United States Senate Committee on Indian Affairs
Hearing May 3, 2007 on the Akaka bill
(S. 310, Native Hawaiian Government Reorganization Act of 2007)

Response to questions by Vice Chairman Craig Thomas
by H. William Burgess May 17, 2007

1. **Do you believe the State of Hawaii would be a more cohesive society after this legislation is enacted?**

Answer: No. I believe the opposite would be more likely. The Akaka bill (S. 310) defines "Native Hawaiian" as anyone with at least one ancestor indigenous to Hawaii, essentially the same definition the Supreme Court in *Rice v. Cayetano*, 528 U.S. 495, 514-516 (2000) held to be a racial classification because it uses ancestry as a proxy for race. The bill would give Native Hawaiians political power superior to that of all other citizens (i.e., the right to create their own separate sovereign government and still retain all their rights as citizens of the U.S. and the State of Hawaii).

Racial distinctions are especially "odious to a free people," *Rice* 528 U.S. at 517 where they undermine the democratic institutions of a free people by instigating racial partisanship. This was the fundamental evil that the *Rice* Court detected in Hawaii's law: "using racial classifications" that are "corruptive of the whole legal order" of democracy because they make "the law itself . . . the instrument for generating" racial "prejudice and hostility." *Rice*, 528 U.S. at 517.

It "is altogether antithetical to our system of representative democracy" to create a governmental structure "solely to effectuate the perceived common interests of one racial group" and to assign officials the "primary obligation . . . to represent only members of that group." *Shaw v. Reno,* 509 U.S. 630, 648 (1983). *Shaw* quoted Justice Douglas:

When racial or religious lines are drawn by the State, the multi-racial . . . communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race . . . rather than to political issues are generated; communities seek not the best

representative but the best racial . . . partisan. Since that system is at war with the democratic ideal, it should find no footing here.

Wright v. Rockefeller, 376 U.S. 52, 67 (1964) (Douglas, dissenting).

In *Shaw*, the racial partisanship was fostered indirectly by gerrymandering legislative districts. By contrast, as in *Rice*, the "structure" in the Akaka bill "is neither subtle nor indirect;" The Akaka bill would specifically sponsor the creation of a new sovereign government by "persons of the defined ancestry and no others." *Rice*, 528 U.S. at 514.

To advance "the perceived common interests of one racial group," *Shaw*, 509 U.S. at 648, the Akaka bill vests public officials with authority to give away public funds and public lands. This cannot stand: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination." *Lau v. Nichols*, 414 U.S. 563, 569 (1974) (quoting Senator Humphrey during the floor debate on Title VI of the Civil Rights Act of 1964, a provision that is coextensive with the Equal Protection Clause, *Alexander v. Sandoval*, 532 U.S. 275, 280-81 (2001)).

The government is even forbidden to give money to private parties "if that aid has a significant tendency to facilitate, reinforce and support private discrimination." *Norwood v. Harrison*, 413 U.S. 455, 466 (1973). *Norwood* instructed the District Court to enjoin state subsidies for private schools that advocated the "private belief that segregation is desirable" and that "communicated" racial discrimination as "an essential part of the educational message." *Id.* at 469. *A fortiori*, federal or state agencies, even with the acquiescence of their legislatures, cannot institutionalize racial classifications that are "odious to a free people" and "corruptive" of democracy. *Rice*, 528 U.S. at 517.

2. **In 1998, the State of Hawaii argued that "the tribal concept simply has no place in the context of Hawaiian history." What has changed since that time?**

Answer: Amid many changes in our lives since 1998, one thing has stayed the same: There is no tribe or governing entity of any kind presiding over a separate community of the Native Hawaiian people as defined in the Akaka bill (any person anywhere in world who has at least one ancestor indigenous to Hawaii). Senator Daniel K. Inouye acknowledged this on January 25, 2005 on the floor of the Senate (151 Congressional Record 450).

"Because the Native Hawaiian government is not an Indian tribe, the body of Federal Indian law that would otherwise customarily apply when the United States extends Federal recognition to an Indian tribal group does not apply."

"That is why concerns which are premised on the manner in which Federal Indian law provides for the respective governmental authorities of the state governments and Indian tribal governments simply don't apply in Hawaii."

3. **Given that this legislation modifies the vote of the Hawaiian people in the late 1950's, should the people of Hawaii be given an opportunity to vote in a referendum on the new proposal?**

Answer: Yes. The Akaka bill would usurp the power of the people of Hawaii to govern the entire State of Hawaii as **promised by Congress in the 1959 Admission Act**. In 1959 Congress proposed, subject to "adoption or rejection" by the voters of the Territory of Hawaii, that Hawaii "shall be immediately admitted into the Union" and that "boundaries of the State shall be as prescribed." "The State of Hawaii shall consist of all the [major] islands, together with their appurtenant reef and territorial waters." "The Constitution of the State of Hawaii shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

The voters decisively accepted: 94.3% "Yes" for Statehood and 94.5% "Yes" for the State boundaries.

Yet the Akaka bill would authorize negotiations unlimited in scope or duration to break up and giveaway lands, natural resources and other assets, governmental power and authority and civil and criminal

jurisdiction. The avowed purpose of the promoters of the bill is to remove vast lands in Hawaii from the jurisdiction of the United States Constitution and to create an unprecedented sovereign empire ruled by a new hereditary elite and repugnant to the highest aspirations of American democracy.

At the very least, the Akaka bill must be amended to require:

> Prior consent to the process by the voters of Hawaii **before** any "recognition" or other provision of the bill takes effect; and
>
> If the electorate approves the process, limit the negotiations both in scope and duration, and, if any transfer is to be made to the new entity the agreement must include a final global settlement of all claims and be subject to ratification by referendum of the entire electorate of the State of Hawaii.

4. **If there is no difference between Congress' power to regulate "Indian tribes" and "indigenous peoples" why does this legislation treat Native Hawaiians differently from Native Americans by segregation of programs and the creation of a new Office of Native Hawaiian Affairs?**

Answer: Excellent question. It pinpoints the deceptive sales pitch that the Akaka bill would just give Native Hawaiians the same recognition as Native Americans. No Native American group has the right to be recognized as a tribe merely because its members share Indigenous ancestors, as the Akaka bill proposes for Native Hawaiians.

By giving superior political power to Native Hawaiians based on blood alone; and by equating them with Native Americans and Native Alaskans, the Akaka bill would put all three groups into the "race" category and would either threaten the continued existence of real Indian tribes or erase the Civil Rights movement and the Civil War itself from our history.

For over 20 years, a draft Declaration of Indigenous Rights has circulated in the United Nations. The United States and other major countries have opposed it because it challenges the current global

system of states; is "inconsistent with international law"; ignores reality by appearing to require recognition to lands now lawfully owned by other citizens; and "No government can accept the notion of creating different classes of citizens." In November 2006, a subsidiary body of the U.N. General Assembly rejected the draft declaration, proposing more time for further study.

Thus, by enacting the Akaka bill, Congress would brush aside core underpinnings of the United States itself both as to the special relationship with real Indian tribes; and as to the sacred understanding of American citizenship as adherence to common principles of equal justice and the rule of law, in contrast to common blood, caste, race or ethnicity.

5. **If existing law was modified, and Native Hawaiians were allowed to apply for tribal recognition through the established process, would it qualify for such status?**

Answer: No. The United States has granted tribal recognition only to groups that have a long, continuous history of self-governance in a distinct community separate from the non-Indian community. But there has never been, even during the years of the Kingdom, any government for Native Hawaiians separate from the government of all the people of Hawaii.

Census 2000 counted some 400,000 persons who identified themselves as of some degree of Native Hawaiian ancestry. About 60% of them or about 240,000, live in the State of Hawaii and are spread throughout all the census districts of the State of Hawaii. The other 40%, or about 160,000, live throughout the other 49 states. The Akaka bill would recognize these 400,000 people plus everyone anywhere else in the world with at least one ancestor indigenous to Hawaii, as a tribe. Such widely scattered and disconnected persons would not be eligible for recognition under CFR by the DOI or by Congress under the standards set by the Supreme Court.

If blood alone were sufficient for tribal recognition (as the Akaka bill proposes for Native Hawaiians), Indian law would change radically. Millions of Americans with some degree of Indian ancestry, but not currently members of recognized tribes, would be

eligible. Some 60 tribes from all parts of the country were relocated to Oklahoma in the 1800's. Descendants of each of those tribes would be arguably entitled to create their own new governments in the states where they originated. Indian tribes and Indian Casinos would surely proliferate.

6. **Do you believe that the Bill of Rights, and the essential protections it provides, is up for negotiation for any American citizen?**

   Answer: Yes, the Akaka bill would put the Bill of Rights of every American citizen in Hawaii and in all other states on the table as bargaining chips. If this bill should become law, it would be the first step in the breakup of the United States. Its premise is that Hawaii needs two governments: One in which everyone can vote which must become smaller and weaker; The other in which only Native Hawaiians can vote, growing more powerful as the other government shrinks away.

   In the negotiation process called for by S. 310, the transfers of lands, reefs, territorial waters, power and civil and criminal jurisdiction go only one way; and are unlimited in scope or duration. The bargaining can and likely will continue slice by slice, year after year, until the State of Hawaii is all gone, and 80% of Hawaii's citizens are put into servitude to the new Congressionally sponsored hereditary elite.

   But even then it will not be over, because there are today living descendants of the indigenous people of every state. Surely they will take notice and demand their own governments.

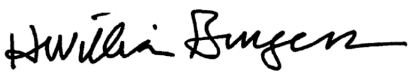
7. **How does the recognition of Native Hawaiians impact potential claims by other "indigenous groups," such at those in the Southwest?**

   Answer: The impact would be ominous. Today, over 1 million American citizens residing in Hawaii are under siege by what can fairly be called an evil empire dedicated to Native Hawaiian Supremacy. A remarkable book has revealed that America's largest charitable trust, Kamehameha Schools Bishop Estate (KSBE), has used its $8.5 Billion in assets and vast land holdings to so corrupt the political process in the State of Hawaii that the legislative, executive

and judiciary powers have been, and still seem to be, concentrated in the hands of those who facilitated a "World Record for Breaches of Trust" by trustees and others of high position, without surcharge or accountability. *Broken Trust: Greed, Mismanagement & Political Manipulation at America's Largest Charitable Trust,* King and Roth, 2006. KSBE openly flaunts its association with others in supporting passage of the Akaka bill. KSBE and its Alumni Associations of Northern and Southern California are members of CNHA, Council for Native Hawaiian Advancement, http://www.hawaiiancouncil.org/members.html.

The nativehawaiians.com website, lists the co-conspirators: CNHA, the Kamehameha Alumni Association, the prominent entities [many under KSBE's hegemony] that support the Akaka bill; and a number of questionable groups such as the National Council of La Raza, the organization that seeks to "liberate" the SouthWest. http://www.nativehawaiians.com/listsupport.html.

Honolulu, Hawaii, May 17, 2007



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