



The Honorable Joseph Biden, President of the Senate
The Honorable Harry Reid, Majority Leader, U.S. Senate
The Honorable Mitch McConnell, Republican Leader
The Honorable Richard Durbin, Majority Whip, U.S. Senate
The Honorable Jon Kyl, Republican Whip, U.S. Senate
The Honorable Patrick Leahy, Chair, Senate Judiciary Committee
The Honorable Jeff Sessions, Ranking Member, Senate Judiciary Committee
The Honorable Byron L. Dorgan, Chairman, Committee on Indian Affairs
The Honorable John Barrasso, Vice Chairman, Committee on Indian Affairs

December 7, 2010

Dear President Biden and Distinguished Senators:

We¹ understand that there is a possibility that the new and significantly revised version of the Native Hawaiian Government Reorganization Act will be tacked onto the spending bill in the next week or so. We hope that this does not happen. A bill as important as this deserves careful consideration. It would be a matter for concern if it were to be made law without a hearing on its new provisions.

The current version of the legislation may create new problems and exacerbate those previously identified, but because the changes to the bill do not eliminate the serious constitutional concerns identified in previous communications, our position remains the same. We therefore attach a copy of a letter we wrote opposing an earlier version of the bill.

Sincerely,

Handwritten signature of Gerald A. Reynolds in black ink.

Gerald A. Reynolds
Chairman

Handwritten signature of Abigail Thernstrom in black ink.

Abigail Thernstrom
Vice Chair

¹ The U.S. Commission on Civil Rights is an independent, bipartisan agency that makes appraisals of the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution of the United States because of color, race, religion, sex, age, disability, or national origin, or in the administration of justice. 42 U.S.C. 1975(a). The Commission voted 5-2-1 to send this letter. Commissioners Arlan Melendez and Michael Yaki voted against sending the letter, and Vice Chair Abigail Thernstrom abstained.

Commissioners Reynolds and Taylor's terms as Commissioners expired on December 5, 2010. Each indicated his willingness to sign this letter on December 5.



August 28, 2009

The Honorable Nancy Pelosi, Speaker
The Honorable John Boehner, Republican Leader
The Honorable Harry Reid, Majority Leader
The Honorable Mitch McConnell, Republican Leader
The Honorable Nick J. Rahall II, Chairman, Committee on Natural Resources
The Honorable Doc Hastings, Ranking Member, Committee on Natural Resources
The Honorable Byron Dorgan, Chairman, Committee on Indian Affairs
The Honorable John Barrasso, Vice Chairman, Committee on Indian Affairs
The Honorable John Conyers, Chairman, Committee on the Judiciary
The Honorable Lamar Smith, Ranking Member, Committee on the Judiciary
The Honorable Patrick Leahy, Chairman, Committee on the Judiciary
The Honorable Jeff Sessions, Ranking Member, Committee on the Judiciary

Re: Native Hawaiian Government Reorganization Act

Dear Distinguished Members of Congress:

Three years ago, the U.S. Commission on Civil Rights issued a report opposing the passage of the proposed Native Hawaiian Government Reorganization Act. Although that report focused on an earlier version of the proposed legislation, that earlier version was substantially similar to S. 1011. Specifically, the report stated:

“The Commission recommends against passage of the Native Hawaiian Government Reorganization Act ... or any other legislation that would discriminate on the basis of race or national origin and further subdivide the American People into discrete subgroups accorded varying degrees of privilege.”

We write today to reiterate our opposition to the proposal.¹ We do not believe Congress has the constitutional authority to “reorganize” racial or ethnic groups into dependent sovereign nations unless those groups have a long and continuous history of separate self-governance. Moreover, quite apart from the issue of constitutional authority, creating such an entity sets a harmful precedent. Ethnic Hawaiians will surely not be the only group to demand such treatment. On what ground will Congress tell these other would-be tribes no?

¹ Commissioners voted 6-2 to develop a letter expressing our views on the legislation at an open meeting on August 7, 2009. Commissioners Melendez and Yaki voted against sending a letter from the Commission.

Some advocates of S. 1011 readily concede that the bill is an effort to preserve the State of Hawaii's current practice of conferring an array of special benefits exclusively on its ethnic Hawaiian citizens—to the detriment of its citizens of African, Asian, European or other heritage. In essence, it is an attempted end-run around the Supreme Court's decisions in *Rice v. Cayetano*² and *City of Richmond v. J.A. Croson Co.*³ The Constitution, however, cannot be circumvented so easily. And even if it could be, we would oppose passing legislation with the purpose of shoring up a system of racially exclusive benefits.⁴

In closing we would like to point out that in 1840, the Kingdom of Hawaii adopted a Constitution with a bicameral, multi-racial legislature. The Constitution was signed by two hands—that of Kamehameha's son King Kamehameha III and that of the holder of the second-highest office in the nation, Keoni Ana, the son of the British-born Hawaiian Minister John Young. Its opening sentence, the substance of which was suggested by an American missionary, was based loosely on a Biblical verse: “Ua hana mai ke Akua i na lahuikanaka a pau i ke koko hookahi, e noho like lakou ma ka honua nei me ke kuikahi, a me ka pomaikai.” Translated, the passage might read: “God has made of one blood all races of people to dwell upon this Earth in unity and blessedness.”

It would be ironic to attempt to honor the dynamic, cosmopolitan Kingdom of Hawaii by disdaining these words.⁵ We urge you to vote against the measure.

If you would like any further information or we can do anything else to assist you, please do not hesitate to ask. We can be reached through the Chairman's special assistant, Dominique Ludvigson, at (202) 376-7626 or at dludvigson@usccr.gov.

² 528 U.S. 495 (2000).

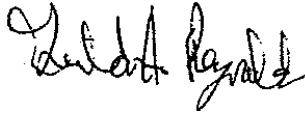
³ 488 U.S. 469 (1989).

⁴ For further elaboration on our reasons for opposing the bill, please see our Report, which is available on our website, www.usccr.gov.

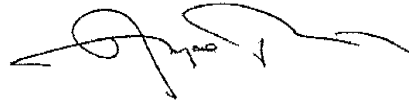
⁵ Contrary to the spirit of S. 1011, the Kingdom of Hawaii was not a kinship-based tribe that can be “restored” and “reorganized” as a membership group based on ethnic Hawaiian bloodline. It was, in fact, a multi-racial society from the first moment of the island chain's unification in 1810. In the true spirit of Aloha for which Hawaii is famous, its rulers were welcoming of immigrants, who came from all over the world, particularly from Portugal, China, Japan, the United States, Great Britain, and Germany. By 1893, when the Kingdom came to an end, ethnic Hawaiians were a minority of the population.

Thank you for your attention.

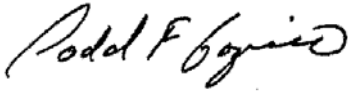
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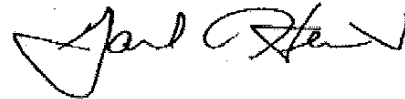
Gerald A. Reynolds
Chairman



Abigail Thernstrom
Vice Chair



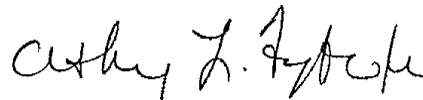
Todd Gaziano
Commissioner



Gail Heriot
Commissioner



Peter Kirsanow
Commissioner



Ashley Taylor, Jr.
Commissioner

cc: Commissioner Arlan Melendez
Commissioner Michael Yaki



UNITED STATES COMMISSION ON CIVIL RIGHTS

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www.usccr.gov

Handwritten signature of Peter Kirsanow in black ink.

Peter Kirsanow
Commissioner

Handwritten signature of Ashley Taylor, Jr. in black ink.

Ashley Taylor, Jr.
Commissioner

Handwritten signature of Gail Heriot in black ink.

Gail Heriot
Commissioner

Handwritten signature of Todd Gaziano in black ink.

Todd Gaziano
Commissioner

Cc: Arlan D. Melendez, Commissioner
Michael Yaki, Commissioner