

NATIVE HAWAIIAN FEDERAL RECOGNITION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2899

TO EXPRESS THE POLICY OF THE UNITED STATES' RELATIONSHIP
WITH NATIVE HAWAIIANS

SEPTEMBER 14, 2000
WASHINGTON, DC



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NATIVE HAWAIIAN FEDERAL RECOGNITION

THURSDAY, SEPTEMBER 14, 2000

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 3:37 p.m. in room 485, Russell Senate Office Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, Domenici, and Murkowski.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUE [assuming Chair]. On January 17, 1893, with the assistance of the U.S. Minister and U.S. Marines, the government of the Kingdom of Hawaii was overthrown.

One hundred years later, a resolution extending an apology on behalf of the United States to Native Hawaiians for the illegal overthrow of the Native Hawaiian government, and calling for a reconciliation of the relationship between the United States and Native Hawaiians was enacted into law.

The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States, and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their government or through a plebiscite or referendum.

Two weeks ago, the Senate Committee on Indian Affairs and the House Resources Committee held 5 days of hearings in Hawaii on S. 2899, and the House companion measure, H.R. 4904. More than 120 people presented oral testimony to the committees, and several hundred others presented written testimony to the committees. By a margin of more than 8 to 1, the testimony received by the committees was in support of the bills.

There are those in the Hawaiian community who are opposed to this measure. Many of those who are opposed to the bill seek complete independence from the United States, the decolonization of Hawaii, and the reinstatement of the Kingdom of Hawaii.

This bill does not provide for independence from the United States, nor does it effect the removal of the citizens of the State of Hawaii, who are not indigenous, native people of the Hawaiian archipelago.

What this bill does do is provide a process for the reorganization of a Native Hawaiian government, and the recognition by the United States of that government for purposes of carrying on a government-to-government relationship.

What this bill does do is provide that the indigenous, native people of Hawaii, Native Hawaiians, might have the same opportunities that are afforded under the Federal law and policy to the other indigenous, native people of the United States, American Indians and Alaska Natives, to give expression to their rights to self-determination and self-governance.

I also want to make clear what this bill does not do. It does not authorize the appropriation of funds from Indian program accounts. It is a separate and distinct authorization. It does not involve the Bureau of Indian Affairs, nor does it affect any Indian programs or Indian program funding.

When I assumed the chairmanship of this committee in 1987, I made a pledge that funding for Native Hawaiian programs would never be taken from Indian program accounts, that Indian funding would never be diminished as a result of Native Hawaiian programs, and that I would always seek a separate appropriation for Native Hawaiian programs. I am proud to say that my pledge has never been broken, nor will it be with the passage of this measure.

Because there are some who have raised the matter of gaming, and whether the recognition of a Native Hawaiian government would authorize the government to conduct gaming, I want to also address what this bill does not do in the area of gaming.

As the primary sponsor of the Indian Gaming Regulatory Act in the Senate, I can assure you that the act which authorizes gaming on Indian lands does not apply in Hawaii, nor will it apply.

First, there are no Indian tribes in Hawaii. Second, there are no Indian lands and no Indian reservations in Hawaii. Finally, all forms of gaming are criminally prohibited in the State of Hawaii. As we all know, under the act, the only gaming that can be conducted on Indian lands is that which is not criminally prohibited under State law.

In developing and refining this measure, we have worked not only with the Native Hawaiian community, but with representatives of the Federal and State Governments, with leaders of the Native American community, and with the congressional caucuses. The bill that is before us today has been revised as a result of the testimony received at these hearings in Hawaii.

With all of this input, with literally hundreds of hours of conference calls and meetings on this measure, I believe we now have a bill that accomplishes what we have set out to do. Our objectives are simple and straightforward.

As a matter of Federal policy and Federal law, we want to assure that the U.S. Government deals with all of the indigenous, native people of the United States in a consistent manner, recognizing and supporting their rights to self-determination and self-governance.

This is the right thing to do, and I call upon my colleagues to lend their support to the passage of this measure.

[Text of S. 2899 follows:]

106TH CONGRESS
2D SESSION

S. 2899

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2000

Mr. AKAKA (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress finds that—

5 (1) the Constitution vests Congress with the au-
6 thority to address the conditions of the indigenous,
7 native people of the United States;

8 (2) Native Hawaiians, the native people of the
9 State of Hawaii are indigenous, native people of the
10 United States;

1 (3) the United States has a special trust rela-
2 tionship to promote the welfare of the native people
3 of the United States, including Native Hawaiians;

4 (4) under the treaty-making power of the
5 United States, Congress exercised its constitutional
6 authority to confirm a treaty between the United
7 States and the government that represented the Ha-
8 waiian people, and from 1826 until 1893, the United
9 States recognized the independence of the Kingdom
10 of Hawaii, extended full diplomatic recognition to
11 the Hawaiian Government, and entered into treaties
12 and conventions with the Hawaiian monarchs to gov-
13 ern commerce and navigation in 1826, 1842, 1849,
14 1875, and 1887;

15 (5) pursuant to the provisions of the Hawaiian
16 Homes Commission Act, 1920 (42 Stat. 108, chap-
17 ter 42), the United States set aside 200,000 acres
18 of land in the Federal territory that later became
19 the State of Hawaii in order to establish a homeland
20 for the native people of Hawaii, Native Hawaiians;

21 (6) by setting aside 200,000 acres of land for
22 Native Hawaiian homesteads and farms, the Act as-
23 sists the Native Hawaiian community in maintaining
24 distinct native settlements throughout the State of
25 Hawaii;

1 (7) approximately 6,800 Native Hawaiian les-
2 sees and their family members reside on Hawaiian
3 Home Lands and approximately 18,000 Native Ha-
4 waiians who are eligible to reside on the Home
5 Lands are on a waiting list to receive assignments
6 of land;

7 (8) the Hawaiian Home Lands continue to pro-
8 vide an important foundation for the ability of the
9 Native Hawaiian community to maintain the prac-
10 tice of Native Hawaiian culture, language, and tradi-
11 tions, and Native Hawaiians have maintained other
12 distinctly native areas in Hawaii;

13 (9) on November 23, 1993, Public Law 103-
14 150 (107 Stat. 1510) (commonly known as the Apol-
15 ogy Resolution) was enacted into law, extending an
16 apology on behalf of the United States to the Native
17 people of Hawaii for the United States' role in the
18 overthrow of the Kingdom of Hawaii;

19 (10) the Apology Resolution acknowledges that
20 the overthrow of the Kingdom of Hawaii occurred
21 with the active participation of agents and citizens
22 of the United States and further acknowledges that
23 the Native Hawaiian people never directly relin-
24 quished their claims to their inherent sovereignty as
25 a people over their national lands to the United

1 States, either through their monarchy or through a
2 plebiscite or referendum;

3 (11) the Apology Resolution expresses the com-
4 mitment of Congress and the President to acknowl-
5 edge the ramifications of the overthrow of the King-
6 dom of Hawaii and to support reconciliation efforts
7 between the United States and Native Hawaiians;
8 and to have Congress and the President, through the
9 President's designated officials, consult with Native
10 Hawaiians on the reconciliation process as called for
11 under the Apology Resolution;

12 (12) despite the overthrow of the Hawaiian gov-
13 ernment, Native Hawaiians have continued to main-
14 tain their separate identity as a distinct native com-
15 munity through the formation of cultural, social, and
16 political institutions, and to give expression to their
17 rights as native people to self-determination and
18 self-governance as evidenced through their participa-
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct
21 Native Hawaiian community through the provision
22 of governmental services to Native Hawaiians, in-
23 cluding the provision of health care services, edu-
24 cational programs, employment and training pro-
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,
2 native language immersion programs and native lan-
3 guage immersion schools from kindergarten through
4 high school, as well as college and master's degree
5 programs in native language immersion instruction,
6 and traditional justice programs, and by continuing
7 their efforts to enhance Native Hawaiian self-deter-
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in
10 Native Hawaiian cultural practices, traditional agri-
11 cultural methods, fishing and subsistence practices,
12 maintenance of cultural use areas and sacred sites,
13 protection of burial sites, and the exercise of their
14 traditional rights to gather medicinal plants and
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-
17 serve, develop, and transmit to future Native Hawai-
18 ian generations their ancestral lands and Native Ha-
19 waiian political and cultural identity in accordance
20 with their traditions, beliefs, customs and practices,
21 language, and social and political institutions, and to
22 achieve greater self-determination over their own af-
23 fairs;

24 (16) this Act responds to the desire of the Na-
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of
2 Federal law for the Native Hawaiian people to exer-
3 cise their inherent rights as a distinct aboriginal, in-
4 digenous, native community to reorganize a Native
5 Hawaiian governing body for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;

8 (17) the United States has declared that—

9 (A) the United States has a special respon-
10 sibility for the welfare of the native peoples of
11 the United States, including Native Hawaiians;

12 (B) Congress has identified Native Hawai-
13 ians as a distinct indigenous group within the
14 scope of its Indian affairs power, and has en-
15 acted dozens of statutes on their behalf pursu-
16 ant to its recognized trust responsibility; and

17 (C) Congress has also delegated broad au-
18 thority to administer a portion of the federal
19 trust responsibility to the State of Hawaii;

20 (18) the United States has recognized and re-
21 affirmed the special trust relationship with the Na-
22 tive Hawaiian people through—

23 (A) the enactment of the Act entitled “An
24 Act to provide for the admission of the State of

1 Hawaii into the Union”, approved March 18,
2 1959 (Public Law 86-3; 73 Stat. 4) by—

3 (i) ceding to the State of Hawaii title
4 to the public lands formerly held by the
5 United States, and mandating that those
6 lands be held in public trust for the better-
7 ment of the conditions of Native Hawai-
8 ians; and

9 (ii) transferring the United States’ re-
10 sponsibility for the administration of the
11 Hawaiian Home Lands to the State of Ha-
12 waii, but retaining the authority to enforce
13 the trust, including the exclusive right of
14 the United States to consent to any actions
15 affecting the lands which comprise the cor-
16 pus of the trust and any amendments to
17 the Hawaiian Homes Commission Act,
18 1920 (42 Stat. 108, chapter 42) that are
19 enacted by the legislature of the State of
20 Hawaii affecting the beneficiaries under
21 the Act;

22 (19) the United States continually has recog-
23 nized and reaffirmed that—

24 (A) Native Hawaiians have a cultural, his-
25 toric, and land-based link to the aboriginal, na-

1 tive people who exercised sovereignty over the
2 Hawaiian Islands;

3 (B) Native Hawaiians have never relin-
4 quished their claims to sovereignty or their sov-
5 ereign lands;

6 (C) the United States extends services to
7 Native Hawaiians because of their unique sta-
8 tus as the aboriginal, native people of a once
9 sovereign nation with whom the United States
10 has a political and legal relationship; and

11 (D) the special trust relationship of Amer-
12 ican Indians, Alaska Natives, and Native Ha-
13 waiians to the United States arises out of their
14 status as aboriginal, indigenous, native people
15 of the United States.

16 **SEC. 2. DEFINITIONS.**

17 In this Act:

18 (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**
19 **PLE.**—The term “aboriginal, indigenous, native peo-
20 ple” means those people whom Congress has recog-
21 nized as the original inhabitants of the lands and
22 who exercised sovereignty prior to European contact
23 in the areas that later became part of the United
24 States;

1 (2) ADULT MEMBERS.—The term “adult mem-
2 bers” means those Native Hawaiians who have at-
3 tained the age of 18 at the time the Secretary pub-
4 lishes the initial roll in the Federal Register, as pro-
5 vided in section 7(a)(4) of this Act.

6 (3) APOLOGY RESOLUTION.—The term “Apol-
7 ogy Resolution” means Public Law 103–150 (107
8 Stat. 1510), a joint resolution offering an apology to
9 Native Hawaiians on behalf of the United States for
10 the participation of agents of the United States in
11 the January 17, 1893 overthrow of the Kingdom of
12 Hawaii.

13 (4) COMMISSION.—The term “Commission”
14 means the commission established in section 7 of
15 this Act to certify that the adult members of the Na-
16 tive Hawaiian community contained on the roll de-
17 veloped under that section meet the definition of Na-
18 tive Hawaiian, as defined in paragraph (6)(A).

19 (5) INDIGENOUS, NATIVE PEOPLE.—The term
20 “indigenous, native people” means the lineal de-
21 scendants of the aboriginal, indigenous, native peo-
22 ple of the United States.

23 (6) NATIVE HAWAIIAN.—

24 (A) Prior to the recognition by the United
25 States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,
2 the term "Native Hawaiian" means the indige-
3 nous, native people of Hawaii who are the lineal
4 descendants of the aboriginal, indigenous, na-
5 tive people who resided in the islands that now
6 comprise the State of Hawaii on January 1,
7 1893, and who occupied and exercised sov-
8 ereignty in the Hawaiian archipelago, including
9 the area that now constitutes the State of Ha-
10 waii, as evidenced by (but not limited to)—

- 11 (i) genealogical records;
12 (ii) Native Hawaiian kupuna (elders)
13 verification or affidavits;
14 (iii) church or census records; or
15 (iv) government birth or death certifi-
16 cates or other vital statistics records;

17 (B) Following the recognition by the
18 United States of the Native Hawaiian govern-
19 ing body under section 7(d) of this Act, the
20 term "Native Hawaiian" shall have the mean-
21 ing given to such term in the organic governing
22 documents of the Native Hawaiian governing
23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The
25 term "Native Hawaiian governing body" means the

1 adult members of the governing body of the Native
2 Hawaiian people that is recognized by the United
3 States under the authority of section 7(d) of this
4 Act.

5 (8) **NATIVE HAWAIIAN INTERIM GOVERNING**
6 **COUNCIL.**—The term “Native Hawaiian Interim
7 Governing Council” means the interim governing
8 council that is authorized to exercise the powers and
9 authorities recognized in section 7(b) of this Act.

10 (9) **ROLL.**—The term “roll” means the roll that
11 is developed under the authority of section 7(a) of
12 this Act.

13 (10) **SECRETARY.**—The term “Secretary”
14 means the Secretary of the Department of the Inte-
15 rior.

16 (11) **TASK FORCE.**—The term “Task Force”
17 means the Native Hawaiian Interagency Task Force
18 established under the authority of section 6 of this
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct
23 aboriginal, indigenous, native people, with whom the
24 United States has a political and legal relationship;

1 (2) the United States has a special trust rela-
2 tionship to promote the welfare of Native Hawaiians;

3 (3) Congress possesses the authority under the
4 Constitution to enact legislation to address the con-
5 ditions of Native Hawaiians and has exercised this
6 authority through the enactment of—

7 (A) the Hawaiian Homes Commission Act,
8 1920 (42 Stat. 108, chapter 42);

9 (B) the Act entitled “An Act to provide for
10 the admission of the State of Hawaii into the
11 Union”, approved March 18, 1959 (Public Law
12 86-3; 73 Stat. 4); and

13 (C) more than 150 other Federal laws ad-
14 dressing the conditions of Native Hawaiians;

15 (4) Native Hawaiians have—

16 (A) an inherent right to autonomy in their
17 internal affairs;

18 (B) an inherent right of self-determination
19 and self-governance; and

20 (C) the right to reorganize a Native Ha-
21 waiian governing body; and

22 (5) the United States shall continue to engage
23 in a process of reconciliation and political relations
24 with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) **IN GENERAL.**—There is established within the
4 Office of the Secretary of the Department of the Interior
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) **DUTIES OF THE OFFICE.**—The Office of Special
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust
9 relationship between the Native Hawaiian people
10 and the United States through the Secretary, and
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-
13 ian governing body by the United States as provided
14 for in section 7(d) of this Act, effectuate and coordi-
15 nate the special trust relationship between the Na-
16 tive Hawaiian governing body and the United States
17 through the Secretary, and with all other Federal
18 agencies;

19 (3) fully integrate the principle and practice of
20 meaningful, regular, and appropriate consultation
21 with the Native Hawaiian people by providing timely
22 notice to, and consulting with the Native Hawaiian
23 people prior to taking any actions that may have the
24 potential to significantly or uniquely affect Native
25 Hawaiian resources, rights, or lands, and upon the
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-
2 grate the principle and practice of meaningful, regu-
3 lar, and appropriate consultation with the Native
4 Hawaiian governing body by providing timely notice
5 to, and consulting with the Native Hawaiian people
6 prior to taking any actions that may have the poten-
7 tial to significantly affect Native Hawaiian re-
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-
10 agency Task Force, other Federal agencies, and with
11 relevant agencies of the State of Hawaii on policies,
12 practices, and proposed actions affecting Native Ha-
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-
15 mittal to the Committee on Indian Affairs of the
16 Senate, the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee on Re-
18 sources of the House of Representatives of an an-
19 nual report detailing the activities of the Interagency
20 Task Force established under section 6 of this Act
21 that are undertaken with respect to the continuing
22 process of reconciliation and to effect meaningful
23 consultation with the Native Hawaiian people and
24 the Native Hawaiian governing body and providing
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated
2 under the authority of Federal law;

3 (6) be responsible for continuing the process of
4 reconciliation with the Native Hawaiian people, and
5 upon the recognition of the Native Hawaiian govern-
6 ing body by the United States as provided for in sec-
7 tion 7(d) of this Act, be responsible for continuing
8 the process of reconciliation with the Native Hawai-
9 ian governing body; and

10 (7) assist the Native Hawaiian people in facili-
11 tating a process for self-determination, including but
12 not limited to the provision of technical assistance in
13 the development of the roll under section 7(a) of this
14 Act, the organization of the Native Hawaiian In-
15 terim Governing Council as provided for in section
16 7(b) of this Act, and the reorganization of the Na-
17 tive Hawaiian governing body as provided for in sec-
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate
22 official within the Department of Justice to assist the Of-
23 fice of the Special Trustee for Native Hawaiian Affairs
24 in the implementation and protection of the rights of Na-
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the
2 Native Hawaiian governing body as provided for in section
3 7(d) of this Act, in the implementation and protection of
4 the rights of the Native Hawaiian governing body and its
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) **ESTABLISHMENT.**—There is established an inter-
8 agency task force to be known as the “Native Hawaiian
9 Interagency Task Force”.

10 (b) **COMPOSITION.**—The Task Force shall be com-
11 posed of officials, to be appointed by the President,
12 from—

13 (1) each Federal agency that establishes or im-
14 plements policies that affect Native Hawaiians or
15 whose actions may significantly or uniquely impact
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native
18 Hawaiian Affairs established under section 4 of this
19 Act; and

20 (3) the Executive Office of the President.

21 (c) **LEAD AGENCIES.**—The Department of the Inte-
22 rior and the Department of Justice shall serve as the lead
23 agencies of the Task Force, and meetings of the Task
24 Force shall be convened at the request of the lead agen-
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of
2 the Office of Special Trustee for Native Hawaiian Affairs
3 established under the authority of section 4 of this Act
4 and the Attorney General's designee under the authority
5 of section 5 of this Act shall serve as co-chairs of the Task
6 Force.

7 (e) DUTIES.—The primary responsibilities of the
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-
10 fect Native Hawaiians or actions by any agency or
11 agencies of the Federal Government which may sig-
12 nificantly or uniquely impact on Native Hawaiian re-
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops
15 a policy on consultation with the Native Hawaiian
16 people, and upon recognition of the Native Hawaiian
17 governing body by the United States as provided in
18 section 7(d) of this Act, consultation with the Native
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**
5 **TERIM GOVERNING COUNCIL AND A NATIVE**
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**
7 **RECOGNITION OF THE NATIVE HAWAIIAN**
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-
11 bers of the Native Hawaiian community who wish to
12 participate in the reorganization of a Native Hawai-
13 ian governing body shall prepare a roll for the pur-
14 pose of the organization of a Native Hawaiian In-
15 terim Governing Council. The roll shall include the
16 names of—

17 (A) the adult members of the Native Ha-
18 waiian community who wish to become mem-
19 bers of a Native Hawaiian governing body and
20 who are the lineal descendants of the aborigi-
21 nal, indigenous, native people who resided in
22 the islands that now comprise the State of Ha-
23 waii on January 1, 1893, and who occupied and
24 exercised sovereignty in the Hawaiian archipel-
25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not limited to)—
2

- 3 (i) genealogical records;
4 (ii) Native Hawaiian kupuna (elders)
5 verification or affidavits;
6 (iii) church or census records; or
7 (iv) government birth or death certificates or other vital statistics records; and
8
9 (B) the children of the adult members listed on the roll prepared under this subsection.

10
11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to
13 be established a Commission to be composed of
14 9 members for the purpose of certifying that
15 the adult members of the Native Hawaiian community on the roll meet the definition of Native
16 Hawaiian, as defined in section 2(6)(A) of this
17 Act. The members of the Commission shall have
18 expertise in the certification of Native Hawaiian
19 ancestry.
20

21 (B) CERTIFICATION.—The Commission
22 shall certify to the Secretary that the individuals listed on the roll developed under the authority of this subsection are Native Hawaiians,
23
24

1 as defined in section 2(6)(A) of this Act, and
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall
4 promptly provide notice to the Secretary if any of
5 the individuals listed on the roll should be removed
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-
8 ceipt by the Secretary of the roll developed under
9 the authority of this subsection and certified by the
10 Commission under the authority of paragraph (2),
11 the Secretary shall certify that the roll is consistent
12 with applicable Federal law by publishing the roll in
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication
15 of the roll developed under the authority of this sub-
16 section shall be for the purpose of providing any
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the
19 roll the name of an individual who meets the
20 definition of Native Hawaiian, as defined in
21 section 2(6)(A) of this Act, and who is not list-
22 ed on the roll; or

23 (B) petition the Secretary to remove from
24 the roll the name of an individual who does not
25 meet such definition.

1 (6) DEADLINE FOR PETITIONS.—Any petition
2 described in paragraph (5) shall be filed with the
3 Secretary within 90 days of the date of the publica-
4 tion of the roll in the Federal Register, as author-
5 ized under paragraph (4).

6 (7) CERTIFICATION OF ADDITIONAL NATIVE
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—

8 (A) SUBMISSION.—Within 30 days of re-
9 ceiving a petition to add the name of an individ-
10 ual to the roll, the Secretary shall submit the
11 name of each individual who is the subject of a
12 petition to add his or her name to the roll to
13 the Commission for certification that the indi-
14 vidual meets the definition of Native Hawaiian,
15 as defined in section 2(6)(A) of this Act.

16 (B) CERTIFICATION.—Within 30 days of
17 receiving a petition from the Secretary to have
18 a name added to or removed from the roll, the
19 Commission shall certify to the Secretary
20 that—

21 (i) the individual meets the definition
22 of Native Hawaiian, as defined in section
23 2(6)(A) of this Act; or

1 (ii) the individual does not meet the
2 definition of Native Hawaiian, as so de-
3 fined.

4 Upon such certification, the Secretary shall add
5 or remove the name of the individual on the
6 roll, as appropriate.

7 (8) HEARING.—

8 (A) IN GENERAL.—The Secretary shall
9 conduct a hearing on the record within 45 days
10 of the receipt by the Secretary of—

11 (i) a certification by the Commission
12 that an individual does not meet the defini-
13 tion of Native Hawaiian, as defined in sec-
14 tion 2(6)(A) of this Act; or

15 (ii) a petition to remove the name of
16 any individual listed on the roll submitted
17 to the Secretary by the Commission.

18 (B) TESTIMONY.—At the hearing con-
19 ducted in accordance with this paragraph, the
20 Secretary may receive testimony from the peti-
21 tioner, a representative of the Commission, the
22 individual whose name is the subject of the pe-
23 tition, and any other individuals who may have
24 the necessary expertise to provide the Secretary
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-
2 tion meets the definition of Native Hawaiian, as
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30
5 days of the date of the conclusion of the hear-
6 ing conducted in accordance with this para-
7 graph, the Secretary shall make a determina-
8 tion regarding whether the individual whose
9 name is the subject of a petition meets the defi-
10 nition of Native Hawaiian, as defined in section
11 2(6)(A) of this Act. Such a determination shall
12 be a final determination for purposes of judicial
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United
16 States District Court for the District of Hawaii
17 shall have jurisdiction to review the record of
18 the decision developed by the Secretary and the
19 Secretary's final determination under para-
20 graph (8) and shall make a final judgment re-
21 garding such determination.

22 (B) NOTICE.—If the district court deter-
23 mines that an individual's name should be
24 added to the roll because that individual meets
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-
2 ual's name should be removed from the roll be-
3 cause that individual does not meet such defini-
4 tion, the district court shall so advise the Sec-
5 retary and the Secretary shall add or remove
6 the individual's name from the roll, consistent
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except
9 for those petitions which remain the subject of judi-
10 cial review under the authority of paragraph (9), the
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-
13 ister within 290 days of the receipt by the Sec-
14 retary of the roll prepared under the authority
15 of paragraph (1); and

16 (B) subsequently publish in the Federal
17 Register the names of any individuals that the
18 district court directs be added or removed from
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-
21 tion of the final roll shall serve as the basis for the
22 eligibility of adult members listed on the roll to par-
23 ticipate in all referenda and elections associated with
24 the organization of a Native Hawaiian Interim Gov-
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within
5 90 days of the date of the publication of the
6 final roll in the Federal Register, the Secretary
7 shall announce the date of a general meeting of
8 the adult members of those listed on the roll to
9 nominate candidates from among the adult
10 members listed on the roll for election to the
11 Native Hawaiian Interim Governing Council.
12 The criteria for candidates to serve on the Na-
13 tive Hawaiian Interim Governing Council shall
14 be developed by the adult members listed on the
15 roll at the general meeting. The general meet-
16 ing may consist of meetings on each island or
17 at such sites as to secure the maximum partici-
18 pation of the adult members listed on the roll.
19 Such general meeting (or meetings) shall be
20 held within 30 days of the Secretary's an-
21 nouncement.

22 (B) ELECTION.—Within 45 days of the
23 general meeting (or meetings), the Secretary
24 shall assist the Native Hawaiian community in
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-
2 bership of the Native Hawaiian Interim Govern-
3 ing Council from among the nominees submit-
4 ted to the Secretary from the general meeting.
5 The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-
7 prove the Native Hawaiian Interim Governing
8 Council elected pursuant to this subsection if
9 the requirements of this section relating to the
10 nominating and election process have been met.

11 (2) POWERS.—

12 (A) IN GENERAL.—The Native Hawaiian
13 Interim Governing Council shall represent those
14 on the roll in the implementation of this Act
15 and shall have no powers other than those given
16 to it in accordance with this Act.

17 (B) TERMINATION.—The Native Hawaiian
18 Interim Governing Council shall have no power
19 or authority under this Act after the time which
20 the duly elected officers of the Native Hawaiian
21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian
24 Interim Governing Council shall conduct a ref-
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited
2 to) the following:

3 (i) The proposed elements of the or-
4 ganic governing documents of a Native
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-
7 ties to be exercised by a Native Hawaiian
8 governing body, as well as the proposed
9 privileges and immunities of a Native Ha-
10 waiian governing body.

11 (iii) The proposed civil rights and pro-
12 tection of such rights of the members of a
13 Native Hawaiian governing body and all
14 persons subject to the authority of a Na-
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOVERN-
17 ING DOCUMENTS.—Based upon the referendum
18 authorized in subparagraph (A), the Native Ha-
19 waiian Interim Governing Council shall develop
20 proposed organic governing documents for a
21 Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall
23 distribute to all adult members of those listed
24 on the roll, a copy of the proposed organic gov-
25 erning documents, as drafted by the Native Ha-

1 waiian Interim Governing Council, along with a
2 brief impartial description of the proposed or-
3 ganic governing documents.

4 (D) CONSULTATION.—The Native Hawai-
5 ian Interim Governing Council shall freely con-
6 sult with those listed on the roll concerning the
7 text and description of the proposed organic
8 governing documents.

9 (4) ELECTIONS.—

10 (A) IN GENERAL.—Upon the request of
11 the Native Hawaiian Interim Governing Coun-
12 cil, the Secretary shall hold an election for the
13 purpose of ratifying the proposed organic gov-
14 erning documents. If the Secretary fails to act
15 within 45 days of the request by the Council,
16 the Council is authorized to conduct the elec-
17 tion.

18 (B) FAILURE TO ADOPT GOVERNING DOCU-
19 MENTS.—If the proposed organic governing
20 documents are not adopted by a majority vote
21 of the adult members listed on the roll, the Na-
22 tive Hawaiian Interim Governing Council shall
23 consult with the adult members listed on the
24 roll to determine which elements of the pro-
25 posed organic governing documents were found

1 to be unacceptable, and based upon such con-
2 sultation, the Council shall propose changes to
3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the
5 Native Hawaiian Interim Governing Council,
6 the Secretary shall hold a second election for
7 the purpose of ratifying the proposed organic
8 governing documents. If the Secretary fails to
9 act within 45 days of the request by the Coun-
10 cil, the Council is authorized to conduct the sec-
11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-
13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of
15 the Native Hawaiian governing body of the indige-
16 nous, native people of Hawaii to organize for its
17 common welfare, and to adopt appropriate organic
18 governing documents is hereby recognized by the
19 United States.

20 (2) RATIFICATION.—The organic governing
21 documents of the Native Hawaiian governing body
22 shall become effective when ratified by a majority
23 vote of the adult members listed on the roll, and ap-
24 proved by the Secretary upon the Secretary's deter-
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-
2 cial trust relationship between the United States and
3 its native people. If the Secretary fails to make such
4 a determination within 45 days of the ratification of
5 the organic governing documents by the adult mem-
6 bers listed on the roll, the organic governing docu-
7 ments shall be deemed to have been approved by the
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—
10 Within 45 days after the Secretary has approved the
11 organic governing documents or the organic govern-
12 ing documents are deemed approved, the Secretary
13 shall assist the Native Hawaiian Interim Governing
14 Council in holding an election by secret ballot for the
15 purpose of determining the individuals who will serve
16 as governing body officers as provided in the organic
17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of
19 this initial election and notwithstanding any provi-
20 sion in the organic governing documents to the con-
21 trary, absentee balloting shall be permitted and all
22 adult members of the Native Hawaiian governing
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and
2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-
4 MENTS.—When ratified by a majority vote of the
5 adult members of those listed on the roll, the organic
6 governing documents shall be revocable by an elec-
7 tion open to the adult members of the Native Ha-
8 waiian governing body, and amendments to the or-
9 ganic governing documents may be ratified by the
10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-
12 dition to all powers vested in the Native Hawaiian
13 governing body by the duly ratified organic govern-
14 ing documents, the organic governing documents
15 shall also vest in the Native Hawaiian governing
16 body the rights and powers to—

17 (A) exercise those governmental authorities
18 that are recognized by the United States as the
19 powers and authorities that are exercised by
20 other governments representing the indigenous,
21 native people of the United States;

22 (B) provide for the protection of the civil
23 rights of the members of the Native Hawaiian
24 governing body and all persons subject to the
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian
2 governing body exercises its authority consistent
3 with the requirements of section 202 of the Act
4 of April 11, 1968 (25 U.S.C. 1302);

5 (C) prevent the sale, disposition, lease, or
6 encumbrance of lands, interests in lands, or
7 other assets of the Native Hawaiian governing
8 body without the consent of the Native Hawai-
9 ian governing body;

10 (D) determine the membership in the Na-
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other
16 provision of law, upon the approval by the Secretary
17 of the organic governing documents of the Native
18 Hawaiian governing body and the election of officers
19 of the Native Hawaiian governing body, Federal rec-
20 ognition is hereby extended to the Native Hawaiian
21 governing body as the representative governing body
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-
24 LEGES.—Nothing contained in this Act shall dimin-
25 ish, alter, or amend any existing rights or privileges

1 enjoyed by the Native Hawaiian people which are
2 not inconsistent with the provisions of this Act.

3 (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-
4 ERNING BODY.—

5 (1) CHARTER OF INCORPORATION.—Upon peti-
6 tion of the Native Hawaiian governing body, the
7 Secretary may issue a charter of incorporation to
8 the Native Hawaiian governing body. Upon the
9 issuance of such charter of incorporation, the Native
10 Hawaiian governing body shall have the same status
11 under Federal law when acting in its corporate ca-
12 pacity as the status of Indian tribes that have been
13 issued a charter of incorporation under the authority
14 of section 17 of the Indian Reorganization Act (25
15 U.S.C. 477).

16 (2) ENUMERATED POWERS.—Such charter may
17 authorize the incorporated Native Hawaiian govern-
18 ing body to exercise the power to purchase, take by
19 gift, bequest, or otherwise, own, hold, manage, oper-
20 ate, and dispose of property of every description,
21 real and personal, including the power to purchase
22 lands and to issue an exchange of interests in cor-
23 porate property, and such further powers as may be
24 incidental to the conduct of corporate business, and
25 that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

7 (a) REAFFIRMATION.—The delegation by the United
8 States of authority to the State of Hawaii to address the
9 conditions of Native Hawaiians contained in the Act enti-
10 tled “An Act to provide for the admission of the State
11 of Hawaii into the Union” approved March 18, 1959
12 (Public Law 86-3; 73 Stat. 5) is hereby reaffirmed.

13 (b) NEGOTIATIONS.—Upon the Federal recognition
14 of the Native Hawaiian governing body pursuant to sec-
15 tion 7(d) of this Act, the United States is authorized to
16 negotiate and enter into an agreement with the State of
17 Hawaii and the Native Hawaiian governing body regard-
18 ing the transfer of lands, resources, and assets dedicated
19 to Native Hawaiian use under existing law as in effect
20 on the date of enactment of this Act to the Native Hawai-
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23 Nothing in this Act is intended to serve as a settle-
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations and such delegations of authority as the Sec-
4 retary deems necessary to carry out the provisions of this
5 Act.

6 **SEC. 12. SEVERABILITY.**

7 In the event that any section or provision of this Act,
8 or any amendment made by this Act is held invalid, it
9 is the intent of Congress that the remaining sections or
10 provisions of this Act, and the amendments made by this
11 Act, shall continue in full force and effect.

Senator INOUE. We are most privileged to have with us as our first witness the Honorable Eni F.H. Faleomavaega, member of the Congress from American Samoa. Congressman Faleomavaega, welcome, sir.

**STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, DELEGATE,
FROM AMERICAN SAMOA**

Mr. FALEOMAVAEGA. Mr. Chairman, thank you for your kind invitation to allow me to testify this afternoon in support of S. 2899.

Mr. Chairman, there are well over 200,000 Native Hawaiians living in the State of Hawaii. I suspect that there are approximately another 100,000 Native Hawaiians living throughout the continental United States. In number, it is my humble opinion that perhaps Native Hawaiians are the largest indigenous group of people living in the United States today.

As one of Polynesian ancestry, I thank God that the Kanaka Maoli, or the Hawaiian people, have not become an extinct race. Given the unfortunate turn of historical events that have now made Native Hawaiians strangers in their own lands, it is only by the grace of God that Native Hawaiians now number well over 300,000 today.

Mr. Chairman, the Kanaka Maoli are my kin. For purposes of giving you a sense of who we are, I would like to share with you something Captain James Cook once noted about the Kanaka Maoli, or Polynesian people.

Captain Cook observed that the Kanaka Maoli established settlements from as far north as Hawaii, and as far south as Actearoa, or what is now known as New Zealand today. In between, the Kanaka Maoli settled in Samoa, in Tokelau, in Tuvalu, in parts of Fiji, in Tonga, and other areas of that triangle.

The Kanaka Maoli nation also stretched as far east as Rapanui, now known as the Easter Island, and constituted what Captain Cook thought was the largest nation on the Earth.

Since Cook's time, we have had our fair share of romantic writers coming to the South Seas, depicting our women coming out of the Garden of Eden on moonlit, tropical shores, with the scent of romance forever in the air. We have also had our share of anthropologists, who think they know more about us than they know about themselves.

We do not need any more Margaret Meads or Derek Freemans to describe to the world who we are as a people. We know how we came first into being. We know our past and are committed to our present. We are here today to define our future.

Mr. Chairman, as we proceed today, I would like to add this thought for the record. When we discuss the rights of Native Hawaiians, we in effect discuss the inalienable rights of any people. As such, what happened historically to Native Hawaiians, in effect, happened to all of us. In this context, I would respectfully like to present the following for consideration.

More than 100 years ago, ambitious descendants of U.S. missionaries and sugar planters, aided by the unauthorized and illegal use of U.S. military forces, overthrew the sovereign nation of Hawaii, then ruled by its queen, Lili'uokalani.

More than 100 years later, the U.S. Congress issued a formal apology, acknowledging that the Native Hawaiian people never relinquished their right to their sovereignty or to their sovereign lands.

Earlier this year, Senator Daniel Akaka, the first Polynesian Native Hawaiian to sit as a member of this distinguished body of U.S. Senators, introduced S. 2899 to express and define a firm policy of the U.S. Congress and the U.S. Government regarding its relationship with the Native Hawaiian people.

Two weeks ago, the Senate Committee on Indian Affairs and the House Resources Committee held joint hearings for 5 days in the State of Hawaii, to consider the provisions and the substance of these bills. Mr. Chairman, I want to thank you for extending me the invitation to participate in that series of hearings.

The purpose of S. 2899 is to clarify the political relationship that exists between Native Hawaiians and the Federal Government. Specifically, the measure provides the Native Hawaiian community with an opportunity to form a government-to-government relationship with the United States, within the context of the U.S. Constitution and Federal law.

The bill provides a process for Native Hawaiians to organize a Native Hawaiian governing body, or essentially a Native Hawaiian government. The bill also authorizes the Native Hawaiian governing body to negotiate with the State of Hawaii, and other appropriate officials and agencies of the Federal Government, regarding such long-standing issues such as ceded lands.

The bill also protects education, health, and housing programs that have already been established by Federal law to benefit the Native Hawaiians.

I fully support the recommendations that have been given and incorporated into the proposed bill, as is now before the committee for consideration.

I honestly believe it is time now for the Congress to correct the inequity that exists in our current process with respect to Native Hawaiians. It is time for Congress to recognize and acknowledge that Native Hawaiians, or the Kanaka Maoli, are a sovereign people with the inherent right to establish a government-to-government relationship with both the State of Hawaii and the Federal Government.

If I could borrow the words of Black Elk, Mr. Chairman, and apply them to this setting as a reminder of what I believe our responsibility to the Kanaka Maoli should be, I would say,

Some little root of the sacred tree still lives. Nourish it then that it may leaf and bloom and fill with singing birds. Hear me, that the people may once again find the good road and the shielding tree.

With this, Mr. Chairman, I extend my thanks to you for your leadership, and for your tireless efforts in trying to bring about a resolution for the needs of the Native Hawaiian people.

Thank you.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN [resuming Chair]. Thank you, Congressman Faleomavaega. I should have known that you would be here to testify, as you have been a terrific champion for all native peoples for years and years.

As many of the people in the audience might know, we were very, very close friends and dear friends, when I was on the House side.

Thank you, Senator Inouye for starting the hearing. I did get a call from Senator Akaka, yesterday afternoon. As many of you know, he will not be able to return still, for a little while. He is still under a doctor's care. But he certainly wants to be helpful.

I understand, as many do, that the extension of the government-to-government relationship, by the United States to an Indian tribe, or in this instance, a Native Hawaiian community, is a very solemn act, and certainly something that we need to consider very carefully.

I am not going to make a long statement, because I really would like to hear from the witnesses. But some of the questions that I think we probably have to ask are not only about the legal foundation for recognizing a Native Hawaiian Government, and I am familiar with how they lost their land and how they lost their sovereignty, just as many Indian tribes did, too. I think all of us on this committee recognize that, and are aware of that.

But there are other questions such as the practical impacts; if it would affect existing, recognized tribes; what would we expect, a few years from now, in terms of requests for funding, or programs, benefits, or if there will be things of that nature, that probably need to be answered by the witnesses.

I, unfortunately, was not able to go to Hawaii when Senator Inouye conducted the hearings, but have read the testimony from them and heard from some of them. I certainly appreciate him doing those hearings.

Mr. FALEOMAVAEGA. If I may, Mr. Chairman, I want to thank our senior Senator from Hawaii. I think his eloquent statement very much addresses the very concerns that you posed.

I think we all have a complete understanding of the fact that this legislation does not, in any way, affect any funding sources that are needed for our Native American communities.

I am very, very happy that this matter is being fully clarified. I sincerely hope that we, on the other side of the Capitol, will also take this into consideration.

Mr. Chairman, thank you.

The CHAIRMAN. I might tell you that it is my intent, if there is no objection from anyone on the committee, and so far there is not going to be, it looks like, anybody to object, that at Senator Inouye's request, we will go ahead and mark this up the same day.

I have been a little reluctant to mark-up bills the same day we do the hearings, because sometimes other members of the committee come back later and say, "but I had this to say," or "I wanted to be involved." You know how that works.

So what I did was at least poll the members of the committee, and ask them to check with their tribes and with their own constituents, to see if there would be any problem with that. We have yet to see if there will be or not; but hopefully, there will not be.

Thank you Congressman.

Senator INOUE. Mr. Chairman?

The CHAIRMAN. Yes.

Senator INOUE. I ask unanimous consent that the statement of Senator Akaka be made part of the record at this time.

The CHAIRMAN. Without objection, that will be so.

[Prepared statement of Senator Akaka appears in appendix.]

The CHAIRMAN. If I can call Kevin Gover, assistant secretary to the desk there, and Jacqueline Agtuca. Before you start with your testimony, we are joined by Senator Domenici of New Mexico, who has been a great friend of our Native American community.

Did you have an opening statement or any comments, before we take testimony, Senator Domenici?

**STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM
NEW MEXICO**

Senator DOMENICI. Well, I see Senator Inouye here. Since I cannot stay very long, I want to make sure that I sit in his presence.

First, I have a statement I would like to put in the record.

The CHAIRMAN. Without objection, it will be included in the record.

[Prepared statement of Senator Domenici appears in appendix.]

Senator DOMENICI. I would like to say that whenever the distinguished Senator offers things here, you know, generally, for me, it is a foregone conclusion that he is right, and that I help and be on board.

But I must say, with reference to S. 2899, I have some reservations, and I would like very much to state them, just briefly, off the cuff, and then you all can proceed.

It is difficult for me, in reading the bill, to know whether we are saying that this group of your constituents, people from Hawaiian Islands, will become part of those people in America who are known as Native Americans, who are covered by the United States commitment to the Indian people of our country. I can not understand whether they are going to become exactly like the Pueblo Indians in New Mexico, be it Jemez or whatever.

I clearly would not like to bring a very large number of new people within the gamut of the BIA, and to be entitled to all of the BIA programs, as vague as some are; whether it be education, whether it be health. It seems to me that we would have to have an evaluation, since it may be a very large number, of what that does to Indian Country and the rest of the American Indians, Native Americans.

So, Senator, that is my general concern. I would hope that we would not move too rapidly, without understanding what this is. I have enough time, however, to permit you to comment.

I do have, for the record, an overview of Indian Federal spending that I would like to make part of the record, just so we would know what they are for the existing population of Native Americans. I will quickly state them.

About \$8.5 billion is what our recent estimates show that we have committed. Most of that is the U.S. Department of Health and Human Services. The Department of the Interior spends about \$2.2 billion; while Health and Human Services spends about \$2.7 billion. The BIA and the IHS accounts are about one-half of the Federal spending for Indian programs.

The other smaller programs, such as HUD, spend about \$600,000 or \$700,000, and the Department of Education, \$1.5 billion.

I think my friend from Hawaii has been sitting here with me at times, and we have been very upset with the United States' executive branch for not sending a budget down in some of these areas which had more money; for instance, Indian Health. One time, we joined together saying that the Administration was going backward, instead of forward, on Indian Health.

I am somewhat concerned, if we are going to add more to this burden, that we understand it, and carefully know what we are doing. I yield.

Senator INOUE. Mr. Chairman, may I respond?

The CHAIRMAN. Yes; certainly, please.

Senator INOUE. I am pleased that you have brought this up at this point in the hearings and proceedings, and I am pleased that you asked those questions and expressed your concern.

First, this bill does not make Native Hawaiians part of Indian Country. I can make that flat assertion and guarantee. It does not make them an Indian tribe, nor will they become part of Indian programs.

As you know, from the very beginning, when I began suggesting programs and projects for Native Hawaiians, I made a pledge that they will be under a separate authorization, in every case, and separate appropriations.

We have funds that have been appropriated for Hawaiian education, Hawaiian health, but they have never been part of the Indian Health program, nor have they been part of the Indian education program. They have all been separate, and they have had to stand on their own.

This bill does not make them an Indian tribe. In fact, at this moment, all this bill does is to begin the process of the Government recognizing Native Hawaiians.

As to the form of this government, I do not know. It would be up to the Native Hawaiian population in the State of Hawaii to decide what they would want. I can assure you that this will be the way it is done, and the bill makes it very clear, sir.

The CHAIRMAN. Yes, Senator Domenici?

Senator DOMENICI. Mr. Chairman, I would like to just say to my good friend from Hawaii, I have already stated that I never questioned what he intends to do, but I would read in the record a paragraph. I think it brings a little bit of concern to mind, and maybe you might reconsider it, or withdrawn on it for awhile, before we finish our work.

Paragraph 4(b)(1) states,

The United States Office for Native Hawaiian Affairs shall effectuate and coordinate the special trust relationship between the United States to the Secretary of Interior and with all Federal agencies.

I do not know what that means. It sounds very much like the enabling language that we have used for various Indian groups and Indian tribes in Continental America and Alaska, that you would be dealing with the department, and have a special trust relationship, and all Federal agencies would be subject to that trust relationship that exists.

I do not know what you mean. Does that mean that even though that exists, it is a brand new trust relationship, and not the one we have with current Indians in America?

Senator INOUE. If I may respond, Mr. Chairman?

The CHAIRMAN. Please do.

Senator INOUE. We have always maintained that there does exist a special relationship between the Native peoples of Hawaii and the Government of the United States.

On that basis, the Congress has responded by approving and emerging into law about 160 separate measures, such as Native Hawaiian education programs, Native Hawaiian health programs, Native Hawaiian cultural programs, et cetera, et cetera. In each case, there would have to be separate authorization and a separate appropriation.

Second, this just establishes this office. We did not want the Native Hawaiians under the BIA. So we are establishing an Office for Native Hawaiian Affairs, because I was certain that my friends in Indian Country might feel threatened if this last group of indigenous people suddenly found themselves under the umbrella of the Bureau of Indian Affairs. This will make certain that that will not happen.

Senator DOMENICI. I would just ask that my statement be made a part of the record.

Thank you, Senator Inouye.

The CHAIRMAN. Without objection, it is so ordered.

Senator DOMENICI. Thank you.

The CHAIRMAN. I might just mention, from my perspective, I know as well as anybody that indigenous people got a raw deal right in the beginning, once they became part of this great country. That has never been a problem with me to recognize indigenous people.

The problem, of course, is the law of unintended consequences. What happens, down the line, if we have limited resources? We will have to deal with that.

But I might mention something, Senator Domenici, before you leave and if Senator Inouye has the time, and we have very little time left, about 13 or 14 working days before we adjourn. But if we do mark up this bill today, and if there is no objection, we are going to do that, do you have any recommendations or suggested amendments that you might want to work with Senator Inouye on?

Senator DOMENICI. Excuse me, I am very sorry, but I am required to be at a 4:00 meeting, or something will start that I may not be able to undo.

The CHAIRMAN. That is the way it works around here.

Senator DOMENICI. Yes, Senator; I think what I would like to do, because my recollection of what you have done in these other bills is extremely vague, I would like to note my objection.

But I want to do that by asking my staff, and if you will have your staff, kind of go through, showing us where you have created these special laws, so that I can be assured that this is not an addition in any way, shape, or form, to the indigenous Indians that are already covered.

It is not that I do not want to cover them. It is that I do not want to add a large group, all of a sudden, when we currently do not have sufficient resources for what we are doing.

They would just be misled, because you and I know we are currently not doing right by the BIA, in terms of many of its functions. They do not have enough money to do what they have to do. So if that is satisfactory, that is where I am.

The CHAIRMAN. Well, may I clarify that?

Senator DOMENICI. Yes.

The CHAIRMAN. Is the objection just on some of the content, or are you objecting to the mark-up?

Senator DOMENICI. Oh, I will not object to the mark-up.

The CHAIRMAN. Thank you.

Senator DOMENICI. I object to the bill, and I would like you to note my objection.

The CHAIRMAN. So noted; thank you, Senator.

With that, we will proceed with a friend of this committee, who will be leaving us shortly, Assistant Secretary Gover.

I might tell you, Kevin, from my own personal perspective, and I think I can speak for most of the members, we are very proud of the job you have done. We know it is a commitment to go into public service, and you have to take a terrific beating, sometimes; and sometimes from this committee, I am sorry to say. But that comes with the territory.

I want to also tell you that I read with great interest your comments 1½ ago, the apology you offered on your own behalf. I, personally, think you were right on. It was something that needed to be said to America, and I am proud that you did it, my friend.

STATEMENT OF KEVIN GOVER, ASSISTANT SECRETARY, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. GOVER. Well, thank you, Mr. Chairman. This probably is the last time I will be appearing before the committee, at least in this capacity.

Let me just say how grateful I am. You know, you get many privileges and honors in these positions, and they are difficult, but it has been such an extraordinary experience. A large part of that has been the opportunity to appear before this committee and discuss important issues with people like you, like Senator Inouye, who have such a deep interest, such a vast amount of knowledge.

I do not anticipate that I shall ever be so honored again. It has been an absolute thrill. I just want to thank the committee, thank the Chairman, and thank Senator Inouye for all that you do, and certainly all that you have done to help me and the BIA for the past few years.

Mr. Chairman, let me go directly to the heart of the matter. I have, of course, listened to the discussion among the committee. I think that those are the right questions. Let me see if I can help with the answers.

The legal foundation for a unique approach, a special approach, a Federal approach, to dealing with Native Hawaiians, is the same as it is for dealing with the Indian tribes. Now as you well know the Constitution makes specific reference to Indian tribes.

So we have no difficulty concluding, of course, that the Congress has plenary power over the Indian tribes. That includes not just, as we so often have seen, the ability to do them harm; but more importantly, the ability to do them good, in a special unique way, because of their status as Indian tribes.

The question we have to ask is, is our Constitution flexible enough to go on and say, we did not mean just Indian tribes, really? We meant any indigenous people that the United States might encounter, as it expands its boundaries, and as it did, of course, expand its boundaries.

That is an important distinction, because if we cannot read the Constitution flexibly enough to say it does include indigenous people, wherever we may find them within the boundaries of the United States, then we endanger things like the Alaska Native Claim Settlement Act.

As you know, while many of the Alaska Natives are ethnically Indians, many of them are not. So we already have interpreted the constitution and the Congress' Indian Affairs power to include people other than Indian tribes.

I believe, and the United States has taken the position in litigation, that Indian Affairs power does extend to the indigenous people in Hawaii, the Native Hawaiians.

The second issue, and of course, we are deeply interested in the practical impact of the establishment of a government-to-government relationship between Native Hawaiian people and the United States, is what will be the impact on Indian tribes.

As Senator Domenici was just pointing out, the BIA does not meet its existing obligations to Indian tribes. We could not support a bill that imposed upon the BIA a new constituency, with very great needs, like Native Hawaiian people, when we are failing to meet the basic obligations that we already have to the Indian tribes.

We are satisfied, from our review of the bill, that these are separate authorizations; these are separate monies; and that this bill certainly does not make Native Hawaiian people eligible for the array of programs that are available to Indian tribes, from both the BIA and from the Indian Health Service.

As Senator Inouye has pointed out, there are a number of separate authorizations for Native Hawaiian programs. Many of them are in statutes that also benefit Indians, but they are clearly separate programs, administered by agencies other than the BIA and the Indian Health Service.

So we are confident that this bill would not have the effect of diminishing the resources that we make available to Indian tribal governments and to Alaska Native Governments.

Senator Domenici also asked, would this bill make Native Hawaiians like the Indian tribes. I think the answer is, no. I do not believe Native Hawaiians want that, and I do not believe that that is the intent of this bill.

We should, if nothing else, learn from the history of the relationship between the United States and the Indian tribes, and more specifically, the relationship between the Bureau of Indian Affairs and Indian tribes, that that is a path we do not wish to travel again, with any people that come under the authority of the Congress.

What the bill does do is give Native Hawaiian people the opportunity to decide for themselves the form in which they will organize. In the future, the Congress, the Administration, and the Native Hawaiian people will debate, negotiate, and establish exactly what the contours of that relationship are going to be.

For example, we talk broadly about a trust responsibility from the United States to Indian tribes. That can mean different things to different people. But the bottomline is, it means no more and no less than what the Congress says it means. So in carrying out our responsibilities, we have a trust responsibility, if you tell us we do.

By the same token, the Native Hawaiian people will have rights, pursuant to the trust responsibility of the United States if, and only if, the Congress says they have those rights.

This is really, to me, as a career Indian lawyer, sort of an exciting opportunity to define, in a careful, modern, meaningful way, what the relationship is going to be, between the United States and a group of indigenous people, subject to the Indian Affairs power of the Congress.

Mr. Chairman, we do wish to express our support for the bill. As you know, the Congress, in 1993, passed the Apology Resolution, and asked that a reconciliation process be established.

In March 1999, Senator Akaka asked my boss, Secretary Babbitt, and Attorney General Reno, to designate people from their respective departments, to work on these reconciliation efforts.

Secretary Babbitt designated our Assistant Secretary for Policy Management and Budget, John Berry. Attorney General Reno designated Mark Van Norman, from the Office of Tribal Justice.

Those two gentlemen, with considerable help from other people, including people in my office, spent a considerable amount of time in Hawaii. They held a series of public hearings this past December, and visited a number of different Native Hawaiian communities.

They came back and have prepared a report, discussing how we ought to go about continuing the process of reconciliation, and establishing this relationship with Native Hawaiian people.

That report did say that such a relationship should be established. It noted that the statutory authorizations of programs available to Native Hawaiians are different from those that are available to Indian tribes, and that we should not be concerned about the impact on the BIA, because these programs simply will not be administered by the BIA, and do operate under separate authorizations.

The last thing I would say, Mr. Chairman, is that there is no alternative process by which a government-to-government relationship can be established with Native Hawaiian people. We do recognize Indian tribes, as you know, through our administrative processes, but our processes would not reach so far as to Native Hawaiian groups.

Now, conceivably, some administration in the future could amend those regulations and say that the Executive Indian Affairs power reaches so far as the Native Hawaiians. I do not see that happening in the foreseeable future.

Certainly, there is nothing underway in this administration to do so. In the end, it is much more appropriate that the Congress do so with the President's concurrence, as opposed to either branch sort of acting on its own, to establish such a relationship.

With that, Mr. Chairman, I will turn it over to my colleague here. Let me just say that this bill really only begins a process. It establishes a relationship. It does not define the contours of that relationship. That work is left to the future, and to be negotiated between future Congresses and future administrations and, of course, the Native Hawaiian people, themselves.

Let me just say one more time, Mr. Chairman, what an honor and a pleasure it has been, working with you and working with the committee. This is one part of my job that I will miss very much.

[Prepared statement of Mr. Gover appears in appendix.]

The CHAIRMAN. Well, may I suggest that if you miss it so much, and you like to work through these exciting issues, that when you are back in the private sector, you run for Congress and help us out. [Laughter.]

We would be glad to have you, Kevin.

We will go on now to Ms. Agtuca, please proceed.

**STATEMENT OF JACQUELINE AGTUCA, ACTING DIRECTOR
FOR THE OFFICE OF TRIBAL JUSTICE, DEPARTMENT OF
JUSTICE**

Ms. AGTUCA. Yes; thank you, Senator Campbell and Senator Inouye. My name is Jacqueline Agtuca. I am now the acting director of the Office of Tribal Justice at the Department of Justice.

First, I want to point out that Senator Akaka has defined reconciliation to be a means of healing. The Department is in line with that view, and finds that S. 2899 would be essential for this process to proceed, a process of reconciliation and a process of healing.

I think that before I give my comments, though, we would like to let you know that we just received the final draft yesterday. Therefore, we would like to submit to you some time next week additional comments from the Department, so that we can review it more thoroughly, and provide you those thorough comments.

The CHAIRMAN. That will be fine. We will keep the record open.

Ms. AGTUCA. I think in line with Assistant Secretary Gover's comments, the Department of Justice also acknowledges the special Federal trust relationship with Native Hawaiian people by the U.S. Government. This Federal trust relationship has been established over time, a very long period of time, that began with the overthrow of the Hawaiian kingdom.

I think that throughout this history, though, the United States' dealings with the Native Hawaiian people, at times, was less than honorable, and that those actions by the U.S. Government, while unauthorized, did lead to the overthrow of the kingdom and the suppression of the Native Hawaiian government.

I think that the Apology Resolution directed the President to engage in a reconciliation process with the Native Hawaiian people. As Assistant Secretary Gover said, Mr. Van Norman and the Interior Department traveled to Hawaii and spent some time in Hawaii taking testimony.

Throughout those visits and meetings, the delegation heard a very clear call of the Native Hawaiian people for increased control over their local affairs.

S. 2899 is a very significant part of the reconciliation process, as outlined in the Apology Resolution. We believe that S. 2899 is very important for three basic reasons.

No. 1, it will clarify the unique political and legal relationship between the United States and the Native Hawaiian community. No. 2, it will facilitate the government-to-government relationship in enabling the Native Hawaiian leader or leaders to directly advocate for the Native Hawaiian community. No. 3, it will create Federal vehicles for implementation and protection of Native Hawaiian self-governance.

Today, I would like to comment on the definition contained within the bill for establishment of the role of the Native Hawaiian community.

S. 2899 provides a Federal process for the reorganization of the Native Hawaiian governing body. An interim Federal law definition of Native Hawaiian is necessary for the operation of this legislation. It is essential for the determination of the body of Native Hawaiians responsible for the reorganization of the Native Hawaiian governing body.

The proposed language set forth on page 20 of the bill includes two parts. Part A at line 9 reads,

The lineal descendants of the Aboriginal indigenous native people who resided in the islands that now comprise the State of Hawaii, on or before January 1, 1893, and who occupied and exercise sovereignty in the Hawaiian archipelago.

In the Department's view, this definition is overly broad, for the purposes of the establishment of the Native Hawaiian governing body. The Department continues to recommend that part A be deleted, and that part B remain as a definition of the initial role.

Part B reads,

Native Hawaiians who were eligible in 1921, for the programs authorized by the Hawaiian Homes Commission Act, or their lineal descendants.

Using this definition is very important for three basic reasons. First, the Hawaii Homes Commission Act definition draws upon an already established Federal law process, created by Congress, under its Indian Affairs power.

S. 2899 provides for a Federal law process for the reorganization of the Native Hawaiian governing body. This is the interim period of the reorganization of the governing body, and in this interim period, we need a Federal definition for Native Hawaiian.

In 1921, Congress, recognizing the need of Native Hawaiian people to return to a traditional way of life, created a definition of those Native Hawaiians eligible to reside on distinctly Native Hawaiian lands; lands specifically set aside in trust by Congress for the Native Hawaiian people. Thus, using this definition draws upon the past practices of Congress on this issue.

Second, this definition provides a specific definition of a portion of Native Hawaiian population that have a cultural, historic and land-based link to the Aboriginal native people, who exercise sovereignty over the Hawaiian Islands.

Given the nature of this interim period of reorganization created by S. 2899, it is important that the definition allow those individuals who maintain close ties to the Native Hawaiian community to lead the reorganization process, and create the structure of the Native Hawaiian governing body.

Third, using the definition of the Hawaiian Homes Commission Act, it better addresses the concerns raised by the U.S. Supreme Court in *Rice v. Cayetano*. It is important to note that this definition is an interim one; one to be used only to implement the legislation in regard to the establishment of the interim governing body.

During this period, the Federal definition, as defined by S. 2899, will be utilized. Once this body is established, the interim governing body of the Native Hawaiian people may determine its own membership, as established by the bill.

Senators in closing, the Department supports this important legislation, and is firmly committed to working with your committee and the Native Hawaiian community, toward fulfilling the goals of these bills, which go toward furthering the reconciliation process.

Ultimately, this process should result in Congressional confirmation of a political government-to-government relationship between Native Hawaiians and the Federal Government; a relationship that facilitates and safeguards the call of Native Hawaiian people for self-governance.

Thank you very much.

[Prepared statement of Ms. Agtuca appears in appendix.]

The CHAIRMAN. Thank you for your testimony, both of you.

I do not have to tell Assistant Secretary Gover this, but one of the biggest problems we have in Indian Country now, when we talk about enrollment or recognizing a tribe, is trying to determine who is Indian.

Most tribes require what is called "proof by blood quantum." But because the Federal Government accepts the tribes' definition, some tribes require you to be one-half provable ancestry, blood requirement; others, one-fourth; others, one-eighth.

Some tribes do not. Some just require what is called lineal decendancy, like the Cherokee, which means, as long as you put them on the role, no matter how thin the blood gets, you could be one-five hundredth Cherokee, and still be legally recognized by the Federal Government as a Cherokee, because the Federal Government accepts the Cherokee's definition of who is a Cherokee.

It has created some real problems, as you might guess. That is, of course, why we have tried to work with the Administration on trying to redefine how we recognize tribal groups.

I might tell you that the bill that we just recently passed is already getting a little heat from some of the members saying, we did not have time to study this, and we do not know what it is going to mean. Kevin, I will just tell you that.

But let me ask you just a couple of questions, maybe, Ms. Agtuca. You can chime in there, Kevin, if you want. Is there a currently recognized state role for Native Hawaiians?

Ms. AGTUCA. Currently, no, there is not.

The CHAIRMAN. There is not? Okay, so what is the definition most commonly used for who is a Native Hawaiian? Can it be anybody who is born in Hawaii?

Ms. AGTUCA. It is dependant upon, there are various statutes and there are various definitions. So for this particular bill and the organization of the interim Hawaiian government, that is why we are recommending that it be according to the Hawaiian Homes Commission Act, which defined it to be one-half.

The CHAIRMAN. One-half, provable by how, by blood quantum?

Ms. AGTUCA. It would be one-half. Any descendant of not less than one-half part of the blood of the races, inhabiting the Hawaiian Islands, previous to 1778.

The CHAIRMAN. So let us say for some of the other islands, a person from Samoa, who was born in Hawaii, can he qualify as a Hawaiian tribe?

Ms. AGTUCA. No, Senator.

The CHAIRMAN. He cannot?

Ms. AGTUCA. He cannot. I can not stress enough that we are in agreement with you that the Native Hawaiian people should determine the definition for their Native Hawaiian governing body and people.

However, during the interim Federal process, in which they are implementing the legislation, you need a set definition; one established by Congress to guide that process. Once they have established that, they can broaden it.

The CHAIRMAN. That is what the Commission or the Inter-Agency Task Force would be charge with doing?

Ms. AGTUCA. Yes; that would be one of the tasks of the Commission.

Mr. GOVER. Actually, the way I read the bill, it would be the termination of a roll and working with the Native Hawaiian community to develop a government. I believe it would be done by the office that would be established in the Interior Department, the Office of Native Hawaiian Affairs.

The CHAIRMAN. Well, does the Native Hawaiian community currently have a political entity that serves as a quasi government or does governmental functions?

Ms. AGTUCA. There are various organizational forums that existing, that continue to exist. But particularly, the trust responsibility that was transferred by the Congress to the State of Hawaii, upon admission, has created an Office of Hawaiian Affairs in this program.

The CHAIRMAN. I mean, within the Hawaiian structure, do they have some kind of a government structure within their own group? I guess that is what I am asking. It was a monarchy at one time, was it not?

Ms. AGTUCA. Well, what occurred with the overthrow of the kingdom, the government was suppressed.

The CHAIRMAN. Okay.

Ms. AGTUCA. That is why the bill is necessary, to reorganize the government.

Mr. GOVER. Mr. Chairman, I believe that there are, and now I am reporting something.

The CHAIRMAN. I may be asking the wrong panel. If I am, excuse me.

Mr. GOVER. The communities have organized themselves in certain traditional ways, as I understand it.

The CHAIRMAN. Right.

Mr. GOVER. So that while there is not a government, as in a constitutional government, there are governing means of the community, that they have established for their own.

The CHAIRMAN. They have some organization, though, within that group that they have.

Mr. GOVER. None that we would identify as a constitutional-style of government.

The CHAIRMAN. The definition of Native Hawaiian states that it includes only those who wish to participate, or to be an established Native Hawaiian governing body. What would be the Federal obligations to those who did not wish to participate?

Ms. AGTUCA. It is a voluntary association, Senator, and there would be no responsibility. If they chose not to identify with the Native Hawaiian governing body and people, then they have chosen to stay outside that process. I think they would still be eligible for some of the programs available to Native Hawaiians.

The CHAIRMAN. Well, maybe I am also asking the wrong panel. But, you know, with American Indians, we have a pretty good idea about all the Indians that are enrolled or, therefore, federally recognized as American Indians; what percent live on the tribal/Aboriginal hereditary lands, and what do not; which ones went to urban areas, or left, or so on.

Do you have any numbers on that?

Ms. AGTUCA. Well, under the Hawaiian Homes Commission Act, it set aside 200,000 acres for the specific use of Native Hawaiians that met the definition that I read to you. I believe that there are approximately 16,000 Native Hawaiians still awaiting leases to those lands.

The CHAIRMAN. I missed part of my colleague's testimony. Apparently, in his testimony, I am reminded by staff, that you did mention the numbers. Thank you.

Now it is my understanding from Senator Akaka and Inouye that there is no cost associated with this. But if we set up a commission, and that commission has to deal with obligations regarding Native American assets, trust lands, or whatever, is there not going to be a cost with that? I am not sure. It is going to be big, probably, is it not?

Mr. GOVER. I think eventually that there will be some cost. The cost of implementing this act is not very large. It is less than \$1 million, I would think, to staff up and help the Native Hawaiians prepare the roll and then prepare their government.

In the future, again, the cost is going to be directly related to the obligations that the Congress gives to the executive branch, with regard to its relationship with the Native Hawaiians. So those costs, in my judgment, should mount, in the future. But, certainly, there is no initial cost to this undertaking; not a substantial cost.

The CHAIRMAN. You do not foresee the time, 10 years from now, when we are going to have a problem with trust funds being lost

by the Bureau? I see Ron Allen back here. He understands what I am talking about.

Mr. GOVER. My guess, Mr. Chairman, is that the Native Hawaiians probably will prefer to look after their own property, much more than to have the Interior Department do so.

The CHAIRMAN. I would. Senator Inouye, I am sure you are much further ahead of me on the curve on this, but you might have some questions.

Senator INOUE. Thank you very much.

Mr. Secretary, section 7 of this bill, as you have noted, calls for the development of the role of Native Hawaiians, and also for the participation in the formation of governing documents, and the interim government. Now this has to be certified by the Secretary, that it has met certain requirements.

Mr. GOVER. Yes.

Senator INOUE. You have had a lot of experience with Native groups in the process of organizing or reorganizing. Why is it necessary for the Secretary to have a role to play in this?

Mr. GOVER. The Department and, therefore, the Secretary, do have, as you point out, considerable experience in helping to develop these rolls. There is a lot of historical research that has to be done. This is research that the Department of the Interior knows how to do.

The Secretary plays a neutral role in terms of issues like who is and is not an Indian; who does or does not meet the definition of Native Hawaiian under this act. I believe that is the need for the involvement of the Secretary in those matters.

In terms of constitutional government, of course, the Department, again, has considerable experience, in my view, in consultation, working with communities to develop constitutions that reflect the particular circumstances of native communities.

You know, of course, while the Bureau has been rightly criticized many times for the way the 1930's era vintage constitutions were developed, I believe that we, not the Bureau, but the Department would do a much better job now in helping the Native Hawaiians accomplish what they want, as opposed to what the Department wants.

Senator INOUE. If I may follow on that question, could Native Hawaiians form a government and adopt governing documents, without the Secretary's involvement, and thereafter petition the United States for formal recognition of this new Hawaiian government?

Mr. GOVER. Theoretically, Senator Inouye, they could do that. Theoretically, the Department or the executive branch, at least, has the authority to acknowledge them as eligible for a government-to-government relationship.

So the answer is yes, but we believe that is not the desirable course; that in a case like this, it is preferable that the Congress should be the one to make the decision whether to extend a formal government-to-government relationship to Native Hawaiian people.

Senator INOUE. Mr. Secretary, in your written presentation, you speak of 160 organization or groups of Native Americans seeking or petitioning the Government for recognition, and these petitions

are pending before you. Why do native peoples seek this government-to-government relationship? Why is it so important?

Mr. GOVER. I can think of several reasons. The first, and perhaps the least important, is eligibility for the Federal programs and services that are offered by the United States to Indian communities.

What I have found in my discussions with unrecognized groups of Indian people is that they are looking, more importantly, for a confirmation of who they are, that they were indigenous people; that there was a time when they existed as separate and independent communities. They want a confirmation of that. A relationship, as a government, with the United States serves as that confirmation.

Senator INOUE. If I may ask, Ms. Agtuca, Congress has, shall I say, recognized Native Hawaiians as Native Americans in many Federal statutes; about 160, I believe, now. If that is the case, why is it important to reestablish a formal government-to-government relationship with Native Hawaiians?

Ms. AGTUCA. Senator Inouye, I think that the main significance of the establishment of a formal government-to-government relationship will be that the Native Hawaiian people will formally have a seat at the table in which they can negotiate their interests. Also, it creates a greater enhanced self-control of their resources, as a people.

Senator INOUE. Is it the Department of Justice's position that the power vested in the Congress, under our Constitution, to deal with Indian tribes, includes the authority to deal with all native people?

Ms. AGTUCA. That is the position of the Department of Justice, Senator.

Senator INOUE. So it is not just limited to Indians living within the Continental United States?

Ms. AGTUCA. No; it is not. I think that the term "Indian" and "Indian tribes" and particularly, "Indian" is somewhat of a misnomer.

I think when we were in Hawaii, I spoke about how, when Columbus arrived in the new world, he operated on a mistaken belief, which I am sure you are aware of, that he was on a sea route to India. So that term has evolved with us through history.

But, fortunately, we have moved beyond that point, where we are clear where we are at. The Commerce clause now has been interpreted by the Supreme Court to mean Aboriginal occupants or original inhabitants, and the Congress also has recognized who has the authority, under the Commerce clause, to deal with those issues.

Senator INOUE. I thank you very much.

Ms. AGTUCA. In fact, I would like to read you a quote from our position in the Rice case. Particularly, it reads,

Thus, to the framers of the Constitution, an Indian tribe simply meant a distinct group of indigenous people, set apart by their common circumstances."

I think that that is what Native Hawaiian people constitute.

Senator INOUE. Thank you. May I join the chairman in thanking the secretary for his service to our people, and to the native people of the United States.

Mr. GOVER. Thank you.

The CHAIRMAN. Thank you. I will need to confer with my vice chairman for a moment.

If the panel would sit, please, Mahealani Kamau'u, executive director, Native Hawaiian Legal Corporation; Raynard Soon, chairman, Hawaiian Homelands; Clayton Hee, chairman, Office of Hawaiian Affairs; Tara Lulani McKenzie, president and chief executive officer, ALU LIKE; and Mililani Trask.

I might also ask Julie Kitka and Ron Allen to take seats around that table, too. I will tell you why. We have just been notified that at a quarter to 4:45, which is just 15 minutes from now, we are going to have five roll call votes in a row. When we have the roll call votes in a row, it is end to end. There is just no way to get back to the committee hearing.

This means that we have a choice. Either we all come back late tonight and finish this up, which most people do not want to do; or we are going to have to ask the people who can, to submit their written testimony, and skip the oral testimony. Either way, we probably will not, in the next 15 or 20 minutes, get through everybody that wants to testify.

But I leave that to you. If you have some testimony that you can submit in writing, and it does not have to be done orally, it will save us coming back this evening, because we are going to try and mark this bill up, today.

With that, let us go ahead. Let us start with Clayton Hee, first.

What we are going to do on the business section, if we can get through this, we will mark this bill up today. The other bills that we were supposed to mark-up today, we will move until next Wednesday.

Go ahead, Mr. Hee, and remember, we are going to run out of time, shortly.

STATEMENT OF CLAYTON HEE, CHAIRMAN, BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS

Mr. HEE. Aloha, Chairman Campbell, and members of the Senate Committee on Indian Affairs. My name is Clayton Hee. I am the chairman of the Board of Trustees for the Office of Hawaiian Affairs. I am here to testify on behalf of OHA's support for S. 2899.

I wish to start by thanking the committee and, in particular, Senator Inouye and the Hawaii congressional delegation, for their hard work over the years in securing programs which benefit Native Hawaiians, and for their continued leadership and support of the Native Hawaiian community.

Earlier this year, the U.S. Supreme Court ruled in *Rice v. Cayetano* that all registered voters who are able can cast ballots in the OHA elections, regardless of ancestry.

Another lawsuit has been filed, and as a result, the requirement that only Hawaiians may be candidates for OHA trustee has been eliminated.

These new plaintiffs and others have stated publicly that their goal is to dismantle the Office of Hawaiian Affairs, and other entitlements and programs enjoyed by Native Hawaiians.

Unfortunately, Mr. Chairman, there is a misconception that only Hawaiians benefit from these programs. We forget that nearly every one of us, non-Hawaiian and Hawaiian, is connected. Many

Hawaiian homesteaders today are married to non-Hawaiians, who reside with them on their land. Many Hawaiian children, attending the schools, as well as graduates of Hawaiian institutions, have one parent who is not Hawaiian.

When a Hawaiian has a successful business through ALU LIKE, a federally-funded program, the community at-large benefits through job opportunities and tax revenue enhancements.

While these programs have been helpful, we find ourselves today at a crossroads regarding Hawaiian issues. The day has arrived to find other means of moving our community, Hawaiians and non-Hawaiians, forward, in an effort to restore justice.

Today, 557 indigenous peoples have already attained Federal recognition. These native peoples have the constitutional right to special benefits in the areas of health, education, housing, social services, and economic development.

They have the authority to govern themselves and to elect their own leaders; to determine their own membership and to have their own land base.

The Navajo Nation has over 14 million acres of land in several states. The Alaska Natives have over 44 million acres of land. Yet, regardless of the fact that there are more Hawaiians than Navajos; more Hawaiians than Native Alaskans, or any other native people in the United States, sadly, Hawaii and her people have remained the "islands of neglect" by the Federal Government.

S. 2899 provides us with an opportunity, not only to protect current programs for Hawaiians, but to meaningfully address the injustice of the illegal overthrow of the kingdom of Hawaii, and the taking of 1.8 million acres of its lands, without the consent of or the compensation to the Hawaiian people.

In the Apology Resolution passed in 1993, the President and the Congress have committed themselves to the process of reconciliation. S. 2899 proposes a process of reconciliation and a formal recognition.

There are no other meaningful alternatives at present. This legislation will help Hawaiians protect our entitlements, and create a political entity to be recognized by the Federal Government.

I would like to share with this committee the thoughts of our last king.

The CHAIRMAN. I might tell you, Mr. Hee, and I do not want to press you, but I can tell you right now, the rest of our witnesses are not going to get to testify, if you take too much time. We do not have a choice. We just have to go. So what I would like you to do is summarize very shortly.

I will tell you right now that nobody on this committee justifies the taking of any Aboriginal land. The people that serve on this committee serve on it because we are on the side of Aboriginal people, and we want you to know that. Most of us are quite aware of what the Federal Government has done to native peoples, whether it is Hawaii or Alaska or on the Mainland.

So with that, I apologize. Please turn the rest of your testimony in, and we will go on to Mr. Soon.

Mr. HEE. Thank you, Mr. Chairman.

[Prepared statement of Mr. Hee appears in appendix.]

**STATEMENT OF RAYNARD SOON, CHAIRMAN, DEPARTMENT
OF HAWAIIAN HOMELANDS**

Mr. SOON. Chairman Nighthorse Campbell and Senator Inouye, I will be as brief as possible.

Why do we need this bill? I listened earlier, and it sounded as though we needed this bill because we needed to come to Congress to ask for funds and resources. That, in fact, is not the case. We need this bill because our Hawaiian programs and our Hawaiian rights are under attack.

They are under attack, based on the 14th amendment of the Constitution, and that is why we need this bill. It is not for us to come, asking for resources. It is rather to protect what we already have.

In *Rice v. Cayetano*, the Supreme Court has served notice that the trust relationship which we have always depended upon, and we have always assumed, may not, in fact, exist. The relationship may be justified and apparent to many, but unless it is clearly articulated in law, and until a government-to-government relationship is formed between Hawaiians and the United States, we will be vulnerable to continual constitutional attack. This bill provides that protection.

Senator we are not asking to be treated any differently than any other Native Americans. As Mr. Gover said, we are not Indians and we are not Alaska Natives, but we share a similar history, and we have been on these lands for thousands of years.

What we do not have is the full protection of the Federal Government, and the rights of self-determination enjoyed by tribes and Alaska Natives.

We do not ask to share in the resources of tribes or Alaska Natives. Whenever we have come to the Federal Government for assistance, we have done so with separate appropriations, as Senator Inouye has already stated. We will continue to do so. I see no reason for Hawaiians ever to seek to share in the Federal resources of Indian Country.

We are not looking to sever our American roots. We are Americans. We are only seeking to solidify those roots that go back centuries, to the time when we sailed the Pacific.

Hawaiians are a proud people, and Hawaii is our only homeland. Pass this legislation and allow us the dignity that comes with self-determination and self-government. Allow us to stand side by side with Indians and Alaska Natives, as the Native people of this country.

Thank you.

[Prepared statement of Mr. Soon appears in appendix.]

The CHAIRMAN. Thank you.

Now we will go back to Ms. Kamau'u.

**STATEMENT OF MAHEALANI KAMAU'U, EXECUTIVE DIRECTOR,
NATIVE HAWAIIAN LEGAL CORPORATION**

Ms. KAMAU'U. My name is Mahealani Kamau'u. Yes, Mr. Chairman, I am the executive director of the Native Hawaiian Legal Corporation. For the past 25 years, we have litigated most of the major native rights cases in Hawaii.

My testimony is submitted for the record. It is a chronicle of the efforts on the part of the Kanaka Maoli, the native people, to have

their own government, again. It has been a continuous struggle, since the 1893 overthrow, and I wanted to give this committee some sense of that.

I would just point out one event that occurred in 1987, which we call the "Year of the Hawaiian." There were 50,000 Kanaka Maoli gathered that the stadium to be in solidarity with one another, to show their affinity and their cultural bond.

There are many, many, many instances in our history, where we have gathered in large groups. In 1893, we also demonstrated, 25,000 of us, in affirmation of our desire to be organized again as a people.

I am here to support this bill. I just got passed a note by some of our Kanaka Maoli in the audience, saying to please express to this committee that there is very strong support in our committee for this legislation.

Thank you.

[Prepared statement of Ms. Kamau'u appears in appendix.]

The CHAIRMAN. Ms. McKenzie.

STATEMENT OF TARA LULANI MCKENZIE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ALU LIKE, INC.

Ms. MCKENZIE. Aloha, Chairman Nighthorse Campbell, and distinguished committee members. Mahalo nui loa for this opportunity. I am the president/CEO of ALU LIKE, a 501(c)(3) non-profit that provides services to Native Hawaiians. I am here on behalf of ALU LIKE, and also on behalf of myself, as a Kanaka Maoli.

I strongly support S. 2899. I believe the majority of our people also support the intent of the bill. A Hawaii poll was conducted by a respected research organization in Hawaii in April. Over 401 residents of Hawaiian ancestry were polled.

One of the questions in the poll asked,

Do you think Hawaiians should be recognized by Congress and the Federal Government as a distinct group, similar to the special recognition given to American Indian tribes?

Eighty-seven percent answered, yes.

Also, when a question was posed, asking if Hawaiians should break away from the United States and become an independent nation, 72 percent answered, no. So while Native Hawaiians feel wronged by the overthrow of the monarchy and other injustices, they do not want to separate from the United States.

This recent Supreme Court decision in *Rice v. Cayetano* underscores the need to resolve these long-standing issues facing Native Hawaiians, such as political status and self-determination.

I would just like to mention a few comments here about ALU LIKE. We have 17 programs in the areas of education, job training, social development, and business and economic development. In the last 25 years of our existence, we have provided services to well over 100,000 Native Hawaiians.

The majority of these programs are all federally funded. I believe that without this legislation, S. 2899, not only our ALU LIKE's programs, but many of the other organizations and institutions in Hawaii, that provide services to Native Hawaiians, will be in serious jeopardy.

So every time that we are able to put a Hawaiian on homelands; a Hawaiian family on homelands; every time we are able to help improve the health of our Hawaiians; every time we are able to improve and help a young teenage mother that is pregnant; all of these things; every time we are able to provide legal services for our native alliance, these things all bring our Native Hawaiians closer to becoming healthy, productive citizens.

So with that, I would like to say that I strongly, again, support this bill. I ask you Chairman Nighthorse Campbell and committee members to please support it, and I urge you to do all that you can to help this bill get passed.

Mahalo.

[Prepared statement of Ms. McKenzie appears in appendix.]

The CHAIRMAN. Thank you very much.

Ms. Trask.

STATEMENT OF MILILANI TRASK, FORMER TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS

Ms. TRASK. Thank you, Chairman.

What I would like to do is just address some of the questions that came up on the floor, because I think that they are very important.

The first is the concern that was expressed that perhaps passage of this measure will negatively impact funding for Indian or Alaska Native peoples.

Let me point out that in the last 40 years, the Congress has passed 150 measures impacting my peoples. There is not a single example of any dollar being taken out of Indian Country or Alaska Native Country for the Hawaiian peoples. All of our funding has been through separate appropriation.

If there was any chance that the passage of this measure was going to negatively impact American Indian funding, American Indians would be here, telling you that.

Instead, NCAI, National Congress of American Indians, the Alaska Federation of Natives, come to join with our people, to support passage of this measure. Indeed, this measure is even supported by Mr. Kevin Gover. We thank our Native American brothers and sisters for joining us in this effort.

There was some discussion with regards to the provisions of Section 4(b)(1), Senator Domenici's concerns. The point is that we are not under the BIA. We have never been under the BIA. We are not under the Indian Health Service. We have worked long and hard to create our own health programs.

If we are going to maintain the jurisdiction of BIA, and not invade their funding, and not invade their providence, then we need to have our own division. The U.S. Office of Native Hawaiian Affairs is important.

Last, on the issue of blood quantum, let me say that we do not favor the 1921 definition of blood quantum, because most of our people were not born in hospitals at that time. My grandfather was not born in a hospital. He does not have a birth certificate, saying that he is a Native Hawaiian.

My brothers and sisters have all different birth certificates. My brother is Hawaiian/Chinese. My sister is Hawaiian/Caucasian. My

eldest sister is part Hawaiian. This was the nature of how the territory recorded our birth.

This is why, in the bill, we are asking to bring in our own genealogical records. When it comes to certifying who we are, we are going to be working with the Secretary of Interior. There are the checks and balances.

When the Congress apologized to our people for the illegal overthrow in 1993, they did not just apologize to those of our people who had a birth certificate from the territory, saying that they were 50 percent blood, but to all of our people. As we correct this historic injustice, let us be inclusive, and let us allow the Native Hawaiian peoples to come forward.

We are all here to support the measure. We all want to see it pass, because we are anxious to proceed with reconciliation.

Thank you.

[Prepared statement of Ms. Trask appears in appendix.]

The CHAIRMAN. Thank you, Mililani. Listening to your own ancestry, and knowing my own, it sounds like you qualify to me. [Laughter.]

I thank this panel. I have got one more witness, Julie Kitka.

I would tell you, you probably know the Olympic games start tomorrow. One of the great all-time American swimmers in the Olympic games was Duke Kahanamoku, as I remember, in the late 1930's or 1940's. He was one of the Americans that put swimming on the international map. I have lost track of him, but I remember his name well.

We are joined by Senator Murkowski. I might tell you, Senator Murkowski, that we have been notified that we are going to have five votes in a row, any minute.

There were about five bills up for the business section. We are going to roll these to next week, because we are simply going to run out of time, unless you all want to come back around 6:30, and I do not.

The only one we were going to deal with, if there is no objection, was this particular bill.

Senator MURKOWSKI. Are you talking about the Hawaiian bill, Mr. Chairman?

The CHAIRMAN. Yes; and the rest of them, we will roll until next week.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. I am going to withhold on the Hawaiian bill. I have concerns that have not been satisfied, relative to the implications of what the Hawaiians really want out of this.

Recognizing the uniqueness of the status between the historical relationship of the Aboriginal Hawaiian people who would qualify, my understanding is there are about 200,000, potentially.

What would be the criteria for qualification? In other words, is it a blood consideration, based on a quarter, or something of that nature?

Then is their ultimate objective one of government-to-government, which certainly dictates a sovereign status; vis-a-vis, the other alternative, which we have had some experience in Alaska.

That experience is the recognition that our settlement was a land and cash settlement; 40 million acres of land and \$1 billion. It did not constitute a sovereignty.

There has been, over a period of time, the recognition of the tribal status, which I certainly support. But the implications of what is asked for here is something that, very frankly, I am not sure of.

I have the highest regard for the position of the two Senators from Hawaii, who are my good friends. I want to certainly follow the direction that they and their constituents are pursuing.

But I am just not sure, in my own mind, whether truly what they want is something similar to a reservation status; where in many cases, in my opinion at least, our American Indians are in a position of almost being wards of the Federal Government.

That may sound offensive, but nevertheless, I think it has an application, certainly with some of the reservation Indians, as opposed to the settlement which we negotiated, which provided an opportunity for our Alaska Natives to be part of the mainstream of our state, and compete actively with their own land, and a substantial cash settlement.

The implications of a sovereign status, to me, deserve an awful lot of reflection. I know Senator Domenici has indicated the concern over the burden, as well as the obligation that that status would mandate to the people that would be qualified.

So recognizing the intent of the chairman and the Ranking Member to proceed, I wanted to voice my concern, and hold my final position on it, until I have a little better understanding of just what the people of Hawaii want, and whether indeed there is another alternative.

I have yet to really pursue whether they would be more interested in a cash and land settlement than something that would be more along the lines of the structure of the reservation American Indian, who has a sovereign status, and the ability to deal, government-to-government. But some of the communication to the state is lost in that kind of a relationship.

So with that profound observation, I thank you for the opportunity to be here.

The CHAIRMAN. May I tell the Senator that some of the concerns that you have were brought up and dealt with in either testimony or in some of the questions when you were not here. But may I suggest that you maybe sit down with Senator Inouye, and he can relay this to you.

But at this point, you have no objection to marking this bill up today?

Senator MURKOWSKI. I will not object, but I am going to refrain from voting.

The CHAIRMAN. Sure, I understand.

All right, could you go ahead and proceed, Julie, and that was the bell to vote, as you know.

**STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA
FEDERATION OF NATIVES, ANCHORAGE, AK**

Ms. KITKA. I will be very quick.

Senator MURKOWSKI. I welcome Julie to enlighten me, a little bit, by the way. She may do that. [Laughter.]

Ms. KITKA. Actually, the one issue that I wanted to put into the record will help address that question that Senator Murkowski raised. Thank you, Mr. Chairman, for the invitation to testify; and thank you, Senator Inouye, as well.

I want to put on, first of all, for the record, the Alaska Federation of Natives represents 110,000 Alaska Native Indians, Eskimos, Aleuts, and we are in 100 percent in support of the Hawaiian people in their path toward self-determination. We feel very strongly that Federal recognition is an important tool for them to use on their path to self-determination.

Alaska Native people are on our own path to self-determination, and our Alaska Native Land claims, we view that as a living document that we fine tune as our needs and aspirations change, in fact, with Senator Stevens' and Senator Murkowski's help. Every Congress, since the Alaska Native Settlement Act was passed, we have come back to the Congress to fine tune it or add to that.

So, I guess, from our vantage point, for the Hawaiian situation, it is an evolving path on self-determination, and it will take some time as that goes forward.

I guess, you know, kind of just in summary, because of your timeframe, we are 100 percent supportive of that. We would like to help the Hawaiian people in whatever extent that is possible, and we will continue to assist them where it is appropriate, and when they request our help. So we very much support them and want to be inclusive.

We do not feel threatened at all by the Federal recognition, as far as any programs or funding that our people participate in, and we would like to see this bill get passed in this Congress.

Thank you.

The CHAIRMAN. I thank this panel, and apologize for the shortness of your timeframe. I am sure you understand the constraints. What we are going to do is roll three of the items until next week, and only deal with this one.

Senator INOUE. Mr. Chairman, I ask unanimous consent that the full statements of all the witnesses be made part of the record.

The CHAIRMAN. Without objection, the full statements will be made a part of the record.

If any other folks in the audience have something you would like included in the record, we will keep the record open for at least two weeks. In fact, in two weeks, we will probably almost be out of here. That is how close we are to finishing. With that, this is adjourned.

[Whereupon, at 4:50 p.m., the committee proceeded to further business.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

I would like to begin by expressing my deep appreciation to Chairman Campbell for holding this hearing on S. 2899, legislation to clarify the political relationship between Native Hawaiians and the United States. I would also like to thank vice chairman Inouye for all of his efforts to advance this legislation which is critical to the people of Hawaii.

This legislation is important to all people in Hawaii because it continues a process that provides for the resolution of a number of longstanding issues in Hawaii. In drafting this legislation, we were advised by five working groups representing the Native Hawaiian community, State officials, Federal officials, Native American community leaders and constitutional scholars, and Congressional members and caucuses. This legislation is the product of many, many discussions between working group members and the Native Hawaiian community.

Last month we held a series of hearings in Hawaii which provided an opportunity for the people of Hawaii to comment on the legislation. While there was some opposition to this legislation by individuals seeking full independence from the United States, we received overwhelming support for this legislation from Native Hawaiians and non-Native Hawaiians. I am pleased to see the discussion this legislation has generated in Hawaii, for it is time for the people of Hawaii to move forward in addressing Native Hawaiian issues.

I am pleased by the strong expression of support we received from the Hawaii State Legislature which passed a resolution during its last session advocating Federal recognition for Native Hawaiians. I am also appreciative of the support expressed by our native brothers and sisters in the American Indian and Alaska Native communities.

The U.S. Constitution vests the Congress with the authority to conduct relations with Indian tribes. When the State of Hawaii was admitted into the Union in 1959, the prevailing Federal policy was the termination of Federal responsibilities related to America's native people and the delegation of those responsibilities to the several States. Accordingly, the Hawaii Admissions Act provided that the State of Hawaii would assume a trust responsibility for lands that had been set aside under Federal law in 1921 in Hawaii for the benefit of Native Hawaiians, and further provided that the balance of other lands in Hawaii which were ceded back to the State of Hawaii by the United States were required to be held in a public trust for five purposes—one of which was the betterment of the conditions of Native Hawaiians.

While the Congress has enacted over 160 laws that are designed to address the conditions of Native Hawaiians, there has been no action taken to restore to the Native Hawaiian people their rights to self-determination or self-governance that were lost when the U.S. minister and U.S. Marines assisted in the overthrow of the Kingdom of Hawaii on January 17, 1893. The United States did act 100 years later to extend an apology to the Native Hawaiian people for the overthrow of their government, and this bill authorizes a process for the reorganization of a Native Hawaiian government and its recognition by the United States.

This is an issue of fundamental fairness. This legislation makes clear that the indigenous, native people of the United States, American Indians, Alaska Natives, and Native Hawaiians, have the same status under Federal law and policy—the right to self-determination and self-governance, and a federally recognized government-to-government relationship with the United States. The U.S. Supreme Court has consistently held that this political and legal relationship is what distinguishes the status of the indigenous, native people of America from groups that are defined by reference to their race or ethnicity.

In closing, I want to reiterate that this legislation is important not only to Native Hawaiians, but to all people in Hawaii. This measure provides the process to begin resolving many longstanding issues facing Hawaii's indigenous peoples and the State of Hawaii. In addressing these issues, we have begun a process of healing, a process of reconciliation not only with the United States but also within the State of Hawaii. The essence of Hawaii is characterized not by the beauty of its islands, but by the beauty of its people. The State of Hawaii has recognized, acknowledged and acted upon the need to preserve the culture, tradition, language and heritage of Hawaii's indigenous peoples. Now is the time for the United States and the Native Hawaiian people to strengthen their political relationship.

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

A bill to express the policy of the United States regarding Native Hawaiians, to provide for a process for the reorganization of the Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

Clearly, this bill is written to provide for recognition standards, in cooperation with the U.S. Department of Justice, for Native Hawaiians. Like the Pueblos in New Mexico, with each having a right to determine its own membership, I do not intend to question or interfere with the standards for recognition desired by Hawaiians.

I am very concerned, however, about the implications of establishing a "trust relationship" in the Department of the Interior, along with a specified "government-to-government" standing that is precisely the kind of relationship the Navajo Nation, the Apache Tribes, and the 19 Pueblos of New Mexico have with the U.S. Government.

While I may not have the precise numbers of how many Native Hawaiians would be recognized by S. 2899, as chairman of the Senate Budget Committee, I do not see how this could be accomplished without a severe impact on existing Indian tribes and Native Alaskans now receiving Federal support from a myriad of Federal agencies.

I have heard that Senator Inouye does not intend to take away money from Native Americans through the Bureau of Indian Affairs. By creating a new Interior Department Office for Native Hawaiian Affairs, this might appear to avoid tapping into BIA or other Federal funding.

Vice Chairman Inouye and I have sat together through too many Interior Appropriations meetings to conclude that adding Native Hawaiians to the mix would leave the other tribes harmless. From an overall budget viewpoint, other tribes would have to pay the price.

I note the Akaka-Inouye substitute bill clearly intends to add Native Hawaiians in huge numbers to our Native American funding programs government-wide.

Subsection 4(b)(1) of the substitute bill states, "The United States Office for Native Hawaiian Affairs shall effectuate and coordinate the *special trust relationship* between the United States through the Secretary (of Interior), and *with all other Federal agencies*."

There are no provisions stating that currently recognized tribes will be held harmless, in their current and future Federal funding when this new office "effectuates and coordinates" the *trust responsibility* with Native Hawaiians.

The implications of adding about 200,000 Native Hawaiians to our Federal Government's programs for American Indians and Native Alaskans are quite serious. This is tantamount to adding a second Navajo Nation. The Navajo Tribe is our nation's largest Indian tribe and has a population of about 200,000.

The 1990 Census reported a Native American population of about 2 million, with about 1.4 million living on Indian reservations. The overwhelming portion of Federal dollars are targeted to reservation Indians.

Our most recent estimates show that the Federal Government committed \$8.5 billion for American Indians in fiscal year 2000.

Most of this spending is in the U.S. Departments of Health and Human Services—\$2.744 billion with the Indian Health Service as the largest component at \$2.2 billion.

The Interior Department also spends about \$2.2 billion through the Bureau of Indian Affairs [BIA].

The BIA and IHS account for about one-half of all Federal spending on Indian programs.

The U.S. Department of Education had \$1.575 billion for Indian programs in fiscal year 2000. The Department of Labor spent \$68.8 million; HUD committed \$693 million for housing (\$620 million) and community development activities on Indian reservations.

Transportation spent \$250 million for Indian reservation roads and bridges.

These programs (IHS, BIA, DOE, DOL, HUD, and DOT) account for the vast majority of Federal commitments to Indian tribes at about \$7.5 billion in FY2000.

The balance of about \$1 billion for FY2000 was committed to Indian tribes through DOD, EPA, SBA, EDA, the Army Corps of Engineers, the Smithsonian Institution, and others.

Obviously, adding tens of thousands of Hawaiians to the Federal trust responsibility with a mandate to the new office to "effectuate and coordinate" with "all other Federal agencies" would have a definite impact on our ability to meet existing trust responsibilities.

We anticipate that total Federal Indian spending will slightly exceed \$9 billion. If we allow Native Hawaiians to become eligible for an estimated 8 to 14 percent of this money, existing tribal programs will suffer significantly. At a low of 8 percent, we stand to see current Indian Federal programs reduced by \$720 million. At 14 percent, this figure becomes \$1.2 billion lost to current tribal commitments in fiscal year 2001.

PREPARED STATEMENT OF W. RON ALLEN, FIRST VICE PRESIDENT, NATIONAL
CONGRESS OF AMERICAN INDIANS

Good afternoon Chairman Campbell and members of the committee. My name is Ron Allen, and I am first vice president of the National Congress of American Indians [NCAI] and president of the Jamestown S'Klallam Tribe of Washington State.

NCAI is the oldest and largest American Indian organization in the United States, and since 1944, we remain dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency.

On behalf of NCAI, thank you for the second opportunity to testify in support of S. 2899. As NCAI President Susan Masten testified at the August 30 joint hearing of the Senate Committee on Indian Affairs and the House Resources hearing in Oahu, HI, NCAI strongly supports Federal recognition of Native Hawaiian sovereignty and the creation of a process that will lead to self-determination and economic self-sufficiency for Native Hawaiian people.

Over the last year, the member tribes of NCAI have unanimously approved two resolutions that support the sovereign rights of Native Hawaiians and that call for Federal recognition of a Native Hawaiian government.

Like all of our Nation's indigenous peoples, Native Hawaiians lived on the land and governed their own affairs for thousands of years before the first European contact. Even after contact, nations from all over the world recognized the government of the Native Hawaiians—the Kingdom of Hawai'i—as a sovereign political entity and a valued partner in commerce and trade through formal documents such as international treaties.

There have been ongoing efforts for many years to formally organize the Native Hawaiian community into an entity that would be recognized as having a government-to-government relationship with the United States. There are many different formulations and concepts that have been debated in the Islands.

I understand that there are many different points of view regarding the potential relationship between the Native Hawaiians and the United States, and I urge the committees to pay attention to all perspectives of the Native Hawaiian people concerning their future.

There has been recognition by the Federal Government of the wrongdoing on its part in relations with the Native Hawaiian people. The obvious instance of this is Public Law 103-150, or the Apology Resolution. This bill enumerates the various wrongdoings of the United States Government in relation to the Native Hawaiians and the Kingdom of Hawai'i, including describing the illegal overthrow as a "substantial wrong" and as "an act of war." This law alone entitles the Native Hawaiian

people to compensation and reconciliation, and calls for the Congress and the President to support those efforts.

In addition to the need of reconciliation, there is another stimulus to the introduction of S. 2988: a recent United States Supreme Court decision in *Rice v. Cayetano*, which determined that the election of trustees of the Office of Hawaiian Affairs [OHA] solely by Native Hawaiians violated the 14th amendment of the U.S. Constitution. This decision allowed non-natives to run for office positions in the OHA, and thus put the interests of the Native people in jeopardy.

In part to remedy the situation created by *Rice v. Cayetano*, and in part to fulfill the government's trust responsibilities, S. 2899 creates a system by which Native Hawaiian people may organize and create their own governing entity that the United States will recognize.

It is clear that Native Hawaiians must support any process designed for this purpose in order for it to be successful. NCAI will support whatever path the Native Hawaiian people choose to assure their self-determination, and will assist by sharing our own experiences where they are relevant.

Before I conclude my testimony, I did want to briefly address two issues surrounding the bill that have recently been brought to my attention. First, some have questioned the possible effect that Federal recognition of a Native Hawaiian government could have on Indian programs funded through the BIA. NCAI is aware that Vice Chairman Inouye, when he assumed the chairmanship of the Senate Committee on Indian Affairs in 1987, pledged that Native Hawaiian programs would never be funded at the expense of Indian programs. In the ensuing 13 years, all Native Hawaiian program funds have been appropriated separately. I am pleased to note that, under the authority of S. 2899, any appropriations would be secured independent of the BIA or other Indian programs.

Second, I understand that some have raised the specter of gaming with respect to the bill. There are no Indian tribes or Indian lands in Hawaii—and the Native Hawaiian government established under S. 2899 would not be an Indian tribe as currently defined. Furthermore, the State of Hawaii is one of two States that criminally prohibits all forms of gaming, so this bill would not secure the right to gaming by Native Hawaiians.

Mr. Chairman, as you well know, the survival of Native cultures, homelands, and lifeways depends on the ability to control our affairs and govern ourselves. The first and most important step toward sovereignty is the recognition of the right to self-government.

As first vice president of NCAI, an national organization whose primary goal is the advancement of American Indian, Alaska Native—and Native Hawaiian—sovereignty, I urge you to support S. 2899 and to enact it this year.

PREPARED STATEMENT OF RAYNARD C. SOON, CHAIRMAN, HAWAIIAN HOMES
COMMISSION, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

Chairman Ben Nighthorse Campbell, Vice Chairman Daniel K. Inouye, Hon. Daniel K. Akaka, members of the Senate Committee on Indian Affairs, aloha, aloha kakou.

I am Ray Soon, chairman of the Hawaiian Homes Commission and I come before you with the unanimous support of the members of the Commission. With me this afternoon is Tony Sang, president of the State Council of Hawaiian Homes Associations, representing nearly 30,000 Hawaiians living on the homesteads.

We come before you to respectfully ask for your immediate passage and for your continual support of S. 2899.

S. 2899 represents the acknowledgement of the United States of America that Hawaiians are among the indigenous people of this land and as such enjoy certain rights of self-determination. The bill goes further to allow for a process to establish a sovereign Hawaiian nation with the promise of a government-to-government relationship with the United States at the end of that long journey.

We believe this bill formalizes a relationship that already exists between Native Hawaiians and the United States. Time and again, Congress has acknowledged this trust relationship with Native Hawaiians through the enactment of the Hawaiian Homes Commission Act, 1920, as amended [HHCA], and dozens of other statutes relating to Native Hawaiians. This bill simply makes clear the United States' recognition of this special relationship and provides an opportunity for Native Hawaiians to achieve self-determination and control over its resources.

The arrival of Captain Cook in 1778 to the Hawaiian islands found an established agrarian society with its own language, religion, culture, and over 300,000 people in number. By Cook's arrival, Hawaiians had been sailing the Pacific and had set-

tled the islands for nearly 1,700 years. By 1920, after only 150 years of European and American influence, Hawaiians were devastated. We had lost over 90-percent of our population to foreign diseases and 99 percent of our land to foreign concepts of registration and ownership. Our language, religion, and most of our customs were closeted as pagan practices by a dominant foreign culture. Sound familiar? This is the unfortunate story of most indigenous people.

The Hawaiian Homes Commission is a product of the United States Government. It was created by Congress to "rehabilitate" a dying Hawaiian people by returning them to the land. For Hawaiians, the land is our brother. It is not a commodity to be bought and sold; it is family. And by 1920, we had lost touch with the land. The act was an attempt to redress a recent history of land distribution laws that left the overwhelming majority of Hawaiians without title to the very land they lived on and farmed. Homesteading became the Commission's mission.

Unfortunately, the major part of this program's 80-year history has not been one of great success. For many years, the lack of public funds and access to private capital severely limited the program's progress. The recent chapters of this story, however, illustrate a turnabout and significant success. In the last 10 years, the Commission has matched the production of homesteads that was achieved in the first 70 years of the program. The reasons for the success are many and the good news is that higher levels of production are still ahead.

This story is not unique to Hawaiian Homes. It is evident in the Hawaiian communities in health care, in education, in the arts, in the resurrection of our language, and on and on. The struggle is difficult and we fail as often as we succeed. And make no mistake, Hawaiians continue to occupy the lowest socio-economic strata in many aspects of our State's society. It is the inevitable story of a people whose culture has been devastated. But programs to help Hawaiians help themselves are beginning to take hold.

So, one might ask, "why do we need this bill?" We need this bill because Hawaiian rights as a native people are under attack, and, because the resources and services directed to our native people, and the many positive results achieved, are under attack. Since statehood, we have assumed that Hawaiians, as indigenous people, enjoyed a special relationship with the United States. This relationship has been stated, in varying forms, in many laws passed by this body and signed by the President.

However, earlier this year, the Supreme Court, in *Rice v. Cayetano*, served notice that this relationship, which we have assumed and upon which we have depended, may not, in fact, exist in the eyes of the law. The relationship may be justified, it may be apparent to many, but it does not necessarily stand the test required by the 14th amendment to the U.S. Constitution. That test is yet to be taken, but we anticipate that such a challenge is only a matter of time.

We need this bill to clearly acknowledge the United States' recognition that Hawaiians are indigenous people with rights of self-determination and to provide Hawaiians a process to establish a political relationship with the United States that meets the requirements of the U.S. Constitution.

It would be cruelly ironic if programs such as ours, created by the United States, were to be declared racially biased and therefore unconstitutional, just when they are beginning to deliver on the promises made by Congress 80 years ago.

This is a simple request and not one unfamiliar to Congress.

We are not asking to be treated any differently than our Native Americans brothers. We are not Indians, nor are we Alaskan natives. But we share a similar history and we have been on these lands for thousands of years. In the case of Hawaiian home lands, our people sit-on trust lands, like other Native Americans; we are also restrained by its title; we have distinct Hawaiian communities within which our language, our cultural practices, our subsistence traditions have been maintained and are beginning to flourish; we have a governing body made up of Native Hawaiians over which the Federal Government retains an oversight responsibility. What we do not have is the full protection of the Federal Government and rights of self-determination enjoyed by tribes and Alaskan natives.

We ask for the same opportunities to have our people recognized by the United States of America and the same opportunities to create a governmental form with which the United States can relate.

We do not ask to share in the resources of tribes or of Alaskan natives. We only ask for the same opportunities to care for our people and for the same opportunities to seek our own resources. The United States is a great and wealthy Nation. In even the most difficult of times, this Nation has shared its wealth with foreign nations offshore. Surely this Nation can find resources to help its original people without giving to one while taking from another. There should never be a reason for Hawaiians to seek to share in the Federal resources of Indian Country.

Although I have brothers back home who seek independence on the international level, the majority of us are not involved in that effort. We are proud to be Americans. We are not looking to sever our American roots. We want to solidify those roots that go back centuries to a time When Hawaiians sailed the great winds of the Pacific. Please do not allow those that would, to remove the last vestiges of our heritage.

Hawaiians are a proud people. Hawaii is our only homeland. Pass this legislation. Allow us the dignity that comes with self-determination and self-government. Allow us to stand side-by-side with our Indian and Alaskan brothers and sisters as the native people of this land.

Mahalo, mahalo a nui loa.

**Statement
of
Kevin Gover
Assistant Secretary - Indian Affairs
Department of the Interior
Before the
Committee on Indian Affairs
United States Senate
Hearing on S. 2899**

September 13, 2000

Introduction

Good morning, Mr. Chairman and members of both Committees. It is my pleasure to be here today to present the Department's views on S. 2899 and the House companion bill, H.R. 4904.

Mr. Chairman, the Administration supports the purposes of S. 2899 and H.R. 4904 that are before both Committees. The Department believes that the Bills appropriately affirm and acknowledge the political relationship between the United States and Native Hawaiians. Our recommended change is set out below, along with our general comments.

Background

The Native Hawaiian people are the aboriginal, indigenous, native people of Hawaii. They have lived in Hawai'i for over 1,000 years, and their culture was based on a well developed system of agriculture and aquaculture. Native Hawaiians made remarkable artistic, cultural, and scientific advances, including amazing feats of navigation, prior to the first contact with Europeans in 1778. In 1810, King Kamehameha I established the unified Kingdom of Hawai'i to govern the Native Hawaiian people. Over the next 60 years, the United States entered into several treaties of peace, friendship and commerce with the Kingdom of Hawai'i, recognizing its status as an independent sovereign.

During the 1880s, western influence over the Kingdom of Hawai'i increased, and in 1893, as Queen Lili'uokalani sought to restore the full authority of the Native Hawaiian monarchy, the American and European plantation owners acting in concert with the U.S. Minister and military forces overthrew the Kingdom. The Provisional Republic of Hawaii, formed by the plantation owners, then seized the Crown and public lands of the Kingdom of Hawai'i, including one-third of Hawai'i that was impressed with a trust for the Native Hawaiian common people. Although President Cleveland initially opposed the overthrow, President McKinley supported the call of the Republic of Hawai'i for annexation. Congress annexed Hawai'i in 1898, without the consent of the Native Hawaiian people. As a result of the overthrow, laws suppressing Hawaiian culture and language, and displacement from the land, the Native Hawaiian people suffered mortality, disease, economic deprivation, social distress, and population decline.

The Reconciliation Process under Public Law 103-150

Against this background in 1993, Congress enacted Public Law 103-150, the Native Hawaiian Apology Resolution, which acknowledged the role of United States' officers in the overthrow of the Kingdom of Hawai'i and called on the Executive Branch to undertake special efforts to promote reconciliation between the United States and the Native Hawaiian people. The passage of the Apology Resolution was the first step in this reconciliation process.

In March of 1999, Senator Daniel K. Akaka asked Secretary of the Interior Bruce Babbitt and Attorney General Janet Reno to designate officials to represent their respective Departments in efforts of reconciliation between the Federal Government and Native Hawaiians. Secretary Babbitt designated John Berry, Assistant Secretary, Policy Management and Budget, for the Department of the Interior, and Attorney General Reno designated Mark Van Norman, Director, Office of Tribal Justice, for the Department of Justice, to take the next steps in the reconciliation process.

Informal meetings were held on O'ahu in August 1999, and public consultations with Mr. Berry and Mr. Van Norman commenced in December 1999, when meetings with the Native Hawaiian community were held on Kaua'i, Maui, Moloka'i, and Lāna'i, and in Hilo, Waimea and Kona on Hawai'i. These public consultations ended in two days of formal hearings held on O'ahu. Over forty hours of public testimony was received. During their visit to Hawai'i, Mr. Berry and Mr. Van Norman also visited Native Hawaiian homestead communities, nā mahi'ai lo'i (taro farms), Hawaiian language immersion schools, and Native Hawaiian fish ponds in the process of being restored, and observed numerous programs designed to benefit Native Hawaiians. Throughout the meetings, Native Hawaiians repeatedly expressed the desire for increased self-determination concerning Native Hawaiian affairs, resources, and lands. As a result of the process, the Departments recently issued a report outlining recommendations with respect to the continuation of the reconciliation process, including federal recognition, self-determination, and self-governance, to help the Native Hawaiians provide a better future for their members and community. The Report will be finalized after the public has had an opportunity to comment.

Native Hawaiians also have called upon the United States to assist them in improving economic opportunities, educational attainment, health status, and housing. Specifically, the Native Hawaiian people requested that the Administration support and Congress enact S. 225, the Native Hawaiian Housing Act and reauthorize the Native Hawaiian Education Act and the Native Hawaiian Health Care Act.

Within the framework of Federal law, there are established precedents to accommodate the Native Hawaiian people's desire for increased self-determination. American Indian tribes and Alaska Native villages exercise self-determination over native institutions, such as schools and health care institutions; over native affairs, such as language and cultural preservation; and over native lands and resources. They do so through recognized tribal governments and federally chartered native corporations in the context of the Federal policy of recognizing the unique government-to-government and special relationships that exist between the United States and its native peoples.

The Territory of Hawai'i recognized that the conditions of the Native Hawaiian people continued to deteriorate, and members of the territorial legislature proposed that Congress enact a measure to rehabilitate the Native Hawaiian people by returning them to the land and promoting agriculture under Federal protections. In congressional hearings, the Secretary of the Interior acknowledged that the Native Hawaiian people were suffering a decline and that the Federal Government had a special responsibility to promote their welfare. In 1920, relying in part on the precedent of the General Allotment Act, which provided individual lands for American Indians under Federal protections, Congress enacted the Hawaiian Homes Commission Act to rehabilitate the Native Hawaiian people by setting aside for Native Hawaiian settlement and agriculture use 200,000 acres of the "ceded" lands, i.e., the former Crown and public lands of the Kingdom of Hawai'i. Later, in the State Admissions Act, Congress set aside the balance of the ceded lands, not reserved for Federal purposes, in a public trust to be held and administered by the State for five purposes, including the betterment of the Native Hawaiians.

The Hawaiian Homeland settlements throughout the Hawaiian Islands assisted the Native Hawaiian people in maintaining their historic ties to the land and distinctly native settlements. In addition, through Native Hawaiian social and political institutions, such as the Native Hawaiian civic clubs, the Kamehameha schools, and the Lili'uokalani Hawaiian Children's Foundation, the Native Hawaiian community has maintained its distinct character as an aboriginal, native people. In recent years, overcoming a legacy of cultural suppression, Native Hawaiians have revitalized their language, culture, traditions, and aspiration for self-determination through Native Hawaiian language immersion programs, cultural education programs, restoration of traditional agriculture and aquaculture, creation of new social institutions and quasi-governmental service providers and the Native Hawaiian sovereignty movement, among other things. Native Hawaiians have made clear their desire for self-determination, i.e., increased Native Hawaiian control of Native Hawaiian affairs, resources, and lands.

Nevertheless, the Native Hawaiian people, as a native community, continue to suffer from economic deprivation, low educational attainment, poor health status, substandard housing, and social dislocation. In response, since the early 1970s, Congress has enacted statutes that recognize these problems among Native Hawaiians and establish programs to address them. For example, the Native Hawaiian Education Act refers to studies that show that Native Hawaiian students face educational risk factors start before birth, stemming from substandard prenatal care and high rates of teen births, and continue to score below national averages at all grade levels (20 U.S.C. sec. 7902). This Act provides funding to Native Hawaiian schools and education councils to promote special education programs for Native Hawaiian students. The Native Hawaiian Health Care Act finds that "the unmet health needs of the Native Hawaiian people are severe and the health status of Native Hawaiians continues to be far below that of the general population of the United States." 42 U.S.C. sec. 11701. This Act provides funding to Native Hawaiian health care providers to provide preventative health care to the Native Hawaiian community. The Native Hawaiian Housing Bill, S. 225, finds that Native Hawaiians face the most severe housing shortage of any group in the Nation, and if enacted, would provide low income housing to Native Hawaiians on Hawaiian Home lands.

American Indian and Alaska Native peoples value self-determination as an avenue for addressing their communities, economic, educational, health, and social needs. Indeed, American Indian and Alaska Native peoples view the Federal Indian self-determination policy as recognizing their legitimate aspiration to transmit their distinct native values, traditions, beliefs, and aboriginal lands to their future generations.

In furtherance of reconciliation process, the Native Hawaiian people seek to re-organize a native governing body. A Native Hawaiian governing body, organized against the background of established precedent, would serve as a representative voice for the Native Hawaiian people, focus community goals, provide governmental services to improve community welfare, and recognize the legitimate aspiration of the Native Hawaiian people to transmit their values, traditions, and beliefs to their future generations.

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties and under Federal common law, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

Traditionally, most aspects of the trust responsibility were delegated by Congress to the Department of the Interior and the Department of Justice, the latter of which has litigated many court cases on behalf of Indian tribes and individuals. As Federal programs for Indians have proliferated in modern times, many other Federal agencies have become involved in Indian affairs and they, too, must comply with the duties imposed by the trust relationship.

In the Department of the Interior, the Bureau of Indian Affairs (BIA) is the principal bureau within the Federal Government responsible for the administration of Federal programs for Federally recognized Indian tribes, and for promoting Indian self-determination. In addition, the BIA, like all Federal agencies, has a trust responsibility emanating from treaties, statutes, judicial decisions and agreements with tribal governments. The mission of the BIA is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and properly manage the trust assets of Indian tribes and Alaska Natives. The BIA provides resources and delivers services to support tribal government operations similar to those provided by state, city, and municipal governments. These services include, but are not limited to: law enforcement, social services, education, housing improvements, loan opportunities for Indian businesses, and leasing of land.

The BIA currently provides Federal services to approximately 1.2 million American Indians and Alaska Natives who are members of more than 550 Federally recognized Indian tribes in the 48 contiguous States and in Alaska. The BIA also has a trust responsibility for more than 43 million

acres of tribally-owned land and more than 10 million acres of individually-owned land. The BIA is headed by the Assistant Secretary - Indian Affairs, who is responsible for BIA policy.

Trust Responsibility

The courts consistently have upheld exercises of congressional power over Indian affairs, as specifically provided under the Indian Commerce Clause. U.S. Constitution, Article I, Section 8, clause 3. Pursuant to that authority, the Congress has enacted many statutes for the benefit of Native Hawaiians.

The concept of the Federal Indian trust responsibility was evident in the Trade and Intercourse Acts and other late 18th and early 19th-century Federal laws protecting Indian land transactions and regulating trade with the tribes. The doctrine was first announced in Chief Justice Marshall's opinion in Cherokee Nation v. Georgia (1831). The Cherokee Nation had filed suit in the United States Supreme Court to enjoin the state of Georgia from enforcing state laws on lands guaranteed to the tribe by treaties. The Court concluded that the tribe was neither a state nor a foreign nation under the Constitution and therefore was not entitled to bring the suit initially in the Supreme Court. Chief Justice Marshall, however, concluded that Indian tribes "may, more correctly, perhaps, be denominated domestic dependent nations" and that "[t]heir relation to the United States resembles that of a ward to his guardian." The courts consistently have upheld exercises of congressional power over Indian affairs, often relying on the trust relationship.

The Supreme Court's subsequent decision in Worcester v. Georgia (1832) reaffirmed the status of Indian tribes as self-governing entities. Chief Justice Marshall construed the treaties and the Indian Trade and Intercourse Acts as protecting the tribes' status as distinct political communities possessing self-government authority within their boundaries. Thus, Georgia state law could not be applied on Cherokee lands because, as a matter of Federal law, the United States had recognized tribal self-governing powers by entering into a treaty with the Cherokees. In spite of its governmental status, however, the Cherokee Nation was placed expressly by the treaties "under the protection of the United States."

Under the special relationship, Indian tribes receive some benefits not available to other citizens. For example, in the 1974 Morton v. Mancari decision, the Supreme Court upheld a BIA Indian hiring preference because, like special health and education benefits flowing from the trust relationship, the preference is not based on race; rather, Federal programs dealing with Indians derive from the government-to government relationship between the United States and Indian tribes. The same reasoning applies to off-reservation Indian hunting and fishing rights; they trace to treaties with specific tribal governments.

Federal Recognition

The rights, duties and obligations that make up the trust relationship as exercised through the Secretary of the Interior exist only between the United States and those Indian tribes "recognized" by the United States. Once Federal recognition is found to exist, it results in the establishment of a government-to-government relationship with the tribe.

An Indian group is a federally recognized tribe if: (1) Congress or the executive created a reservation for the group either by treaty, by statutorily expressed agreement, or by executive order or other valid administrative action; and (2) the United States has some continuing political relationship with the group, such as providing services through the BIA. Accordingly, Indian groups situated on Federally maintained reservations are considered tribes under virtually every statute that refers to Indian tribes. In addition, tribes have been recognized by the United States based on the existence of treaty relations or other continuous dealings with the Federal Government, despite the lack of a reservation.

In 1978, in order to resolve doubts about the status of those tribes lacking Federal recognition, the Department of the Interior issued regulations entitled "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," now codified at 25 C.F.R. 83. The regulations "establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist."

Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment also means that the tribe is entitled to the immunities and privileges available to other Federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment subjects the Indian tribe to the same authority of Congress and the United States to which other Federally acknowledged tribes are subjected.⁴ 25 CFR 83.2.

Under the procedures, groups not recognized as tribes by the Federal Government may apply for Federal acknowledgment. Tribes, bands, pueblos or communities already acknowledged as such and receiving services from the Bureau of Indian Affairs were not required to seek acknowledgment anew. 25 CFR 83.3 (a), (b). To assist groups in determining whether they were required to apply, the procedures provided for the publication within 90 days of a list of "all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs." 25 CFR 83.6(b). This list is to be updated annually. Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Department Comments on S. 2899 and H.R. 4904

The Department has recommended a reconciliation process that would result in an official confirmation of a political, government-to-government relationship between Native Hawaiians and the Federal Government, similar to the relationship enjoyed by other native people in the United States. The Senate and House Bills would enable the Native Hawaiians to establish a representative governing body through a process that has precedent in the federal recognition of Indian tribes.

The Department has recommended the establishment of an office under the Assistant Secretary of Indian Affairs to address Native Hawaiian issues. The Bills, however, would establish a new Interior Office of Special Trustee for Native Hawaiian Affairs.

The Department has recommended the creation of a Native Hawaiian Advisory Commission to consult with Interior bureaus that manage land in Hawaii affecting Native Hawaiians. The Bills would also establish a Native Hawaiian Interagency Task Force for the government-wide coordination of federal policies affecting Native Hawaiians, including consultations with the Native Hawaiian governing body.

We have carefully reviewed the definition of "Native Hawaiians" in the Bills and consulted with the Department of Justice. We concur in the recommendations made by the Department of Justice with respect to that definition.

Conclusion

The Department of the Interior generally supports the legislation and is committed to working with the Native Hawaiian people and the Congress, upon enactment of this legislation, to address successfully the steps to Federal recognition, self-governance, and self-determination of the Native Hawaiian people. There are a number of prospective matters that the Federal Government may have to work out with the Native Hawaiian governing body and the State of Hawaii, through future legislation. These challenges may include:

- potential land claims that Native Hawaiians may assert against the United States, the State of Hawaii, or private landowners;
- the nature and extent of the rights, obligations and benefits in extending Federal recognition to Native Hawaiians under the Native American Indian statutes;
- the Federal Government's trust and fiduciary responsibilities for any federal lands that may be transferred to the Native Hawaiian community; and
- the relative responsibilities of Native Hawaiian community and the State of Hawaii and its local governments in providing schools, law enforcement, and other public services.

With the permission of the Committees, the Department intends to supplement this testimony with additional views on S. 2899 and H.R. 4904 before the record is closed. This concludes my prepared statement. I will be happy to answer any questions the Committee members may have.

**Testimony of Jacqueline Agtuca, Acting Director,
Office of Tribal Justice, U.S. Department of Justice
On S. 2899 – A Bill to Express the Policy of the United States
Regarding its Relationship with Native Hawaiians**

Chairman Campbell, Vice Chairman Inouye, and members of the Committee. I am the Acting Director of the Office of Tribal Justice in the United States Department of Justice. Thank you for the opportunity to present views on S. 2899.

At the outset, I should explain that the Office of Tribal Justice coordinates Department policy on its dealings with American Indians, Alaska Natives, and Native Hawaiians. Department of Justice policy recognizes the principle of government-to-government relations in its work with tribal governments. See Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes, at 1 (June 1, 1995); <http://www.usdoj.gov/otj/sovtrb.htm>. Pursuant to this policy, the Office of Tribal Justice has been integrally involved in the Reconciliation Process between the United States and the Native Hawaiian people pursuant to Public Law 103-150 (S.J. Res. 19), 107 Stat. 1510 (1993), the Native Hawaiian Apology Resolution. S. 2899 would provide the Native Hawaiian people with an opportunity to reorganize a representative, self-governing body to promote Native Hawaiian interests.

I will begin with a brief background of the relevant history of United States-Native Hawaiian relations and a discussion of the Reconciliation Process under Public Law 103-150 before turning to some of our specific comments on the bill.

I. Background of Native Hawaiian - United States Relations

The Native Hawaiian people are the indigenous people of Hawaii. Historically, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistence social system based on communal land tenure. The Native Hawaiians have a highly developed and distinctive language, culture, and religion. The first encounter between Native Hawaiians and Europeans occurred when Captain James Cook sailed into Hawaiian waters in 1778. At that time, even though indigenous Hawaiians were all one people, the eight islands were governed by four independent Hawaiian chiefdoms.

In 1810, King Kamehameha I united the islands into the Kingdom of Hawaii. Between 1826 and 1893, the United States recognized the Kingdom as a sovereign nation and entered into several treaties with it. During that same period, Americans gained control of most of Hawaii's commerce and began to dominate the Kingdom's political affairs. Resulting social and economic changes had a "devastating" effect on the Native Hawaiian population and on their "health and well-being." Public Law 103-150, 107 Stat. 1510, 1512.

In 1893, Queen Lili'uokalani sought to re-establish Native Hawaiian control over the Kingdom's governmental affairs through constitutional reform. Fearing a loss of power, a group representing American commercial interests overthrew the Kingdom with the unauthorized aid of the United States Minister to Hawaii, who caused an armed U.S. naval force to invade Hawaii. Under this threat of military force, Queen Lili'uokalani abdicated her throne. A provisional government was established, which immediately sought Hawaii's annexation by the United States. President Cleveland refused to recognize the provisional government and called for restoration of the monarchy. However, Congress later enacted a joint resolution annexing Hawaii, which President McKinley signed into law in 1898. As part of annexation, the provisional government, without compensation to the Native Hawaiian people, ceded 1.8 million acres of the Kingdom's former crown, government, and public lands to the United States (the "ceded lands").

After annexation, the conditions of Native Hawaiians continued to deteriorate, and in 1920, territorial representatives sought assistance for the Native Hawaiian people from Congress. Explaining that the Native Hawaiian people had been "frozen out of their lands and driven into the cities," and that the "Hawaiian people are dying," the representatives recommended allotting land to the Native Hawaiians so that they could reestablish their traditional agricultural way of life. H.R. Rep. 839, 66th Cong., 2d Sess. 4 (1920). Recognizing the unique relationship between the United States and the Native Hawaiian people, the Secretary of the Interior joined in the recommendation, stating that Native Hawaiians are "our wards . . . for whom in a sense we are trustees," that they were "falling off rapidly in numbers," and that "many of them are in poverty." *Id.* Additionally, Congress found constitutional precedent for the HHCA in part in previous enactments that allotted individual lands to American Indians. The recommendations led to the enactment of the Hawaiian Homes Commission Act ("HHCA"), Pub. L. No. 67-34, 42 Stat. 108 (July 9, 1921), which designated 200,000 acres of lands as homelands for "Native Hawaiians" of ½ blood or more.

In 1959, Hawaii was admitted as a State. In the Hawaii Admissions Act, Pub. L. No. 86-3, 73 Stat. 4 (1959), Congress required the new State of Hawaii to adopt the HHCA as part of its constitution and transferred federal authority over administration of the HHCA lands to the State. Congress also placed an additional 1.2 million acres of the ceded lands into a trust to be managed by the State for five specified purposes, including "the betterment of the conditions of native Hawaiians." *Id.* § 5(f), 73 Stat. at 6.

The admission of Hawaii as a State did not alter the status of Native Hawaiians as an indigenous people, and thus, did not alter the political relationship between the United States and the Native Hawaiian people. After passage of the Hawaii Admission Act, Congress continued to recognize its special responsibility for the welfare of Native Hawaiians. Congress has established programs for the benefit of Native Hawaiians in the areas of health care, education, employment, and loans. Congress has also enacted statutes to preserve Native Hawaiian culture, language, and historical sites. Native Hawaiians have been classified as Native Americans in a number of federal statutes. These laws reflect Congress' view that its "authority . . . under the

United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of . . . Hawaii." 42 U.S.C. § 11701(17). This acknowledgment of a distinct political relationship between the United States and the Native Hawaiians arose out of these historical events I have just described.

In 1980, Congress authorized a Native Hawaiians Study Commission to assess the cultural needs and concerns of Native Hawaiians (Public Law 96-565, Title III). The Commission, comprised of three Hawaiian residents, six federal officials, and support staff, conducted public meetings and other fact-finding activities throughout Hawaii from January to June in 1982. The Commission's final, two-volume report was submitted to Congress on June 23, 1983. The social and economic conditions of the Native Hawaiian population has not improved significantly since this 1983 study. Their employment, income, education, and health levels have remained lower than other ethnic groups in Hawaii. The Commission recommended coordinated actions by the federal, state, and local governments and private organizations to address specific needs of Native Hawaiians.

The Senate bill that is being considered today would begin this process of restoring self-governance to Native Hawaiians so they may better address their social, economic and cultural needs.

II. The Reconciliation Process under Public Law 103-150

In 1993, Congress enacted a Joint Resolution to acknowledge the 100th anniversary of the overthrow of the Kingdom of Hawaii and to apologize to the Native Hawaiian people for the role of the United States in that overthrow. In the Joint Resolution, Congress acknowledged that the overthrow of the Kingdom "resulted in the suppression of the inherent sovereignty of the Native Hawaiian people," that "the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States," and that "the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions." Pub. 103-150 (S.J. Res. 19), 107 Stat. at 1512, 1513 (1993). The Joint Resolution calls upon the President to promote further reconciliation between the United States and the Native Hawaiian people.

In March 1999, Senator Akaka wrote to the Attorney General, requesting that an office be designated within the Department of Justice to work in cooperation with the Department of the Interior to promote reconciliation between the United States and the Native Hawaiian people. The Attorney General designated the Office of Tribal Justice to work with the Department of the Interior on the Reconciliation Process. In December 1999, the Interior Department Assistant Secretary for Policy, Management and Budget and the Director of the Office of Tribal Justice visited Native Hawaiian sites and held a series of meetings with the Native Hawaiian people to promote reconciliation.

The site visits demonstrated to the Interior-Justice delegation the continuing, distinctly native character and culture of the Native Hawaiian people. The delegation visited Aha Punana Leo, a Native Hawaiian language immersion school on the Island of Hawaii. They were greeted by Native Hawaiian students with traditional Native Hawaiian songs, and they toured the campus grounds, which included areas planted with Taro, the traditional Native Hawaiian staple, and a fish hatchery, reflecting traditional aquaculture. Students had also planted native trees and plants on the campus to establish a conservation area. On the Island of Kauai, the delegation met with Native Hawaiian parents and students at Ni'ihau, a school run by Native Hawaiian teachers from Ni'ihau and Kauai. The Ni'ihau parents explained that their children learned Hawaiian as a first language in the home, so the focus at the school was on teaching the students to speak, read, and write English to ensure that the children are able to interact with non-Natives when they travel to neighboring islands. On the Island of Molokai, the delegation visited a Native Hawaiian group that is restoring a fish pond that is hundreds of years old for subsistence use. On Molokai, the delegation met with a Native Hawaiian kindergarten class, where all of the students are fluent in both Hawaiian and English, and visited with Native Hawaiian kupuna (elders), who explained the importance of being raised in a Hawaiian Homestead community in terms of language and cultural preservation. The delegation also met with and visited a number of Native Hawaiian organizations, including: the Alu Like, the Native Hawaiian Education advocacy organization; members of Native Hawaiian organizations advocating for self-governance; a Native Hawaiian Health Care Center; the Kamehameha schools; Hawaiian Home Land communities and land areas on Kauai, Oahu, and Maui; and several other distinctly Native Hawaiian communities. In addition, the delegation held public meetings and heard statements from several hundred Native Hawaiians.

Throughout these delegation site visits and public meetings, two things were made clear. First, the Native Hawaiians are a distinctly native community with a vibrant culture, traditions, and language and active social and political organizations. We learned from Native Hawaiians that Hawaiian Home Land settlements helped to maintain Hawaiian language and culture, which was particularly important from the 1920s through the 1960s when the use of the Native Hawaiian language and the practice of Native Hawaiian culture were often discouraged by state institutions. We also learned that since the 1960s, a number of Native Hawaiian advocacy groups have actively promoted Hawaiian language and culture and these efforts have gone hand-in-hand with efforts to enhance Native Hawaiian self-governance. To foster these efforts, the Native Hawaiian people maintain both social and quasi-governmental institutions, such as the Native Hawaiian Civic Clubs, Alu Like – the Native Hawaiian education organization, Papa Ola Lokahi – the Native Hawaiian health care organization, Native Hawaiian schools, and Native Hawaiian traditional justice programs, among others.

1. While most Native Hawaiians appear to support increased Native Hawaiian control over native lands, resources,

Second, the delegation heard the clear call of the Native Hawaiian people for self-governance. A majority of Native Hawaiians, from whom the delegation heard, support increased self-governance over their lands, resources, and affairs.¹ Some of the critical subjects that the Native Hawaiian people identified are increased control of Native Hawaiian lands and resources, education programs, health care delivery, Native Hawaiian housing, and an increased ability to engage the Federal Government in an ongoing dialogue concerning Native Hawaiian issues.

III. Comments on S. 2899 and H.R. 4904

The overthrow of the Kingdom of Hawaii frustrated the right of Native Hawaiians to control their own affairs. While Congress has enacted a number of measures to promote the welfare of the Native Hawaiian people, and Native Hawaiians have themselves worked to maintain their own distinct community, culture, language, and social and political institutions, they have not been afforded a clear opportunity to control their own affairs since 1893. This bill would enable the Native Hawaiians to reorganize their own representative governing body, which will promote control over their own affairs.

A. Goals of this Legislation

It is evident from the documentation, statements, and views received during the Reconciliation Process undertaken by the Interior-Justice delegation that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures, and they desire to increase their control over their own affairs. For generations, the United States has recognized the unique relationship that exists between the United States and the Native Hawaiians, and has promoted the welfare of Native Hawaiians as an indigenous people within our Nation through legislation, administrative action and policy statements. The proposed legislation, by clarifying the political status of Native Hawaiians, would extend to Native Hawaiians the right of self-governance over their cultural resources and internal affairs.

The proposed process of reorganizing a Native Hawaiian governing body has precedent in Federal legislation promoting self-governance for American Indian and Alaska Native peoples. The government-to-government relationship that exists between the United States and American Indian and Alaska Native communities is firmly established in federal law and policy. From its earliest days, the United States recognized the sovereign status of Indian tribes. Indian tribes were independent, self-governing societies long before their contact with European

and affairs within the framework of Federal law, some members of the Native Hawaiian community have called for restoration of the Kingdom of Hawaii or another form of independence from the United States. The Interior-Justice delegation explained that its mission was to promote reconciliation within the framework of Federal law, and the Reconciliation Process does not have any bearing or implication concerning international law matters.

nations. See *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 851 (1985); F. Cohen, *Handbook of Federal Indian Law*, 229 (Strickland ed. 1982). The retention of inherent sovereignty forms the basis for the exercise of tribal power. Today American Indian tribes and Alaska Native villages and corporations control many programs affecting their communities, including, for example, programs affecting their lands and natural resources, schools and colleges, health, housing, water, sewer, and sanitation services, public safety, and transportation infrastructure on native lands. In addition, acknowledged governmental leaders facilitate the government-to-government relationship, which enables tribal governments to advocate effectively for their community interests.

The proposed bill responds to the call of the Native Hawaiian people for increased self-governance within the framework of domestic Federal law. It recognizes that Native Hawaiians were a self-governing people prior to contact with the European nations, and that the clarification of their political status vis-a-vis the United States is a legitimate exercise of Congress' Indian affairs power. The reorganization of a Native Hawaiian governing body that the bill affords the Native Hawaiian people to constitute could assist the Native Hawaiians to better address their community needs and goals in the context of federal law, and could facilitate the government-to-government relationship between the Federal Government and the Native Hawaiian community. Enhancing the government-to-government relationship between the Native Hawaiians and the United States could ensure that the Native Hawaiian people have greater control over activities affecting their rights and resources. See Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments (April 29, 1994).

B. Findings

The bill's legislative findings establish Congress' intent to exercise authority pursuant to its Indian affairs power. Section 1(1) states that "the Constitution vests Congress with the authority to address the conditions of the indigenous, native peoples of the United States." Subsections (2) and (3) find that the Native Hawaiian people are an aboriginal, indigenous, native people with a special trust relationship to the United States and that Congress has legislated on behalf of the Native Hawaiian people as such. The legislative findings concerning the Hawaiian Homes Commission Act are important because they reflect an early congressional effort to promote the welfare of the Native Hawaiian people by fostering the continuation of traditional Native Hawaiian agricultural endeavors on aboriginal lands under the protection of Federal law. The HHCA embodies a congressional determination that the Native Hawaiians, as defined in that Act, are an indigenous, aboriginal people under the protection of the United States. The legislative findings also reflect the fact that the Native Hawaiian people today maintain a distinctly Native Hawaiian culture, language, social and political institutions, and community. These policy declarations make clear that Congress intends to reaffirm the right of Native Hawaiians to self-governance, within the framework of Federal law, and intends to continue to promote reconciliation between the United States and the Native Hawaiian people.

C. Definition of Native Hawaiian

In modern Federal legislation dealing with American Indians and Alaska Natives, Congress commonly relies on a tribe's determination of its own membership. However, because the Native Hawaiian governing body has not yet been reorganized, an interim Federal law definition of "Native Hawaiian" is necessary for the operation of the legislation.

We have several comments on the definition of "Native Hawaiian" set forth in section 2(6), and section 7. First, the Department finds it important that the definition includes only those Native Hawaiians who voluntarily choose to affiliate with the Native Hawaiian governing body. Section 7(a)(1)(A) does exactly this by establishing a roll that includes the names of "the adult members of the Native Hawaiian community who wish to become members of a Native Hawaiian governing body."

Second, the interim definition of Native Hawaiian set forth in section 7(a) ties membership to "lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago."

The Supreme Court's decision in *Rice v. Cayetano*, 120 S. Ct. 1044 (2000) left open the question "whether Congress may treat the native Hawaiians as it does the Indian tribes." *Rice*, 120 S. Ct. at 1057. Accordingly, in invoking its established constitutional authority with respect to Indian Tribes in the present context – namely, by providing Native Hawaiians with much the same opportunity to reorganize and establish a self-governing body that Congress has furnished to the Indian Tribes elsewhere in the United States that the Court referred to – it would make the most sense to adopt an interim definition that draws upon past practices under Congress' Indian affairs power.

Thus, we recommend an alternative interim definition that references the Hawaiian Homes Commission Act (HHCA), Pub. L. No. 67-34, 42 Stat. 108 (1921). There are several reasons for this recommendation. First, the HHCA was itself an exercise of Congress' Indian affairs power not long after annexation, and it thus represents an established Federal law process for determining who is a Native Hawaiian for federal purposes. See H.R. Rep. 839, 66th Cong., 2d Sess. 4 (1920) (statement of Secretary Lane expressly mentioning the trust relationship that exists between the United States and Native Hawaiians). Second, the HHCA presents a definition that is tied to those Native Hawaiians who are eligible to reside on distinctly native Hawaiian lands, and which can reasonably serve as an indication of those Native Hawaiians who maintain close ties to the Native Hawaiian community. Third, insofar as lineal descendency is concerned, this definition traces to 1778, the date of European contact, rather than 1893, a date long after the arrival of Europeans, Asians, and Americans. Finally, the Department of Hawaiian Home Lands maintains a record keeping system regarding eligibility for HHCA lands, which will make the interim reorganizational process more definitive and thus less complicated. This recommendation is intended to ensure that this legislation serves as an enduring measure to provide a strong foundation for Native Hawaiian self-governance within the framework of

federal law.

Accordingly, we recommend the following interim definition of the term Native Hawaiian:

A Native Hawaiian is any person:

(a)(i) who is eligible to hold Hawaiian Home lands as a Native Hawaiian directly or by devise under the Hawaiian Homes Commission Act, Public Law 67-34, 42 Stat. 108, as amended, and (ii) who voluntarily affiliates with the Native Hawaiian people as a political community; or

(b)(i) who is a lineal descendant of a Native Hawaiian who is or was eligible to hold Hawaiian Home Lands directly or by devise under Public Law 67-34, 42 Stat. 108, as amended, (ii) who is recognized by the Native Hawaiian community as a Native Hawaiian, and (iii) who voluntarily affiliates with the Native Hawaiian people as a political community.

Finally, it is important to note that the purpose of the interim definition is to provide a means of implementing this legislation, which first seeks to establish a Native Hawaiian Interim Governing Council. Once that is accomplished, the Native Hawaiian people may then determine their own membership just as other native communities. This is important, because a tribe's "right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978). Section 7(c)(7)(D) expressly states that the organic documents of the governing body will vest it with the power to "determine the membership in the Native Hawaiian governing body."

D. Transfer of Authority Over HHCA and Ceded Lands Trust to the Native Hawaiian Governing Body

Section 9(a) of the bill reaffirms the delegation of authority by the United States to the State of Hawaii over the HHCA in Hawaii's Admissions Act. Section 9(b) then authorizes the United States to negotiate an agreement between the State and the Native Hawaiian governing body that would transfer authority over "lands, resources, and assets dedicated to Native Hawaiian use under existing law" to the Native Hawaiian governing body. We support the premise of providing the Native Hawaiian governing body with primary authority over these programs.

However, we recommend an alternative provision that would authorize the State and the Native Hawaiian governing body to negotiate a transfer of authority over governmental services provided by the State to the Native Hawaiian governing body, subject to the approval of the Secretary. This alternative provision better serves the Native Hawaiian community because the State, not the United States, is the administrator of the HHCA and the ceded lands trust. Our

alternative provision would also provide express protection for the justified expectations of Native Hawaiians under the HHCA.

Conclusion

In conclusion, the Department of Justice generally supports S. 2899, and is committed to working closely with the Native Hawaiian people and the Congress, upon enactment of this legislation, to address successfully the steps to Federal recognition, self-determination, and self-governance for the Native Hawaiian people. There are a number of prospective matters that the Federal Government may have to work out with the Native Hawaiian governing body and the State of Hawaii, through future legislation. These challenges may include:

- potential land claims that Native Hawaiians may assert against the United States, the State of Hawaii, or private landowners;
- the nature and extent of the rights, obligations and benefits in extending Federal recognition to Native Hawaiians under the Native American Indian statutes;
- the Federal Government's trust and fiduciary responsibilities for any federal lands that may be transferred to the Native Hawaiian community; and
- the relative responsibilities of the Native Hawaiian community and the State of Hawaii and its local governments in providing schools, law enforcement, and other public services.

**TESTIMONY OF THE OFFICE OF HAWAIIAN AFFAIRS
ON S. 2899, H.R. 4904
SUBMITTED AUGUST 23, 2000**

Co-Chairs Senator Inouye and Congressman Abercrombie, Senator Akaka, Congresswoman Mink and Congressman Faleomavaega. My name is Clayton Hee, Chairman of the Board of Trustees of the Office of Hawaiian Affairs, and I am here to testify on behalf of OHA in support of Senate Bill 2899 and House Resolution 4904, relating to federal recognition for Native Hawaiians.

Let me start by thanking our Congressional delegation for their hard work over the years in securing programs for the benefit of Native Hawaiians and for their leadership and support of the Hawaiian community at this critical time.

The pursuit of justice for Hawaiians has been a long and arduous journey. For the overwhelming majority of Hawaiians, justice means political status and federal recognition, the restoration of our inherent sovereignty and redress from the United States for the illegal overthrow of the Kingdom of Hawaii in 1893.

Our struggles have intensified in the last 40 years in pursuit of justice for Hawaiians, but we have reached a crossroad in that journey where recent events have shown us all too clearly that we must act now – we must take a monumental step forward in our efforts to find justice for Hawaiians or risk the loss of essential programs and benefits gained for our people.

By recent events I am referring, of course, to the “Fredly Rice case” and its fallout – at least the fallout to date. Earlier this year, in Rice v. Cayetano, the U.S. Supreme Court ruled that Hawai‘i’s denial of Rice’s right to vote in OHA trustee elections violated the Fifteenth Amendment. As a result, all registered voters in Hawai‘i have the right to cast ballots in the election of trustees to the Office of Hawaiian Affairs regardless of ancestry.

Another lawsuit has been filed recently to eliminate the Hawaiians-only restriction on candidates for election to the office of OHA trustee. One of the plaintiffs in this matter has succeeded in obtaining a preliminary injunction from the federal district court allowing him, as a non-Hawaiian, to file nomination papers to run for OHA trustee. The plaintiffs have made no secret of their desire to bring about the demise of OHA.

The Rice decision will continue to breed similar lawsuits. It will continue to be utilized to erect roadblocks along the path to justice for Hawaiians. As I have said, it is not only our future progress that is at risk, but erosion of the many advances Hawaiians have gained in health, education and housing benefits with the dedication and support of our Congressional delegation. Both state and federal policy makers have acted on the premise that programs provided for the benefit of Native Hawaiians have been legal, constitutional and morally right. The Rice decision opens the door to challenge the entire framework of federal and state laws put in place to benefit Native Hawaiians until our status as a native people has been settled.

So we are at a critical moment in our history as a people. The Rice and Arakaki cases directly impact OHA, but if we fail to act now, these challenges to our rights as a native people will have far reaching and more devastating impacts on Hawaiians and non-Hawaiians who benefit from programs that are available to Hawaiians.

All of these concerns and the urgency felt in the community have given rise to the legislation before us. We are fortunate that Senator Akaka and Senator Inouye, Congressman Abercrombie and Congresswoman Mink have undertaken leadership in this matter and have sought, and continue to seek, the mana'o of the community, both Hawaiian and non-Hawaiian, to

move us forward toward justice for Hawaiians by seeking formal recognition of our political status as a native people.

Today, more than 550 indigenous peoples have already attained such recognition from the federal government. Federally recognized indigenous peoples have the right under U.S. law to special benefits in the areas of health, education, housing, social services and economic development. They have the authority to govern themselves, to elect their own leaders, to determine their own membership and to have their own land base. The Navajo Indians have over 14 million acres of land in several states. The Alaska Natives have over 44 million acres of land. Although there are more Hawaiians than Navajos, Alaska Natives or any other native peoples in the United States, Hawaiians have remained without recognition of our right to self-govern and a settlement that would provide us with a land base which is crucial to our economic and spiritual well-being. The best case scenario is for Congress to formalize the political status and federal recognition of Hawaiians and this bill expedites constituting a representative political entity.

This legislation provides us with the opportunity not only to protect current programs for Hawaiians, but to meaningfully address this lingering injustice. As such, it is the first step, but an essential step, on the journey for Hawaiians towards reconciliation. The President and Congress have committed themselves to the process of reconciliation with Hawaiians through the Apology Bill. Senate Bill 2899 and House Resolution 4909 promote such reconciliation by acknowledging as a matter of policy that:

- Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship;
- The United States has a special trust relationship to promote the betterment of Native Hawaiians,
- Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has

- exercised that authority;
- Native Hawaiians have an inherent right to (i) autonomy in their internal affairs; (ii) self-determination and self-governance, and (iii) reorganization of a Native Hawaiian governing body; and that
- The United States shall continue to engage in the process of reconciliation and political relations with the Native Hawaiian people.

To that end, the proposed legislation provides for:

- A process by which Native Hawaiians can organize themselves for the purpose of self-governance. Significantly, the process is inclusive. There is no pre-determination as to the form that governing body will take.
- Establishment of an Office of Special Trustee for Native Hawaiian Affairs. The Office is not the federalization of OHA, but a new office within the Department of Interior to, among other things, effectuate the special trust relationship between the Native Hawaiian people and the U.S., to assist the Native Hawaiian people in facilitating the process for self-determination, and to be responsible for continuing the process of reconciliation with the Native Hawaiian governing body.
- Designation of a representative in the Department of Justice to assist the Office in implementation and protection of the rights of Native Hawaiians, the Native Hawaiian governing body and its political and legal relationship to the U.S.
- Establishment of an interagency task force to coordinate federal policy concerning Native Hawaiians.
- Notwithstanding any other provision of law, notwithstanding the decision in Rice, federal recognition of the governing body organized by Native Hawaiians as the representative governing body of the Native Hawaiian people.

We are pleased that many of the foregoing initiatives were recommended by OHA in its reconciliation testimony to representatives of the Departments of Interior and Justice this past January. We are also gratified that there has been tremendous support in the community to include a process for self-determination in the bill -- a position which the Board of Trustees has consistently supported.

We would like to acknowledge our Congressional delegation once again for their leadership. While we recognize there remains a difference of opinion in the Hawaiian community regarding the methods of achieving the goal of self-determination, we believe this legislation provides us with a constructive process and a timely opportunity to achieve our ultimate goal of self-governance and, with a truly representative governing body, the achievement of a settlement with Native Hawaiians for the unlawful taking of our kingdom and lands. It rightfully leaves potentially divisive issues, such as blood quantum, for Hawaiians to decide as a self-governing people.

The timing of this bill is absolutely critical, in terms of the threats to Hawaiian rights that have only begun to surface in the wake of *Rice* and as a matter of policy if we are to achieve any kind of meaningful reconciliation with the United States. For Hawaiians, the time is now and the opportunity is ours to seize to move forward together on our common journey for justice.

In conclusion, I believe there are no other meaningful alternatives at present. This legislation will help Hawaiians protect our entitlements, but it does not preempt others from continuing their journey, including in the international arena. Let us be reminded of what Queen Liliuokalani once said:

Nana i ka nana 'ole
 Lohe i ka lohe 'ole
 'Ike i ka 'ike 'ole
 'Oia ka mana'o, 'oia ka mana
 'Oia ka piko o ka hua olelo o aloha.

To see what cannot be seen,
 To hear what cannot be heard,
 And to know the unknowable,
 That is the meaning, that is the power,
 And that is the essence of the word aloha.

Thank you for the opportunity to testify on this measure.

**TESTIMONY OF MAHEALANI KAMAUU BEFORE THE
UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS
RELATING TO SENATE BILL 2899**

September 13, 2000

Aloha Chairperson Campbell, Vice-Chairperson Inouye and members of the Senate Committee on Indian Affairs. Thank you for this opportunity to testify in support of Senate Bill 2899, which affirms the existence of a trust relationship between the United States and Native Hawaiians; supports the reorganization of a Native Hawaiian Government; and establishes a government-to-government relationship between the United States and the Native Hawaiian people.

My name is Mahealani Kamauu and I am Executive Director of Native Hawaiian Legal Corporation. The corporation is a public interest lawfirm committed to the assertion, protection, and defense of Native Hawaiian claims to lands, natural resources, and related entitlements.

Kanaka maoli, the Native Hawaiian people, have been struggling to govern themselves for a very long time. They have never stopped trying to restore their government or asserting their uniqueness as an indigenous people since the overthrow of their government in 1893. Their efforts to restore their government, to give expression to their political will, has been not only in response to national and cultural pride, but an effort to uplift a people who have suffered the highest socio-economic, health, housing, and rates of incarceration in the nation.

I would like to share some information and history regarding our sovereignty and self-determination movement so that you can fully appreciate the vibrant political context within which this Senate Bill 2899 is being considered by the Native Hawaiian people. It is a long and continuous history of protest and resistance against displacement from the land, and struggle to assert control over their trust resources. It has been a struggle to obtain resources necessary for basic needs -- health, housing, employment, education and welfare concerns. During that entire period, the Native Hawaiian people have continued to maintain their unique culture and traditions, as well as their own social, political and economic institutions.

Our history of protest begins before the overthrow of the Native Hawaiian

government.

Six years before the overthrow in 1887 after the Bayonet Constitution eliminated voting rights for most Native Hawaiians, hundreds petitioned their sovereign, Queen Lili'uokalani, to restore these rights to native governance. When she heeded their petitions and attempted to promulgate a new constitution in 1893, her government was overthrown.

In 1894 a native insurrection against the annexationist Provisional Government, the Wilcox Rebellion, was unsuccessful and resulted in imprisonment of Queen Lili'uokalani.

In 1897, thirty-seven thousand Native Hawaiians signed petitions opposing annexation which were ignored when the U.S. subsequently annexed Hawai'i.

Their numbers already declined by a factor of ninety percent, their lands controlled and correlative rights suppressed, their assimilation forced under U.S. policies during the years following annexation -- in spite of all of this -- Native Hawaiians endured. They continued to speak their native language; they held on to their traditions and culture; they continued to live their unique lifestyle. They continued to maintain their distinct cultural, social, and political identity and institutions.

It was in 1920 that Congress set aside 203,000 acres of trust lands for homesteading by Native Hawaiians. Although there have been many problems with that program, native Hawaiian settlements for farming, ranching and residential purposes on all islands except Lana'i have continued and in fact are currently increasing exponentially. The State Council of Hawaiian Homestead Associations is an active, well-organized group representing approximately 30,000 homestead beneficiaries and their families.

It was around the turn of the last century that the Hawaiian Civic Club of Honolulu was organized by Prince Jonah Kūhiō Kalaniana'ole to promote Hawaiian culture and civic responsibility. Today, the Association of Hawaiian Civic Clubs has grown to encompass over 43 clubs throughout Hawaii and the U.S. mainland, with thousands of politically active members whose delegates meet annually in convention.

The benevolent societies -- Ka'ahumanu, Sons & Daughters of Hawaiian Warriors, Mamakakaua, Royal Order of Kamehameha -- all were founded around the turn of the century to perpetuate Hawaiian culture and traditions, and they are all still very active today.

In the last thirty years, the contemporary political movement for sovereignty and self-determination has been extremely active.

In the late 1960's, Native Hawaiians engaged in organized protests against evictions from Kalama Valley, Mokauea and Sand Islands, Waiahole-Waikane Valleys, and Kahana Valley on O'ahu; and Niunalu-Nawiliwili on the island of Kaua'i.

In the mid-1970's and into the 1980's, there were large-scale organized protests to stop military bombing of the island of Kaho'olawe and Makua Valley. There were struggles to protest evictions from Hale Mohalu, a Hansen's disease treatment facility whose patients were native Hawaiian, and of homeless Native Hawaiian families from Hawaiian Homes and ceded lands, including Waimanalo Beach, Bellows, Kaiona Beach, Makapu'u Beach and Lighthouse, all on O'ahu, and Anahola Beach on the island of Kaua'i.

The island of Molokai organized Hui Alaloa to assert native Hawaiian rights to beach and trails access. The islands of Molokai and Lanai have long struggled to balance the competing interests of tourist development and protection of water resources. The island of Maui organized Save Makena Beach.

Some political organizations which came into being during this period include:
Hawaiians, to pursue reform of the Hawaiian Homelands program.

Ho'ala Kanawai, to pursue sovereignty and self-determination research and education
 Homerule, to pursue self-determination.
 Hui Alaloa, to protect access rights
 Hui Malama 'Aina o Kahalu'u, to preserve Kahalu'u.
 Hui Malama 'Aina o Kahana, to preserve Kahana Valley
 Institute for the Advancement of Hawaiian Affairs, to pursue sovereignty and self-determination
 Ka Lahui Hawai'i, to pursue sovereignty and self-determination.
 Ka Pakaukau & Komike Tribunal, to pursue sovereignty and self-determination.
 Nation of Hawaii, to pursue sovereignty and self-determination
 Native Hawaiian Land Trust, to research and educate on ceded lands issues.
 'Ohana o Hawai'i, to pursue sovereignty and self-determination
 Protect Kaho'olawe 'Ohana, to stop military bombing of Kaho'olawe
 Protect Makua Valley, to stop military bombing of Makua Valley
 Save Makena Road, to protect access rights
 Waihole-Waikane Association, preserve Waihole-Waikane Valley.

This list is not exhaustive. In addition, there have been hundreds of mass cultural and political gatherings over the past 30 years.

In 1987, the state-declared "Year of the Hawaiian", *kanaka maoli* filled Honolulu Stadium to its 50,000-seat capacity to celebrate their common bond and cultural affinity in a celebration called "Ho'olokou". In January of 1993, over 25,000 *kanaka maoli* and their supporters commemorated the 100th anniversary of the overthrow by marching from all parts of the island to 'Iolani Palace, once the seat of their government on the island of O'ahu.

With the realization that many of these struggles and demonstrations result because Native Hawaiians have little say over decisions and policies affecting their trust lands, natural resources, and affairs in general, early single-issue struggles have coalesced into a struggles for sovereignty and self-determination.

Some current sovereignty initiatives:

Institute for the Advancement of Hawaiian Affairs
 Ka Lahui Hawai'i
 Ka Pakaukau - Komike Tribunal
 Kingdom of Hawai'i
 Lawful Government of Hawai'i
 Nation of Hawai'i
 Native Hawaiian Convention ('Aha Hawai'i 'Oiwī)

Many agencies have sprung up in response to Native Hawaiians' socio-economic and health needs, such as my own organization; Alu Like, Inc., which has focused on employment and training; and Papa Ola Lokahi, a community-based health initiative. The Office of Hawaiian Affairs (OHA), created by an amendment to the Hawaii State Constitution in 1978, has been the principal vehicle and focus for native Hawaiian self-determination since its inception. Approximately 70,000 Native Hawaiians have participated in elections for its nine trustees. The recent U.S. Supreme Court decision in *Rice v. Cayetano* has derailed that office as a vehicle for native Hawaiian self-determination. In fact, the week preceding this very hearing was the most chaotic in all of OHA's history, since its nine trustees were forced to resign their elected office by the Governor of Hawai'i. It has been an extremely demoralizing time for Native Hawaiians, who are full of anger at a system which does not recognize their special status as the aboriginal people

of Hawai'i.

In conclusion, my organization supports Senate Bill 2899 because it will protect programs with a Native Hawaiian preference against further *Rice* assaults, it supports long-standing and ongoing efforts to organize a native government, and will establish a government-to-government relationship between the United States and Native Hawaiians, a relationship which enlarges opportunities to negotiate for the return of trust lands and resources to help our people.

In conclusion, I realize that Congress' passage of the Hawaiian Homes Commission Act of 1920; the statehood Act of 1959, and the 150 pieces of federal legislation benefitting Native Hawaiians makes a strong case for the existence of a trust relationship between the United States and Native Hawaiians, warranting a government-to-government relationship. I hope my testimony has helped members of this Committee to better understand the *kanaka maoli* people's historic resolve and commitment to restore their government, and that this resolve and commitment has also demonstrated their continuous, unique and distinct political identity, from a *kanaka maoli* standpoint. Thank you for this opportunity to testify in support of Senate Bill 2899.

Testimony in Support
of
S. 2899

By
Tara Lulani McKenzie

Aloha Chairman Nighthorse and distinguished committee members. My name is Tara Lulani McKenzie. I am a Native Hawaiian whose ancestors come from the Kohala region on the big island of Hawai'i. I am the President/CEO of ALU LIKE, Inc. and a member of Senator Akaka's Native Hawaiian Community Working Group. I want to thank you for this opportunity to provide testimony on S. 2899. Moreover, I want to honor na aumakua (ancestors) and that which is greater than "we" for the mana (divine guidance) that has been provided regarding this very important matter. My family, friends, and colleagues have spent many hours over the past few months contemplating and discussing this bill.

Within the US, Hawaii is the most ethnically diverse state, and is also the only state in which the majority population is not Caucasian. There are 238,371 Native Hawaiians in the state of Hawaii. (The State of Hawaii Data Book 1997, page 43). There are more than 50,000 Native Hawaiians scattered across the continental United States. We have endured two centuries of injustices; in response there has been decades of organizing and political strife, active formation of sovereignty groups, hundreds of community meetings, numerous votes and elections, and thousands of hours of discussion.

We are now at a crossroads.

We may choose to remain where we are, content with our current situation and oblivious to the suffering of many of our people.

We may choose to remain where we are, optimistically holding on to a future vision of an independent Hawaii.

Or we may choose to move forward taking a step which has the potential to create greater autonomy and self-governance for Native Hawaiians, thereby improving the socio-economic conditions of our people. I choose this option and that is why I strongly support S. 2899 which has the primary intent to protect Native Hawaiian programs and trusts, while formally recognizing Native Hawaiians as an indigenous peoples with the right to self-determination.

The majority of our people support the intent of the bill. A Hawai'i poll was conducted by a respected research organization in April of this year. Over 401 residents of Hawaiian ancestry were polled. The margin of error from the results was 4.9 percent, meaning that 95 percent of the time, if the entire adult Native Hawaiian population were sampled their responses would be within 4.9 percent plus or minus of those obtained in the poll.

One of the questions in the poll asked, *"Do you think Hawaiians should be recognized by Congress and the federal government as a distinct group, similar to the special recognition given to American Indian tribes?"* Eighty-seven percent answered "Yes".

Another question asked, *"There is much talk about the creation of a sovereign Hawaiian nation, or a Hawaiian government of some kind that would represent the Hawaiian people in their dealings with the state and the federal government and would work for the betterment of the Hawaiian people. Do you agree or disagree that an entity of some kind should be formed?"* Seventy-two percent stated that they agreed. Finally, when a question was posed asking if Hawaii should break away from the United States and become an independent nation, seventy-two percent answered "No". While Native Hawaiians feel wronged by the overthrow of the monarchy and other injustices, they do not want to separate from the United States.

The recent Supreme Court decision in Rice vs. Cayetano underscores the need to resolve longstanding issues facing Native Hawaiians such as political status and self-determination. The challenge to federal programs and other benefits to Native Hawaiians, even the Native Hawaiian trusts, is imminent. Through Senate bill 2899, the many acts of Congress that have enabled assistance to Native Hawaiians through numerous organizations and programs are afforded some measure of protection.

ALU LIKE, Inc., the organization that I work for, is the largest 501(c)(3) private nonprofit that provides services to Native Hawaiians statewide. We have seventeen programs in the areas of education, job training, social development, and business/economic development. Every year, ALU LIKE provides services to over 10,000 Native Hawaiians.

The Native Hawaiian Youth Offender Employment Demonstration Project - Hui Ho'ona'auao in na Opio Project (HHOP) provides services to court-referred youth in Hilo on the big island which include Ho'oponopono, remediation, GED preparation, computer literacy, job training and cultural education.

Mark Cohen, Ph.D. from the Graduate School of Management, Vanderbilt University has developed a model of determining the monetary value of saving a high risk youth. His studies assign values to certain behaviors associated with high risk youth. For example the value of diverting a high risk youth who has dropped out of school is \$291,000.

HHOP conducted a 32 month study of 19 court-referred youth in their program who were at risk of dropping out of school. Using Mr. Cohen's model, HHOP has returned \$7.37 in value for each dollar provided by the government (\$5,529,000/\$750,000). Viewed another way, if the HHOP had only diverted 3 youths from dropping out of school, the project would have justified its costs ($\$5,529,000/19 = \$291,000$ average value per youth $\times 3 = \$873,000$ versus \$750,000 government funds).

From 7/1/99 to 12/31/99, the ALU LIKE Employment & Training Program placed 354 Native Hawaiians in jobs for a total placement rate of 71%. The return on investment was calculated at 1173% (see attached).

The above-mentioned programs are only a few examples of the benefits gained from federal support. There are many more programs and organizations that have helped thousands of Native Hawaiians. Every time a Hawaiian family is able to move into a home on Hawaiian homelands; health and medical services are provided to a Hawaiian who is sick through the programs funded by the Native Hawaiian Health Act; prenatal and early childhood education is provided as a result of the Native Hawaiian Education Act; or the Office of Hawaiian Affairs supports various efforts such as legal services through the Native Hawaiian Legal Corporation for a Hawaiian family seeking to stay on their land, a Native Hawaiian individual or family gains pride and self-respect. They move closer to becoming healthy, productive citizens.

In order to have even greater impact, Native Hawaiians need to build a strong economic foundation and have control over our land and resources, our education, and our governance systems. We need to demand a higher quality of leadership and build valuable relationships both within and outside Hawaii. Senate bill 2899 provides the vehicle and opportunity for the United States to rectify past deeds and live up to its obligation to make things pono (right). The time is now. We have been waiting for over one hundred years. For Native Hawaiians, this is history in the making.

Chairman Nighthorse and committee members, I thank you for your support, and urge you to do all that you can to help this bill get passed.

August 23, 2000

TO: US Senate Committee on Indian Affairs
US Senator Ben Nighthorse Campbell
US Senate Committee on Resources

FROM: Mililani B. Trask, Trustee-At-Large
Office of Hawaiian Affairs

RE: S.2899 Testimony

Aloha Senators and Committee Members:

I am an elected Trustee of the Office of Hawaiian Affairs and a native Hawaiian attorney who is a member of the Native Hawaiian Community Working Group which has monitored the evolution of S.2899 and previously proposed amendments to earlier drafts of the measure.

I. General Comments

I support the purpose and intent of this measure. It is long overdue. Indigenous Hawaiians have been included in many Congressional bills as Native Americans, but we have always been excluded from the US Native American Policy for Self-Determination. I consider this exclusion to be a deprivation of Constitutional magnitude, a violation of the equal protection clause of the US Constitution, and a violation of the civil rights of Native Hawaiians.

II. Specific Comments

(a) Equal Protection and Native Hawaiians

The Equal Protection Rule in the American juridical system does not guarantee that all people are treated equally. It does provide that people similarly situated be given equal protection of the law. Consequently, Equal Protection does not require that white Americans receive the same

benefits that Native Americans receive, but does require that all National Americans be similarly treated under the law.

As the result of recent challenges to affirmative action programs, and the US Supreme Court ruling in Adarand Constructors, Inc., programs and entitlement based on racial or ethnic classifications have come under "strict judicial scrutiny" requiring evidence of a "compelling governmental interest" in order to be maintained.

Programs and entitlements of Native Americans are not subject to the above analysis because such programs are not based on race, but upon the unique legal status of Indians under federal law and the political relationship of Native American Peoples to the U.S., Morton v. Mancari 417 U.S. 535(1974).

The US Congress has repeatedly recognized and reaffirmed that Hawaiians are Native Americans through passage of several federal laws conferring benefits on Native Americans (Indians, Alaskan Natives and Hawaiians). The quote below was taken from Congressional Acts:

"...through treaties, Federal statutes, and rulings of the Federal courts, the United States has recognized and reaffirmed that—

- (A) the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives; and
 - (B) the aboriginal, indigenous peoples of the United States have —
 - (i) a continuing right to autonomy in their internal affairs; and
- (ii) an ongoing right of self-determination and self-governance that has never been extinguished;
- (13) the political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States as evidenced by the inclusion of Native Hawaiians in —
 - (A) the Native American Programs Act of 1974 (42 U.S.C. 2291 et seq.);
 - (B) the American Indian Religious Freedom Act (42 U.S.C. 1996 et seq.);
 - (C) the National Museum of the American Indian Act (20 U.S.C. 80 q et seq.);
- (D) the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.);
 - (E) the National Historic Preservation Act (16 U.S.C. 470 et seq.);
 - (F) the Native American Languages Act of 1992 (106 Stat. 3434);
 - (G) the American Indian, Alaskan Native and Native Hawaiian Culture and Arts Development Act (20 U.S.C. 4401 et seq.);
 - (H) the Job Training Partnership Act (29 U.S.C. 1501 et seq.), and
 - (I) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); and

In the area of housing, the United States has recognized and reaffirmed the political relationship with the native Hawaiian peoples through:

- (A) The enactment of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.), which set aside approximately 200,000 acres of public lands that became known as Hawaiian Home Lands in the Territory of Hawaii that had been ceded to the United States for homesteading by Native Hawaiians in order to rehabilitate landless and dying people;
- (B) The enactment of the Act entitled "An Act to provide for the Admission of the State of Hawaii into the Union," approved March 18, 1959 (73 Stat. 4)—
 - (i) by ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust, for the betterment of the conditions of Native Hawaiians, as that term is defined in section 801(15) of the Native American Housing Assistance and Self-Determination Act of 1996, as added by section 3 of this Act; and
 - (ii) by transferring what the United States considered to be a trust responsibility for the administration of Hawaiian Home lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 180 et seq.), enacted by the legislature of the State of Hawaii affecting the rights of beneficiaries of the Act;
- (C) the authorization of mortgage loans insured by the Federal Housing Administration for the purchase, construction, or refinancing of homes of Hawaiian Home Lands under the Act of June 27, 1934 (commonly referred to as the "National Housing Act" (42 Stat. 1246 et seq., chapter 847; 12 U.S.C. 1701 et seq.));
- (D) authorizing Native Hawaiian representation on the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing under Public Law 101-235;
- (E) the inclusion of Native Hawaiians in the Act commonly known as the "Native American Veterans' Home Loan Equity Act of 1993;" and
- (F) the enactment of the Hawaiian Home Lands Recovery Act (109 Stat. 357; 48 U.S.C. 491, note prec.) which establishes a process for the conveyance of Federal lands to the Department of Hawaiian Home Lands that are equivalent in value to lands acquired by the United States from the Hawaiian Home Lands inventory."

(b) Civil Rights and Equal Protection Violations under the Federal Domestic Policies

1. Background

Although there were numerous federal statutes which recognize the indigenous Hawaiian peoples as 'Native American,' the United States has failed to include Hawaiians in the Federal policy which provides Indians and Alaskans with a limited right of self-determination. Several federal commissions and bodies have called for the acknowledgement of the political relationship between the U.S. and Kanaka Maoli, but no congressional action has been taken. In December 1991, the Hawaii Advisory Committee to the United States Commission on Civil Rights published a Report entitled Broken Trust. This report documented the failure of the U.S. to protect Hawaiian civil rights for 73 years. Seventy-nine years have now elapsed and Hawaiian civil rights continue to be violated because of our peoples status as wards of the state. The Civil Rights Commission made the following finding in its report:

"Finding 2: Unlike other Native Americans, Hawaiians have never received the privileges of a political relationship with the United States. Yet Hawaiians, whose former kingdom was a member of the international community of nations and recognized by the United States, have a compelling case for Federal recognition.

The lack of formal recognition of Native Hawaiians by the federal government has resulted in their inability to secure controls of lands and natural resources, develop self-governance mechanisms, enjoy eligibility for Federal programs designed to assist Native Americans and other protected groups, and the denial of valuable legal rights to sue for discrimination. This constitutes disparate treatment and must be remedied without delay.

Recommendation 2: Federal Recognition of Native Hawaiians

The Congress should promptly enact legislation enabling Native Hawaiians to develop a political relationship with the Federal Government comparable to that enjoyed by other native peoples in the Nation. Such legislation would encourage the realization of sovereignty and self-determination for Native Hawaiians, a goal that this Advisory Committee strongly endorses.

The legislation should also explicitly confer eligibility to Native Hawaiian beneficiaries for participation in Federal programs designed to assist Native Americans, Alaska Natives, and other protected groups who have suffered from historical discrimination.

Native Hawaiians should receive the full protection of civil rights statutes and regulations applicable to Native Americans and other protected groups in the United States."

The Above Recommendation of the Civil Rights Report has not been addressed to date.

2. The Conflicting Solicitors Opinions – A Confused Federal Policy on Native Hawaiians

On January 19, 1979, US Deputy Solicitor Fredrick Ferguson issued an opinion for the Western Regional Office of the US Commission on Civil Rights which acknowledged that

the US had a 'trust' obligation to Native Hawaiians by virtue of the Hawaiian Homes Act of 1920 and the Statehood Admissions Act.

Following the publication of the Civil Rights Report, Broken Trust, in 1991, the US Department of Interior began to disclaim its trust obligation. On January 19, 1993, in the waning hours of the Bush Administration, Deputy Solicitor Thomas Sansonetti issued an opinion overruling the Ferguson Opinion and finding that there was no trust obligation owed to Hawaiians by the US.

On November 15, 1993, nine (9) days before President Clinton signed Pub. L. 103-150, the Federal Apology Law, Solicitor John Lesby issued a third opinion withdrawing both the 1979 and 1991 opinions. In his opinion, Lesby states that the US would not bring legal action to enforce the provisions of federal statutes providing entitlements to Native Hawaiians, but would continue to assert that the US has no trust obligation to Native Hawaiians. The Lesby Opinion clearly states that as a matter of policy, the US will not protect Hawaiian entitlements. This is a violation of the Equal Protection Doctrine. The Lesby Opinion is now in clear derogation of the brief the United States filed in Rice v. Cayetano. Section 1ç herein.

As a result of the above, Hawaiians continue to suffer from civil rights violations, poverty, ill health and homelessness while their vast land and fiscal resources are mismanaged by the State government.

3. A Comparison of Native American Indian and Alaskan Nation to Nation Status to Native Hawaiian Status as Wards of the State

Native Indians/Alaskan Natives	Native Hawaiians
1. <u>Legal Status:</u> Under the US Domestic Policy, Indian Nations have the right to create native nations with jurisdiction over lands and natural resources.	Hawaiians are wards of the state. There is no federal process to confer recognition on Ka Lahui Hawaii. Hawaiians are excluded from the US Policy because of their race.
2. <u>Judicial Protection:</u> Native American Indians and Alaskan Natives have the right to sue State and the US to enforce their property (trust) entitlements	Native Hawaiians cannot sue to enforce the trust obligations of the US or the State. Neither the State or US has sued in their behalf due to conflict of interest.

<p>3. <u>Health</u>: Indians and Alaskan Natives received health services through the Indian Health Service (HIS).</p>	<p>There is no state or federal health entitlements guaranteed for Hawaiians. Congressional legislation is piecemeal and not guaranteed.</p>
<p>4. <u>Housing</u>: Indian Nations have housing authorities which receive significant federal funding and have the power of an authority to construct housing.</p>	<p>Hawaiians have the poorest housing conditions in the US based on a 1996 Urban Institute Report (see <u>Housing Problems and Needs of Native Hawaiians</u>, prepared for the US Department of Housing and Urban Development, Sept.95). Current federal legislation enforces wardship by providing benefits to the State DHHL, an agency with an extensive history of breach of trust (see <u>The Broken Trust</u>, Hawaii Advisory Committee to the US Commission on Civil Rights, Dec.1991).</p>
<p>5. <u>Child Protection</u>: Native Alaskan and Indian children removed from their homes are placed in cultural environments under the Indian Child Welfare Act (ICWA).</p>	<p>Hawaiian children removed from dysfunctional homes are placed in environments which are not cultural. Hawaiian children are excluded from the ICWA.</p>
<p>6. <u>Economic Opportunity</u>: Indians and Alaskan native governments are allowed significant tax benefits under the IRS Code. In addition, these tribal governments are allowed the economic freedom to develop their lands and resources.</p>	<p>Hawaiians are wards of the state, do not have the authority to control or develop their resources. The IRS Code provisions for other Native Americans does not apply to Hawaiians.</p>

(c) Rice v. Cayetano

The recent ruling of the US Supreme Court in the Rice v. Cayetano case presents a serious threat to Native Hawaiian benefits and to the Hawaiian trusts. The ruling is the logical

result of the failure of the United States to acknowledge and formally establish a 'political' relationship with Native Hawaiians.

It is significant that the brief of the United States in the Rice Case, filed by Mr. Seth Waxman is an important departure from past positions of the Department of Justice. It is also a departure from the position of The Solicitor's Office as stated by Mr. Leshy. The United State's brief formally acknowledged that a trust obligation does exist between the US and our peoples. Despite these important changes, the US Supreme Court's ruling was against Hawaiians. Only the US Congress can clarify the political relationship and through passage of appropriate legislation.

IV. Restoring the Hawaiian Peoples Right of Self-Determination

"Self-determination" is a term defined in the International Covenant on Civil & Political Rights (ICCPR). The ICCPR states:

"All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Self-determination is a human right. Some legal rights are rights that are recognized as national or state rights, some legal rights are recognized as corporate rights. Self-determination is not a right of the state of Hawaii or the USA or corporation, but it is a right that belongs to human beings.

Self-determination is a collective right. The international legal definition says that "peoples" have the right of self-determination. Individual people have individual rights – however, "peoples" rights go to collective groups of human beings. If we apply this to the Hawaiian situation this means that Hawaiians as a group have the right to determine their political status. Because of the overthrow of the Kingdom, Hawaiians lost our status as citizens of the Hawaiian Nation. As the result of annexation and statehood, Hawaiians were made to be wards or beneficiaries of the State and the United States. If Hawaiians are to be given their right of "self-determination" as part of the Reconciliation process under the Apology Law, then there must be a process which empowers Hawaiians to determine their political status.

To summarize, "Self-determination" is a collective human right which Hawaiians exercise through a process which allows them first to choose their political status, and then to use their political status to "freely pursue their economic, social and cultural development."

Conclusion

S. 2899 is a measure which the Hawaii Advisory Committee to the US Commission on Civil Rights called for in 1991. It is corrective legislation which provides for increased participation of the Hawaiian peoples in their own economic, social and cultural development. It initiates and is part of the larger effort for Reconciliation which the Apology Law calls for and which the Hawaiian peoples indicated they are prepared to address.

August 30, 2000

TO: US Senate Committee on Indian Affairs
US Senator Ben Nighthorse Campbell
US Senate Committee on Resources

FROM: Mililani B. Trask, Trustee-At-Large
Office of Hawaiian Affairs

RE: First Supplemental Testimony on S.2899 - Amendments

Aloha Senators and Committee Members:

After considerable discussion with the Community Working Group and after consulting with Hawaiians on all islands, I am submitting the following amendments to the Bill. Most of these comments mirror the testimony of Ms Beadie Dawson who is also a Working Group member.

AMENDMENTS TO S. 2899 AND H.R.4904

Sec. 1 FINDINGS.

Comment for Sec. 1(2), Findings:

The United States Constitution both explicitly and implicitly gives Congress plenary power over the indigenous peoples of the United States and the Court has never questioned that authority. This Act aligns Native Hawaiians with the other indigenous peoples of the United States and must be amended to expressly bring Native Hawaiians under the constitutional provisions of Art. I, Sec.8 (Commerce Clause), Art. II, Sec. 2, C I. 2 (Treaty Clause) and Art I, Sec.2 and IXV Am, Sec.2 (Indian Tax Clause) to enable Native Hawaiians to receive the same benefits and protections accorded to Indian tribes and Alaska natives. However, there is no need to perpetuate the error made by Columbus² who called the native in America "Indians," when a simple explanation will retire the word "Indians" and properly equate it to indigenous, native people of the land. Labels such as "tribes" and "Indians" are patently offensive to many Native Hawaiians. Thus Section 1(2) should be amended because "tribes" and "Indians" do not describe who we are or our traditional form of government:

Sec. 1(2) Native Hawaiians are the indigenous, native people of the Hawaiian archipelago which became a part of the United States"

² "The term "Indian" was first applied by Columbus to the native people of the New World based on the mistaken belief that he had found a new route to India. The term has been understood ever since to refer to the indigenous people who inhabited the New World before the arrival of the first Europeans." (citations omitted throughout) Brief for the United States, Seth P. Waxman, Solicitor General, Rice v. Cayetano.

Comment for Sec. 1, Findings:

Because the history of Hawaii is critical to this Act and because so few Americans (read also Members of Congress) know or understand the actual facts about the desecration of the independent Kingdom of Hawaii and its people, the Findings Section should commence with twenty-five relevant recitals from the Apology Joint Resolution. In addition, the Findings Section needs to be amended to acknowledge that at the time of the overthrow, the Kingdom of Hawaii had twenty treaties with other foreign nations in addition to five existing treaties with the United States, and it had ninety-one consulates throughout the world.

Comment for Sec. 1(5), Findings.

This subsection is inaccurate and misleading. It must be amended to state that the Hawaiian Homes Commission Act was enacted for the express purpose of rehabilitating certain Native Hawaiians back onto the land. (HCCA was never intended to establish a "homeland" for the native peoples of Hawaii.)

NEW SECTION RELATING TO 5f TRUST:

Comments to Sec. 1(5)(6)(7)(8):

These sections create the false impression that the DHHL trust is the 'homeland' for Hawaiians and that there are only 18,000 natives who want to live on the homelands. This is the Democratic Party's proposal which has repeatedly surfaced. It has also been supported in Washington by the Pacific American Foundation. The Democrats want to get rid of the DHHL problem and give the debt the 200,000 acres of marginal land to Hawaiians while retaining the vast wealth of the Ceded Lands (5f) Trust for themselves. The only 5(f) lands for the Hawaiian peoples will be the 32, 000 acres of bombed out Kahoolawe Island.

These sections are included for political purposes.

Section 1(6)(7)(8) should be deleted.

New language:

6. In 1959, as part of the compact admitting Hawaii into the United States, the Congress created a Ceded Lands Trust to "better the conditions of Native Hawaiians." This trust consists of approximately 1.8 million acres of land, the submerged lands and the revenues there from, the assets of which have never been inventoried or segregated.
7. Throughout the years, Hawaiians have repeatedly sought to access the Ceded Lands Trust and resources and revenues in order to establish and maintain native settlements throughout the State.
8. The Hawaiian Homelands and the Ceded Lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language and tradition and for the survival of the Hawaiian peoples.

Sec 2. DEFINITIONS:

Comment for Sec. 2(2), Adult Members:

Section 2(2) should be amended to eliminate any reference to either the Secretary of Interior or

the Federal Register. (See amendments recommended for Section 7, supra.)

Sec.3. UNITED STATES POLICY:

Comment for Sec. 3(1) United States Policy.

It is critical in the prevention or successful resolution to future legal challenges that this Section be amended to establish that the provisions of Article I, Section 8, (Indian Commerce Clause) and Article II, Section 2, (Treaty Clause) and Article I, Section 2 and XIV Amendment, Section 2 (Indian Tax Clause) of the United States Constitution apply to the Native Hawaiian peoples.

Comment for Sec. 3(4)(A) United States Policy:

Native Hawaiians have historically enjoyed many years of autonomy in their internal and external affairs. Native Hawaiians may wish to do so again, particularly in the areas of trade, commerce and exchanges and promotions of culture. A new section 3(4) D should be added referencing the peoples' right to become economically self-sufficient through trade and commerce.

Sec. 4 UNITED STATES OFFICE FOR NATIVE HAWAIIAN AFFAIRS:

Comment for Sec. 4, United States Office for Native Hawaiian Affairs:

The Native Hawaiian Community Working Group has previously requested that the role and authority of the Secretary and the Department of Interior be substantially reduced and that elected Hawaiians assume as much of the oversight as possible.

Sec. 7. PROCESS:

Comment for Sec. 7, Process.

Many in the Working Group found that the role and authority of the Secretary in the Process Section was overbearing and unnecessary, particularly since we were aware of the recent revelation of mismanagement and the loss of \$2.4 billion of Indian Trust funds by the Secretary and the Department of Interior. Cobell v Babbitt. The entire Section 7 should be amended so that the role and authority of the Interior is substantially reduced. Native Hawaiians can certify their Roll and their Elections through the utilization of sworn statements and oversight of the Commission in an expanded role. If a legal requirement for the Secretary's oversight exists for Indian Tribes and Alaska Natives, Native Hawaiians should be exempted from it. Native Hawaiians are "People," not a group of multiple tribes. The entire Process Section should be simplified.

Comment for Sec. 7(a)(2) A, Commission:

This Section should be amended so that Commission members are elected by Native Hawaiians and their roles and authority expanded. All Commissioners should be Native Hawaiian and the number of Commissioners should be expanded to include perhaps sixteen representatives, two each from Hawaii, Maui, Molokai, Lanai, Kauai and Niihau and four from O'ahu.

Comment for Sec. 7(a)(2) B, Certification.

This section should be amended to permit Native Hawaiians to self-qualify themselves on the Roll by sworn statements. The Commission would review and certify the Roll prior to election of the Interim Governing Council. The Secretary could thereafter approve the Roll.

- Sec. 7(a)(3): Notification: delete
 Sec. 7(a)(4): Publication: delete
 Sec. 7(a)(5): Effect of Publication: delete
 Sec. 7(a)(6): Deadline for Petitions: delete
 Sec. 7(a)(7): Certification of Additional Native Hawaiians on the Roll: delete
 Substitute: "Additional Native Hawaiians may timely apply to the Commission for inclusion on the Roll"
 Sec. 7(a)(8): Hearing: delete
 Sec. 7(a)(9): Judicial Review: delete
 Sec. 7(a)(10): Publication of Final Roll: delete
 Sec. 7(a)(11): Effect of Publication: delete
 Sec. 7(b)(1)(A): Organization of the Native Hawaiian Interim Governing Council:
 Amend to organize meetings under supervision of the Commission.
 Sec. 7(b)(1)(B): Election: Amend to have elections of Interim Council supervised by Commission
 Sec. 7(b)(1)(C): Approval: Amend to have the election of the Interim Council supervised by the Commission.
 Sec. 7(b)(2): Powers: No changes.
 Sec. 7(b)(3): Duties: No changes.
 Sec. 7(b)(4)(A): Elections: Amend to have the Commission supervise elections to ratify organic documents.
 Sec. 7(b)(4)(C): Further Elections: Amend to have second or further elections to ratify revised organic documents supervised by the Commission.
 Sec. 7(c)(1): Organization of the Native Hawaiian Governing Body: No changes
 Sec. 7(c)(2): Ratification: Amend to have ratification of organic documents approved by the Commission.
 Sec. 7(c)(3): Election of Governing Officers: Amend to have election of governing officers supervised by the Commission.
 Sec. 7(c)(7): Additional Rights and Powers: Amend to add Enumerated Powers.
 Sec. 7(e): Incorporation: Delete

Sec. 8. APPROPRIATIONS:

Comment for Sec. 8 Appropriations:

Amend to require substantial funding for the education of Native Hawaiians prior to all elections with references to this Bill and the Process and for funding the Commission to fulfill its tasks.

Sec. 11. REGULATIONS:

Comment for Sec. 11 Regulations: Delete

Amend to substitute: "The Commission is authorized to make such rules and regulations as necessary to carry out the provisions of this Act."



KANAKA MAOLI TRIBUNAL KŌMIKE

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September 13, 2000

Honorable Sen. Ben Nighthorse Campbell, Chairman
US Senate Committee on Indian Affairs
838 Hart Senate Office Building, Washington, DC 20510
PH (202) 224-5852, FX (202) 224-5429

Dear Mr. Chairman:

We of the Kanaka Maoli Tribunal Kōmike strongly oppose S. 2899: To express the policy of Congress regarding the United States' relationship with Native Hawaiians, and for other purposes.

While some Kānaka Maoli (Indigenous Hawaiians) may support this measure introduced by Sen. Daniel Akaka and Sen. Daniel Inouye of your Committee on July 20, 2000, such advocates are mainly government officials or those associated with US Federal programs. Substantial numbers of others who oppose this bill are largely taro-roots Kānaka Maoli who have had to make special efforts to inform themselves about the bill and its grave implications, as described below. Nevertheless, most Kānaka Maoli, unfortunately, remain uninformed on this crucial legislation.

Opposition to Sen. Akaka's initiative was already forcefully evident during the December 1999 "Reconciliation" Hearings, six years after the 1993 US Apology Resolution in our homeland on six major islands of Ka Pae'āina (The Hawaiian Archipelago). This opposition was mainly because the terms of "reconciliation" for the US's role in the 1893 taking of our government and lands were imposed by US government officials. The hearings, arranged by Sen. Akaka and conducted by US Interior Department's Mr. John Berry and US Justice Department's Mr. Mark Van Norman, were video-taped. We urge you to view these videotapes.

Such overwhelming resistance among our Kānaka Maoli people who testified was intensified during the recent August 28 to September 1, 2000 hearings on S. 2899 and companion H.R. 4904 in Honolulu when hearings scheduled on our neighbor islands were cancelled. The videotaped replays refute government officials' and communications media reports of witnesses' majority support for the companion bills.

In spite of statements by Senators Akaka and Inouye that this legislation "has been developed by Native Hawaiians for Native Hawaiians following extensive consultation with the Native Hawaiian community," the evidence is otherwise. The bills were drafted and redrafted in Washington, not in Ka Pae'āina, before their formal introduction in both houses of Congress on July 20.

Neither drafts nor the bills and amended bills have been distributed in our major island communities for discussion and input.

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On September 9, eight days after the Honolulu hearings, the *Honolulu Advertiser* newspaper reported that as a result of the hearings, S. 2899 was being "substantially amended" for a hearing by your Committee in Washington, originally scheduled for September 13.

In spite of our requests to all Hawai'i Congress members' offices and the press, we were not able to procure a copy of the amended bill to be heard by your Committee until early this morning, September 13, on the eve of your Committee's scheduled hearings in Washington.

We consider this confirming evidence that the rush and predetermined content of this Washington legislation concerning our Kanaka Maoli political status, without the knowledge of, nor input and final consent by, most of our Kanaka Maoli people, to be in itself a grave violation of our Kanaka Maoli inherent sovereignty and right to self-determination.

Senators Akaka and Inouye may feel that they are protecting current US Federal Kanaka Maoli programs from being ruled "race-based" by proposing in S. 2899 US recognition of a government-to-government trust relationship via a Native Hawaiian Governing Body under the US Interior Secretary and a Native Hawaiian Commission appointed by the US Congress to certify as "Native Hawaiian" descendants of aboriginal people who resided in our islands on or before January 1, 1893.

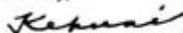
However, the creation of such a Federal wardship, similar to that of American Indians and Alaska Natives, is instinctively repulsive to us Kanaka Maoli. For we are well aware that because of such recognition, US indigenous peoples have lost their lands; their trust funds have disappeared, such as in current scandals under investigation; and their health, education, social and economic disparities have persisted or worsened.

Senators Akaka's and Senator Inouye's urgency in pushing S. 2899 seems to be based on the belief that S. 2899 has a better chance of passage while President William Clinton is in office. But we Kanaka Maoli people do not want to be manipulated by "party politics."

Senators Akaka and Inouye also appear to have ignored Hawai'i Representative Patsy Mink's September 1, 2000 plea that since the Kanaka Maoli people appear to be divided on the issue, the US Congress should first abide by the Kanaka Maoli people's will through a referendum. Only if a Kanaka Maoli majority approves in advance, Representative Mink says, should the US Congress proceed with recognition of a Native Hawaiian Governing Body. And then, such an entity should be created by the Kanaka Maoli people, not by the US.

For the foregoing reasons, we call upon you, Mr. Chairman, and other members of your Senate Indian Affairs Committee to reject S. 2899.

Sincerely,



Kekuni Blaisdell