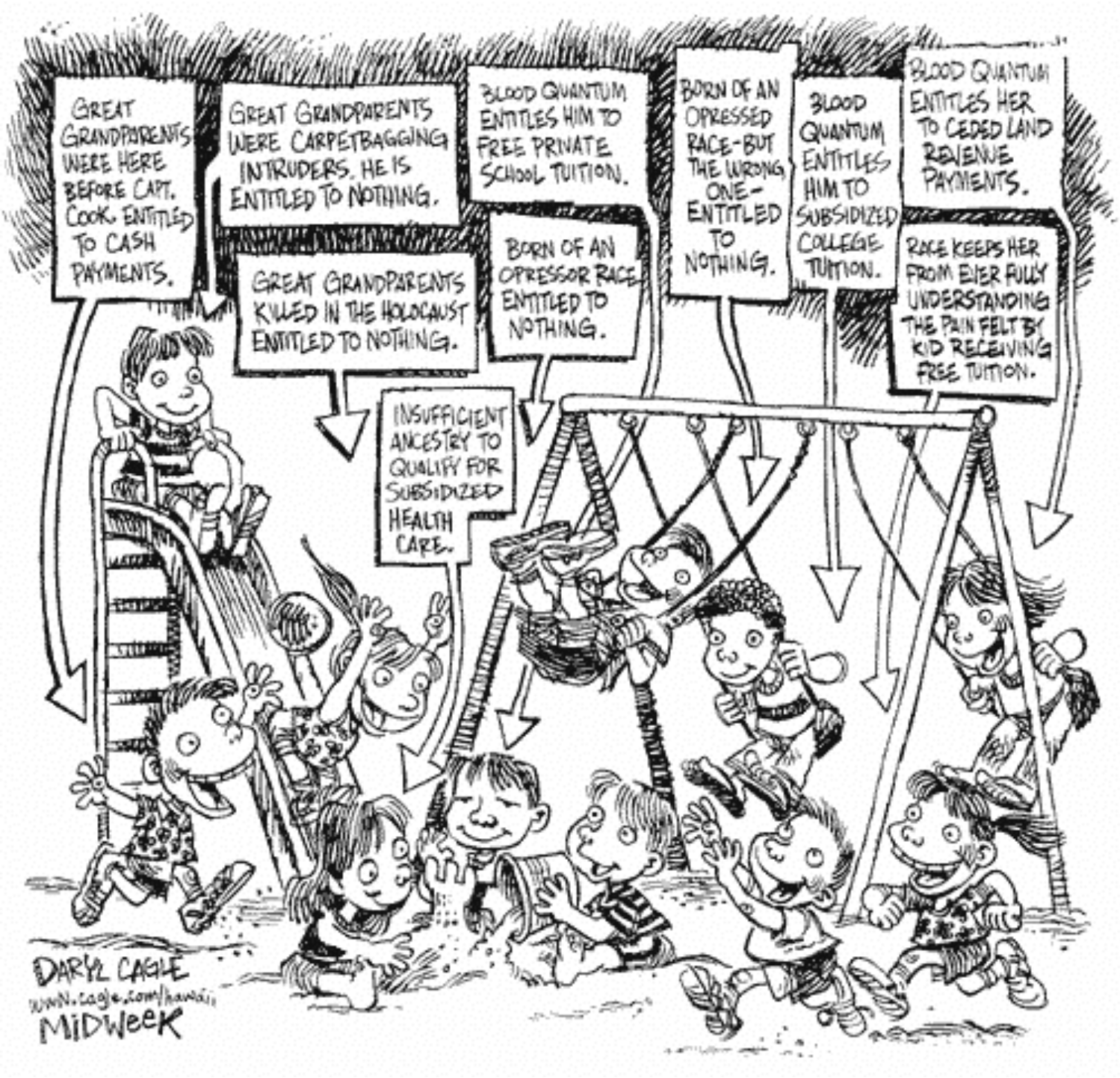


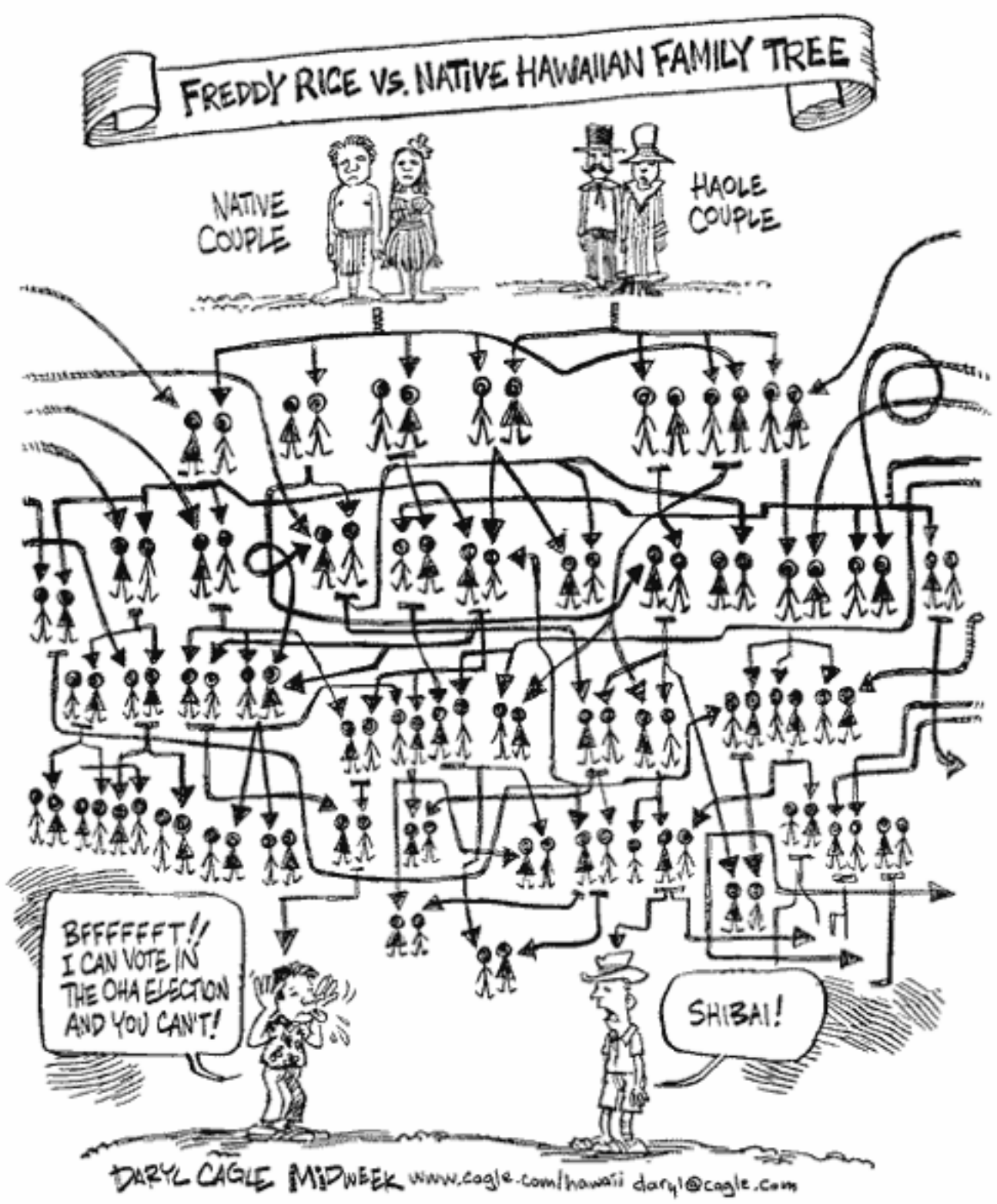
Figure ES-1 DHHL Lands on O‘ahu

Table ES-2: Land Use Acres[a] Proposed By Area

Area	Wai'anae	Lualualei, & Mā'ili[a]	Nānākuli	Kapolei, East Kapolei & Kalaeloa	Waiawa	Moanalua	Kapālama	Papakōlea, Kewalo & Kalāwahine	Mō'ili'ili	Waimānalo	Ha'ikū	Waiāhole	Total By Land Use
Homestead Land Use Designations													
Residential Total Acres *(# of New Homesteads Proposed)*	**130** *(115)*	**125** *(210)*	**745** *(1,835)*	**345** *(1,190)*	**0**	**0**	**0**	**90** *(20)*	**0**	**210** *(0)*	**0**	**0**	***1,645***
Subsistence Agricultural Total Acres *(# of New Homesteads Proposed)*	**50** *(5)*	**140** *(130)*	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**15** *(15)*	**0**	**15** *(5)*	***220***

Section 19. Page 129 Six cartoons by Daryl Cagle illustrating the social divisiveness of racial entitlement programs, as seen in Midweek newspaper, Honolulu, probably late 1990s to mid 2000s.




FREDDY RICE VS. NATIVE HAWAIIAN FAMILY TREE
NATIVE COUPLE
HAOLE COUPLE
BFFFFFFT!! I CAN VOTE IN THE OHA ELECTION AND YOU CAN'T!
SHIBAI!
DARYL CAGLE MIDWEEK www.cagle.com/hawaii daryl@cagle.com


MY FAMILY HAS LIVED IN HAWAII FOR GENERATIONS.
MINE TOO
MIDWEEK
YEAH—BUT DID YOUR GREAT, GREAT, GREAT, GREAT GRANDFATHER SUFFER THE INDIGNITY OF HAVING HIS SOVREIGN NATION STOLEN BY GREEDY AMERICAN IMPERIALISTS?
NO—MY GRANDFATHERS ALL DIED IN WARS DEFENDING AMERICA.
SO—YOU'RE NOT A NATIVE HAWAIIAN AND YOU CAN'T VOTE IN THE OHA ELECTIONS.
THAT'S RIGHT.
DARYL CAGLE
BFFFFFFFFFT!!
THIS WOMAN HAS SUFFERED. WOULD SOMEBODY PLEASE PAY HER?
www.cagle.com/hawaii


FOR YOU
DISABLED VETERAN WILL WORK FOR FOOD
SOVREIGNTY STOLEN FROM MY GREAT GREAT GRAND FATHER
$
GIVE
GIVE
DARYL CAGLE
www.cagle.com/hawaii
MIDWEEK!!


AKAKA BILL
I WANTED A PONY.
THAT'S NOT WHAT I ASKED FOR.
ARF
DA KINE JUNK
WHY ISN'T IT BIGGER?
MIDWEEK! www.cagle.com
DARYL CAGLE


THAT CLOUD LOOKS LIKE A HAOLE, UNJUSTLY STEALING SOVEREIGNTY FROM MY GREAT, GREAT GREAT GRANDFATHER.
I THINK THAT CLOUD LOOKS LIKE A PONY.
RACIST.
DARYL CAGLE
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MIDWEEK